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WISCONSIN LAW REINFORCES WHITE SUPREMACY THROUGH ARTICLE XIII, SECTION 3 OF THE STATE CONSTITUTION

By: Felicia L. Owen*

INTRODUCTION

Wisconsin law reinforces white supremacy through the constitutional provision barring individuals convicted of a felony or misdemeanor violating public trust from holding public office. Article XIII, Section 3(2) and (3) states:

(2) No person convicted of a felony, in any court within the United States, no person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust and no person convicted, in a court of a state, of a crime designated, at the time of commission, under the law of the state as a misdemeanor involving a violation of public trust shall be eligible to any office of trust, profit or honor in this state unless pardoned of the conviction.

(3) No person may seek to have placed on any ballot for a state or local elective office in this state the name of a person convicted of a felony, in any court within the United States, the name of a person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust or the name of a person convicted, in a court of a state, of a crime designated, at the time of commission, under the law of the state as a misdemeanor involving a violation of public

trust, unless the person named for the ballot has been pardoned of the conviction.

Subsection 2 prohibits an individual from seeking public office, while Subsection 3 prohibits an individual from being placed on a ballot. It is through these two subsections of the State Constitution that white supremacy is upheld in the State of Wisconsin. It is because of white supremacy in Wisconsin, that the state once known for its progressive leadership has now become a national leader for some of the worst disparities in racial equity.

This Comment will explain how the above constitutional provision upholds a power structure designed to maintain the power of white Americans over communities of color in the State of Wisconsin. Part II will explain what white supremacy is and theories on why it persists. Part II will also explain how national and state laws have changed throughout the nation's history to maintain white supremacy. Part III will explain how the constitutional provision reinforces white supremacy currently. And finally, Part IV will explain how this state can begin to address this problem. It is the goal of this Comment to enlighten readers on how Wisconsin law has historically, and continually, maintained white supremacy, while also offering solutions to consider such as the repeal of the above-mentioned constitutional provision.

BACKGROUND

This part will explain what white supremacy is and how it has manifested within the country and within the State of Wisconsin. This information is necessary to understand how Article XIII, Section 3 reinforces white supremacy within the state currently.

What is White Supremacy?

The dictionary provides two definitions of white supremacy: 1) "the belief that the white race is inherently superior to other races and that white people should have control over people of other races"; and 2) "the social, economic, and political systems that collectively enable white people to maintain power over people of other

racism.”¹ For purposes of this Comment, the focus is on the latter definition although it is the ideology of white superiority that has created these social, economic and political systems in the first place. This ideology of white supremacy has been present in America since the first day Europeans discovered this continent. It is the ideology

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¹ *White Supremacy*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/white%20supremacy> (last visited Jan. 25, 2021).

that led to the removal of Native Americans from their land,² forced assimilation,³ slavery,⁴ redlining,⁵ Jim Crow⁶ and Black Codes.⁷

In the present day, a white American may not be as willing to openly say that they believe they are superior to other races, yet the social, economic and political systems that allow white people to maintain power over nonwhite groups persists. Legal scholar Frances Lee Ansley offers two opposing theories for consideration as to why white supremacy persists in her article “Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship.” One theory Ansley offers is that white supremacy exists to maintain class domination.⁸ In the class domination model, “white supremacy is primarily a means to justify and enhance class dominance and thus to strengthen existing relations of economic power.”⁹ An example under this model would be the social, economic and political standards imposed to maintain an exploitable work force.¹⁰ White supremacy is maintained when minorities are forced into a marginal underclass that can be “summoned, moved, or rebuffed at will, thereby facilitating the mobility of capital and improving the system’s ability to control and channel investment.”¹¹ Essentially, under this theory, white supremacy continues to exist for the financial benefit of the upper

² *Removing Native Americans from their Land*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/immigration/native-american/removing-native-americans-from-their-land/> (last visited Jan. 25, 2021).

³ Becky Little, *How Boarding Schools Tried to ‘Kill the Indian’ Through Assimilation*, HISTORY, <https://www.history.com/news/how-boarding-schools-tried-to-kill-the-indian-through-assimilation> (Nov. 1, 2018).

⁴ *A Journey in Chains*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/immigration/african/journey-in-chains/> (last visited Jan. 25, 2021).

⁵ Terry Gross, *A ‘Forgotten History’ Of How The U.S. Government Segregated America*, NAT’L PUB. RADIO (May 3, 2017, 12:47 PM), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>; see generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

⁶ *Jim Crow and Segregation*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/jim-crow-segregation/> (last visited Jan. 25, 2021).

⁷ GILBERT THOMAS STEPHENSON, *RACE DISTINCTIONS IN AMERICAN LAW* 36 (1910).

⁸ Frances Lee Ansley, *Stirring the Ashes: Race Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1025 (1988-1989).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1026.

class.¹² If white supremacy were to cease to exist, minorities might become too savvy to be exploited, therefore depleting the source of cheap labor and costing the upper class a larger cut of their wealth.¹³

The second theory Ansley offers is the race model.¹⁴ Under the race model, white supremacy is maintained because it “is concretely in the interests of all white people.”¹⁵ “It assures them greater resources, a wider range of personal choice, . . . and more self-esteem than they would have if they were . . . forced to share [these] with people of color.”¹⁶ Under this theory white supremacy continues to exist because there is no benefit to the white majority to dismantle the systems that uphold it.¹⁷

While there is truth to be found in both theories, neither on their own are fully explanatory for the persistence of white supremacy today. In his book *The Racial Contract*, philosopher Charles W. Mills offers that while all whites are beneficiaries of white supremacy, not all whites are signatories or even fully aware that they are beneficiaries.¹⁸ “[I]t reflects the fact that standard textbooks and courses have for the most part been written and designed by whites, who take their racial privilege so much for granted that they do not even see it

¹² *Id.*

¹³ See David Leonhart, Opinion, *The Black-White Wage Gap Is as Big as It Was in 1950*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/opinion/sunday/race-wage-gap.html> (“Because black workers were disproportionately in blue-collar jobs, the general rise of incomes for the poor and middle class shrank the racial wage gap. One law was especially important: the 1966 amendment to the Fair Labor Standards Act. When Congress passed the original law, during the New Deal, it deliberately exempted service and other industries with many black workers from the minimum wage. ‘Just expanding the minimum wage to those industries,’ Ellora Derenoncourt, a University of California, Berkeley, economist, said, ‘boosted the relative wages of black workers substantially.’ Since 1980, however, the wage gap has increased again, and is now back roughly to where it was in 1950. The same economic forces are at work, only in the opposite direction: The minimum wage has stagnated in some states, unions have shrunk, tax rates on the wealthy have fallen more than they have for anyone else and incomes for the bottom 90 percent — and especially the bottom half — have trailed economic growth. Black workers, again, are disproportionately in these lower-income groups.”).

¹⁴ Ansley, *supra* note 8, at 1035.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CHARLES W. MILLS, *THE RACIAL CONTRACT* 11 (1997).

as *political*, as a form of domination.”¹⁹ This serves as a third theory for why white supremacy continues to exist, because many do not even realize that it exists. When the system is not designed to interrupt an individual’s life, they are unlikely to see it and are therefore not aware of it unless it is pointed out to them. A great example of this would be the differing attitudes towards law enforcement by white and non-white Americans due to the different experiences one generally has.²⁰

White Supremacy is an Inherent Ideology in American Legal Framework

White supremacy has been an underlying ideology in American legal framework from the first colony.²¹ The laws and methods used to maintain white power over nonwhites have certainly been chipped away at throughout history, but white America has always been able to shift and rework the system to continue to maintain power and privilege over people of color.

When Congress abolished slavery in 1865, immediately after states responded by enacting laws that allowed them to arrest and convict their freed slaves and continue to maintain them for free labor through the criminal conviction clause in the Thirteenth Amendment.²² A clause which created an exception for legal slavery if

¹⁹ *Id.* at 1.

²⁰ See Mora A. Reinka & Colin Wayne Leach, *Race and Reaction: Divergent Views of Police Violence and Protest Against*, 73 J. SOC. ISSUES 768, 768-69 (2017) (“Across the social sciences, it has long been argued that a disproportionate degree of violence against disadvantaged ethnic minorities is an indicator of systemic racism in a society (for reviews, see Bonilla-Silva, 2014; Goldberg, 2002; Sidanius & Pratto, 1999). Perhaps the most obvious form of such bias is the disproportionate use of deadly force against the unarmed. In an analysis of public records and media, the Washington Post estimated that 60% of the 965 people shot and killed by police in 2015 were unarmed Blacks and Latinos. More specifically, unarmed Black men were seven times more likely to be killed by police than unarmed White men. The recent sustained media attention to this long-standing racial bias is likely why there has been such strong public and political reactions to the recent killings of unarmed African American children and adolescents like 17-year-old Trayvon Martin (2012), 18-year-old Michael Brown (2014), and 12-year-old Tamir Rice (2014) as well as adults like Rekia Boyd (2012), Eric Garner (2014), and Philando Castile (2016).”)

²¹ Liam Seamus O’Melinn, *Imperial Origins of Federal Indian Law: The Ideology of Colonization in Britain, Ireland, and America*, 31 ARIZ. ST. L.J. 1207, 1251 (1999).

²² STEPHENSON, *supra* note 7, at 57-58.

someone was convicted of a crime, resulted in the passage of a multitude of laws across the southern states that essentially created any excuse to arrest a Black person for any reason. One such law was a law against vagrancy in South Carolina, classifying a vagrant as:

- “[A]ll persons who have not some fixed and known place of abode, and some lawful and reputable employment;
- [T]hose who have not some visible and known means of a fair, honest, and reputable livelihood;”
- “[P]ersons who lead idle or disorderly lives, or keep or frequent disorderly or disreputable house or places; “
- All common gamblers; prostitutes; fortune tellers; magicians; drunkards; and several other classifications.²³

Essentially a “catch all,” not that much unlike the modern-day disorderly conduct.²⁴

Although the abolishment of slavery in 1865 was a step in the right direction, the relatively more overt expressions of white supremacy in American history continued to endure for over the next one hundred years to come. Segregation was not declared illegal until the passage of the Civil Rights Act in 1964,²⁵ voting discrimination was not outlawed until the passage of the Voting Rights Act in 1965,²⁶ and until the passage of the Fair Housing Act in 1968 the federal government was still participating in housing discrimination practices.²⁷

After the civil rights movement, white supremacy began to manifest itself through another social, economic and political system - the “War on Drugs.” It was 1971 when President Richard Nixon infamously declared drug abuse “public enemy number one.”²⁸ In a 1994

²³ *Id.* at 58-59.

²⁴ WIS. STAT. § 947.01 (2019) (“Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.”).

²⁵ *Civil Rights Act of 1964*, HISTORY, <https://www.history.com/topics/black-history/civil-rights-act> (Jan. 25, 2021).

²⁶ *Voting Rights Act of 1965*, HISTORY, <https://www.history.com/topics/black-history/voting-rights-act> (Aug. 25, 2020).

²⁷ See generally Gross, *supra* note 5; ROTHSTEIN, *supra* note 5.

²⁸ Remarks About an Intensified Program for Drug Abuse Prevention and Control, 1 PUB. PAPERS 738 (June 17, 1971) (“Ladies and gentlemen: I would like to summarize for

interview, twenty-three years later, former White House Counsel and top advisor to former President Nixon during his presidency, John Ehrlichman admitted that the war on drugs was initially conjured up to maintain power:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.²⁹

It was not until the mid-1980's, almost fifteen years later, when the "crack epidemic" actually hit communities of color and further fed into the narrative that the former president started in 1971.³⁰ Prior to the mid 1980's, however, white Americans had largely viewed cocaine, the drug which crack is made from, as a harmless "leisure pharmaceutical."³¹ It was so popular among white men in America that "[i]t was not uncommon to find cocaine related products advertised in standard men's magazines."³² "At its height in the 1970's, the

you the meeting that I have just had with the bipartisan leaders which began at 8 o'clock and was completed 2 hours later. I began the meeting by making this statement, which I think needs to be made to the Nation: America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.")

²⁹ Dan Baum, *Legalize It All*, HARPER'S MAGAZINE (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all/>.

³⁰ U.S. GEN. ACCT. OFF., GAO/HEHS-98-130, EMERGING DRUG PROBLEMS 1 (1998).

³¹ See generally David Musto, *America's First Cocaine Epidemic*, WILSON Q., Summer 1989, at 59.

³² Yeoman Lowbrow, *Cocaine Advertising of the 1970s-1980s*, FLASHBAK (Sept. 10, 2017), <https://flashbak.com/cocaine-advertising-of-the-1970s-1980s-386108/>.

[cocaine] paraphernalia business accounted for an estimated \$600 million to \$1.5 billion in sales."³³

At some point during the late 1970's, so much cocaine was being trafficked into the United States that the price of cocaine dropped by nearly as much as 80% and dealers began to look for new ways to sell their product, as a result, crack was introduced to lower income communities.³⁴ Once the cheaper and highly addictive drug began to spread in these poorer communities, politicians responded with harsher punishments and mandatory sentencing minimums.³⁵ In true white supremacist form, Congress enacted a mandatory minimum sentence of five years for possession of five grams of crack cocaine, a drug more commonly associated with impoverished Black and Brown communities, while mandating the same sentence for the possession of 500 grams of powder cocaine, a drug more commonly associated with rich white communities.³⁶ This sentencing disparity remained a law until the passage of the Fair Sentencing Act in 2010.³⁷

³³ John Kass, *Selling of Drug Paraphernalia Goes from Chic to Underground*, CHI. TRIB. (Sept. 5, 1989), <https://www.chicagotribune.com/news/ct-xpm-1989-09-05-8901100384-story.html>.

³⁴ *Cocaine*, HISTORY (Aug. 21, 2018), <https://www.history.com/topics/crime/history-of-cocaine>; *Our History: 1985-1990*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/sites/default/files/2018-07/1985-1990%20p%2058-67.pdf> (last visited Feb. 2, 2022).

³⁵ Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207. (Title I, Subtitle A, Sec. 1002 (B) read, "In the case of a violation of subsection (a) of this section involving— "(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin; "(ii) 500 grams or more of a mixture or substance containing a detectable amount of— "(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; "(II) cocaine, its salts, optical and geometric isomers, and salts of isomers; "(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or "(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);"; "(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base; ... such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years.")

³⁶ *Id.*

³⁷ Fair Sentencing Act, Pub. L. No. 111-220, 124 Stat. 2372 (2010) (codified as amended at 21 U.S.C. §§ 841, 844, 960) (changing the penalty for 5 grams of cocaine base to 28 grams).

How the War on Drugs Impacted Wisconsin

In 1987 Wisconsin introduced the state's first Anti-Drug Abuse Strategy and grant program to enhance existing and establish new local drug task forces.³⁸ In the ten-year period prior to 1987, drug arrests in Wisconsin were on the decline.³⁹ Drug arrests increased in 1987 for the first time since 1982.⁴⁰ Between 1988 and 1993, drug related arrests in Wisconsin rose by 44%.⁴¹ Within those same five years, drug task forces made 822 drug related juvenile arrests, a 325% increase.⁴²

While the majority of these arrests were concentrated in Milwaukee County, the county with the largest Black and Brown communities, it is notable that a report published by the Wisconsin Office of Justice Assistance noted that Wisconsin officials confiscated almost 14 million wild and more than 43,000 cultivated marijuana plants found growing in rural Wisconsin in 1993.⁴³ Additionally, Wisconsin officials acknowledged a growing concern over a newly discovered, highly addictive drug, methcathinone, also produced in rural Wisconsin.⁴⁴ This is notable as the war on drugs painted a picture associating black and brown communities with drug abuse, and black and brown individuals were incarcerated at higher rates, yet rural communities in Wisconsin were cultivating drugs in large amounts.

When President Nixon first declared drug abuse public enemy number one, in 1971, the Wisconsin prison population was less than 2,500 inmates.⁴⁵ By 2018, Wisconsin's prison population, was 23,844,

³⁸ WIS. OFF. OF JUST. ASSISTANCE STAT. ANALYSIS CTR., DRUG ARRESTS IN WISCONSIN IN 1986-1987 1 (1988).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ WIS. OFF. OF JUST. ASSISTANCE STAT. ANALYSIS CTR., WISCONSIN DRUG LAW ENFORCEMENT TASK FORCES 1989-1993 11 (1995).

⁴² *Id.* at 13.

⁴³ *Id.* at 7.

⁴⁴ *Id.*; see also Mike Nichols, *Drug More Powerful, Addictive Than Cocaine Emerges in Midwest*, CHI. TRIB. (June 24, 1993), <https://www.chicagotribune.com/news/ct-xpm-1993-06-24-9306250196-story.html>.

⁴⁵ U.S. DEP'T JUST. BUREAU JUST. STAT., HISTORICAL STATISTICS ON PRISONERS IN STATE AND FEDERAL INSTITUTIONS YEAREND 1925-86, at 11 (May 1988).

an 856% increase.⁴⁶ And while people of color only made up 17% of the state's population, they accounted for 54% of the state prison population.⁴⁷ Even more disturbing, the Black community only accounted for 7% of the state population, yet at the same time accounted for 41% of the prison population.⁴⁸

Article XIII, Section 3

At the same time incarceration rates were beginning to rise in Wisconsin, state legislators began to consider a constitutional amendment that would prohibit a person from holding public office or from appearing on a ballot for state or local office if the person had been convicted of a misdemeanor involving public trust or any felony.⁴⁹

As it was written at the time, Article XIII, Section 3 of the constitution barred any person convicted of an infamous crime from holding public office.⁵⁰ Infamous crime was defined by the Wisconsin Supreme Court in the 1922 case *Becker v. Green County*, as "a crime punishable by imprisonment in state prison."⁵¹ In 1981, the Supreme Court reversed that ruling when they disavowed the ruling that all felonies, or crimes punishable by state imprisonment, constituted an infamous crime within the parameters of the constitutional provision.⁵²

In 1993 the state legislature began the procedure to amend the constitution, changing the language of Article XIII, Section 3 from barring from public office any person convicted of an infamous crime, to any person convicted of a felony or misdemeanor violating public trust.⁵³

⁴⁶ See *id.*; *Incarceration Trends in Wisconsin*, VERA INST. OF JUST., <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-wisconsin.pdf> (last visited Feb. 8, 2021).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Assemb. J. Res. 16, 1995 Leg., Reg. Sess. (Wis. 1996).

⁵⁰ *Id.*

⁵¹ *Becker v. Green Cnty.*, 176 Wis. 120, 124 (1922).

⁵² *L. Enf't Standards Bd. v. Lyndon Station*, 101 Wis. 2d 472, 497 (1981.).

⁵³ Assemb. J. Res. 16, 1995 Leg., *supra* note 49.

To pass a constitutional amendment in the state of Wisconsin a constitutional convention must be called⁵⁴ or, Article XII, Section 1 of the Wisconsin Constitution provides for a three part procedure which requires constitutional amendments pass by both houses of the legislature for first consideration, referred to the legislature chosen at the next general election without changes for second consideration, and finally submitted to the public to be voted on by ballot at the next election.⁵⁵ This proposed amendment to Article XIII was first considered and approved by the 1993 legislature as 1993 Enrolled Joint Resolution 19,⁵⁶ by the 1995 legislature as 1995 Enrolled Joint Resolution 28,⁵⁷ and finally submitted and approved by the voters on the November 5, 1996 ballot.⁵⁸ As of today, Wisconsin is one of only twelve states with a law that prohibits felons from holding public office after they have completed their sentence, unless pardoned by the Governor.⁵⁹ Federal law does not bar felons from running for federal public office.⁶⁰

PROBLEM

Barring individuals convicted of a felony or misdemeanor violating public trust reinforces white supremacy in Wisconsin due to the state's history of incarcerating Black and Brown individuals at disproportionately high rates; the fact that the state laws have been written to penalize crimes associated with Black and Brown communities with harsher consequences than crimes associated with white communities; and the fact that by barring these individuals from holding public office the state is barring an entire population of individuals affected by the law from having a say in how those laws are written.

⁵⁴ WIS. CONST. art. XII, § 2.

⁵⁵ WIS. CONST. art. XII, § 1.

⁵⁶ Assemb. J. Res. 16, 1995 Leg., *supra* note 49.

⁵⁷ *Id.*

⁵⁸ WIS. LEGIS. REFERENCE BUREAU, STATE OF WISCONSIN 1997-1998 BLUE BOOK 868 (Lawrence S. Barish ed., 1997).

⁵⁹ *Restoration of Rights Project*, COLLATERAL CONSEQUENCES RES. CTR., <https://ccre-sourcecenter.org/restoration-2/> (last visited Jan. 26, 2021).

⁶⁰ U.S. CONST. art 1.

As previously mentioned, Wisconsin's prison population was 23,844 in 2018, and while people of color only made up 17% of the state's population, they accounted for 54% of the state prison population.⁶¹ Further, the Black community only accounts for 7% of the state population, yet at the same time accounts for 41% of the prison population.⁶² The state incarcerates Black and Brown individuals at a much higher rate than that of white individuals in Wisconsin.⁶³ A variety of reasons this occurs includes the war on drugs, racial profiling, lack of access to financial capital and lack of social ties. As a result, a higher percentage of individuals in Black and Brown communities become ineligible to run for public office than the percentage of white individuals in most of the communities across this state. Not only does that create a smaller pool of qualified candidates for communities of color to choose from versus white communities, but it also creates a smaller pool of qualified candidates for the state to choose from with a skew towards more white candidates than candidates of color. This lack of representation is just one of the ways in which white supremacy is reinforced through Article XIII of the state constitution.

Another way white supremacy is reinforced through the constitutional provision barring felons from holding public office is the fact that Wisconsin law penalizes crimes generally associated with Black and Brown communities with harsher sentences than crimes generally associated with white communities. A great example of this can be found in the way the State of Wisconsin does not penalize a first offense driving under the influence of alcohol.⁶⁴ In fact, driving under the influence of alcohol doesn't even become a felony in Wisconsin until the fourth offense.⁶⁵ Yet, 140 people were killed in Wisconsin in 2019 due to alcohol related crashes, and 2,918 people were

⁶¹ VERA INST. OF JUST., *supra* note 46.

⁶² *Id.*

⁶³ Mary Prosser & Shannon Toole, *Wisconsin's Mass & Disparate Incarceration*, WIS. LAW. (Apr. 1, 2018), <https://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=91&ArticleID=26275>.

⁶⁴ STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, OWI AND RELATED ALCOHOL AND DRUG OFFENSE PENALTIES 1 (2020), <https://wisconsindot.gov/Documents/safety/education/drunk-drv/owi-penchrt.pdf>.

⁶⁵ *Id.*

injured.⁶⁶ And the Wisconsin Department of Transportation Vehicles Driver Record shows that as of December 31, 2019, there were 494,939 Wisconsin drivers that had at least one Operating While Intoxicated conviction.⁶⁷ That's approximately 8.5% of the population of Wisconsin.⁶⁸

Further, even though Wisconsinites report driving after drinking too much at a rate higher than the national average,⁶⁹ Wisconsin is the only state that treats a first-time drunk driving offense as a civil violation and not a crime.⁷⁰ So why haven't Wisconsin legislators cracked down on drinking and driving the way they have cracked down on drugs and other crimes? Maybe because of the 25,269 total arrests for driving while intoxicated made in 2019, 82% of those arrests were white individuals and only 12% were Black.⁷¹

By comparison, state law makes a first-time offense for simple possession of marijuana in Wisconsin a misdemeanor and a second time offense a felony.⁷² In 2019, of the 14,786 arrests for the possession

⁶⁶ *Drunk Driving*, STATE OF WIS. DEP'T OF TRANSP., <https://wisconsin-dot.gov/Pages/safety/education/drunk-drv/default.aspx> (last visited Jan. 26, 2021).

⁶⁷ *Drunk Driving Arrests and Convictions*, STATE OF WIS. DEP'T OF TRANSP., <https://wisconsin-dot.gov/Pages/safety/education/drunk-drv/ddarrests.aspx> (last visited Jan. 26, 2021).

⁶⁸ See *id.*; *WISH: Wisconsin Population by Sex*, WIS. DEP'T OF HEALTH SERVS., <https://www.dhs.wisconsin.gov/wish/population/data.htm> (Nov. 22, 2021) (reporting Wisconsin's 2019 population as 5,835,721). In 2019, 494,939 Wisconsinites had at least one OWI conviction out of a total population of 5,822,434.

⁶⁹ *Sobering Facts: Drunk Driving in Wisconsin*, CTR. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/motorvehiclesafety/pdf/impaired_driving/drunk_driving_in_wi.pdf (Dec. 2014).

⁷⁰ Amy DuPont, *'We have a problem in Wisconsin: Bill would make 1st offense OWI a crime, punishable by 30 days in jail'*, FOX 6 NOW MILWAUKEE (Jan. 8, 2019), <https://www.fox6now.com/news/we-have-a-problem-in-wisconsin-bill-would-make-1st-offense-owi-a-crime-punishable-by-30-days-in-jail>.

⁷¹ See WIS. DEP'T OF JUST., UCR ARREST DEMOGRAPHICS: ADULT VS. JUVENILE ARRESTEES, BY RACE AND YEAR, <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-demographics> (last visited Jan. 26, 2021) (choose "Adult" under "Choose an age group:"; then choose "2019" under "Choose the year of arrest:"; then choose "Society Crimes" under "Choose an arrest category").

⁷² WIS. STAT. § 961.41(3g)(e) ("*Tetrahydrocannabinols*. If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4)(t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense.").

of marijuana, 68.5% of those arrests were white while 25.6% of those arrests were Black individuals.⁷³ Whether or not it was intentional to punish Black and Brown communities with harsher sentences, the lack of sentencing for a much more dangerous crime is reflective of a set of morals and values that reinforces white supremacy.

Consequently, due to the state's history of incarcerating Black and Brown communities at higher rates, and the current system that still penalizes crimes associated with Black and Brown communities with harsher sentences, the bar on individuals convicted of certain crimes from holding public office is a bar on the state's ability to make meaningful change so that Black and Brown communities do not have to continue to live with these unjust inequities.⁷⁴

By broadly banning a large class of convicted criminals from holding public office it makes it more difficult for individuals harmed by the system to be heard and offer insight on ways the system could be improved upon. Someone who has never been treated unfairly by the system is not likely to be aware of the ways the system can go wrong. Someone who has been treated unfairly by the system is more capable of calling out these flaws, in turn, helping create a more just system. Moreover, someone who has never had to commit a crime of survival is not likely to understand the pressures one might face when deciding whether to commit a crime or not. Someone who does understand those pressures is more capable of coming up with preventative solutions, in turn, lowering crime rates.

Unfortunately, Wisconsin does not track felony convictions in any comprehensive way that would allow for a full picture of 'how' and 'who' has been convicted and prevented from running for public office.⁷⁵ There is no database amongst the agencies that could tell you

⁷³ See WIS. DEP'T OF JUST., *supra* note 71 (choose "Adult" under "Choose an age group."; then choose "2019" under "Choose the year of arrest."; then choose "Drug Crimes" under "Choose an arrest category").

⁷⁴ WIS. CONST. art. XIII, § 3(2)-(3).

⁷⁵ *But see Bureau of Justice Information and Analysis*, WIS. DEP'T OF JUST., <https://www.doj.state.wi.us/dles/bjia/bureau-justice-information-and-analysis> (last visited Sept. 15, 2020) (tracking law enforcement arrests); see *Data and Reports*, STATE OF WIS. DEP'T OF CORR., <https://doc.wi.gov/Pages/DataResearch/DataAndReports.aspx#> (last visited Sept. 15, 2020) (tracking prisoners in the state's custody). Note that public records requests were made with the Wisconsin State Law Library Reference Services, the State of Wisconsin Department of Justice, and the Department of Corrections in October of 2020,

how many individuals in the state are barred from running for public office, or how many people have felony convictions. However, Governor pardons are public record, and since the current administration has made an effort to review as many pardon applications as possible, it provides a good sample population to look at of individuals who have been affected.⁷⁶ These are just some examples of individuals who have been convicted of felonies and recently pardoned:

- James Hernon, 59, who burglarized a home 20 years ago. He now works with the Milwaukee Rescue Mission.
- Taranda Westmoreland, 45, who made unauthorized charges on a credit card when she was 26. She has since obtained a master's degree and works in social services.
- Matthew Raasch, 41, who cashed fraudulent checks. He now volunteers and works with Waukesha County inmates and drug and alcohol treatment courts.
- Elandis Peete, who was 18 when he sold cocaine to an undercover police officer. He has since opened his own trucking business, where he mentors and hires formerly incarcerated people.

to which all three agencies responded that they were not in the possession of the demographic breakdown of felony convictions or felons in Wisconsin.

⁷⁶ See generally Scott Bauer, *Gov. Evers re-forms Wisconsin pardons board Walker dropped*, AP NEWS (June 13, 2019), <https://apnews.com/article/d5ed1cd21f9d40d9b5c7fdf40970730d>; Scott Bauer, *Evers issuing 1st Wisconsin pardons in 9 years*, AP NEWS (Oct. 6, 2019), <https://apnews.com/article/e614ecf0b8574be68112b0580eb4c176>; Emily Hamer, *Gov. Tony Evers grants 18 more pardons*, WIS. STATE J. (July 16, 2020), https://madison.com/wsj/news/local/govt-and-politics/gov-tony-evers-grants-18-more-pardons/article_f0272d6b-400c-5a39-9e9d-3f732d143a58.html; *Wisconsin governor pardons 9 more, raising total to 65*, AP NEWS (Sept. 15, 2020, 12:20 PM), <https://www.nbc26.com/news/local-news/wisconsin-governor-pardons-9-more-raising-total-to-65>; Elliot Hughes, *Gov. Evers pardons nine more people, totaling 74 in his time in office*, MILWAUKEE J. SENTINEL (Oct. 8, 2020, 5:48 PM), <https://www.jsonline.com/story/news/2020/10/08/evers-pardons-9-people-offenses-including-burglary-fleeing-cops/5924616002/>; Addy Bink, *Wisconsin governor announces 33 new pardons, grants more than 100 while in office*, WEAREGREENBAY.COM (Dec. 4, 2020, 8:13 AM), <https://www.wearegreenbay.com/news/local-news/wisconsin-governor-announces-33-new-pardons-grants-more-than-100-while-in-office/>; Juliana Tornabene, *Gov. Tony Evers issues 37 pardons to Wisconsinites*, WSAW-TV (Feb. 3, 2021, 3:43 PM), <https://www.wsaw.com/2021/02/03/gov-tony-evers-issues-37-pardons-to-wisconsinites/> (totaling 144 pardons in less than 2 years).

- Shelesia Parham, 51, who was 23 when she forged her mother's name on multiple withdrawal slips for her mother's account. She is now an owner of multiple newspapers in Racine.
- Kerry Brunner, 59, who was in his early twenties when he was convicted of delivery of cocaine and cashing a stolen check. He has been a small business owner and is currently working in his local school district as a custodian.
- Keith Butler, 40, who was 23 when he was charged with selling drugs to undercover police officers. He is now a community volunteer and has worked an assistant coach with the Green Bay Packer Pee Wee League.
- Andrew Ophoven, who was arrested for selling marijuana. He has since gone to school for culinary arts and hospitality management.
- Michael Andersen, 40, who sold marijuana and shoplifted 20 years ago. He now has obtained associate degrees in marketing and business.
- Yusef Moore, 49, who was convicted of several drug-related offenses in his early 30s. He is now working as a substance abuse residential counselor.⁷⁷

Many of these individuals were convicted of "crimes of survival" at young ages - cashing fraudulent checks, selling drugs, burglary. And many of these individuals have since learned from their mistakes and have since turned their life around, many of which volunteer or mentor to prevent others from making the same mistakes they did. Yet these are the people, where it not for a Governor pardon, that would not be allowed to run for or hold public office. And this is just a small sample of individuals because not every felon qualifies for a pardon,⁷⁸ not everyone who qualifies knows they can apply, and not everyone who applies gets pardoned.

⁷⁷ Laurel White, *Gov. Tony Evers Issues 18 More Pardons*, WIS. PUB. RADIO (July 16, 2020), <https://www.wpr.org/gov-tony-evers-issues-18-more-pardons> (individual descriptions taken directly from the article, some names omitted).

⁷⁸ To be eligible for a Governor's Pardon, you must:

1. Have been convicted of a felony in Wisconsin.

By not allowing these individuals to run for or hold public office, the state in turn is disproportionately holding back individuals from Black and Brown communities, from being able to hold office. By creating an additional barrier for these communities to serve in positions where important decisions are being made, the state is creating what is essentially a protective barrier around the white supremacist values that uphold their communities at the expense of Black and Brown communities. While white communities across the state benefit from generations of wealth and freedom from over policing, the few concentrated Black and Brown communities across the state are suffering from generations of discrimination, lack of generational wealth, a criminal justice system that targets them, impoverished school districts, lack of access to health care and much more.⁷⁹

Furthermore, this barrier prevents white individuals that might be sympathetic to the problems faced by Black and Brown communities from holding public office in the all-white communities that make up the majority of the state.

Between the years 1890 and 1940 in Wisconsin, over 150 towns and counties reportedly became sundown towns across the state, all-white communities that excluded people of color through the use of discriminatory laws, harassment, and threats or use of violence.⁸⁰ Of

2. Have completed your sentence at least five years ago, including jail, prison, Huber, probation, community service, parole or supervision.

3. Have not been convicted of another crime since you completed your sentence. This does not include minor traffic charges (including a misdemeanor conviction for driving with a revoked or suspending license) or crimes prior to finishing your sentence.

4. Not currently be required to register as a sex offender.

Pardon Information, OFF. WEBSITE FOR GOVERNOR TONY EVERS, <https://evers.wi.gov/Pages/pardon-information.aspx> (last visited Jan. 26, 2021).

⁷⁹ COWS, WISCONSIN'S EXTREME RACIAL DISPARITY (Jan. 2017), <https://cows.org/wp-content/uploads/sites/1368/2020/04/2017-Wisconsins-Extreme-Racial-Disparity-2017.pdf>.

⁸⁰ See James W. Loewen, *Location: Wisconsin*, TOUGALOO COLL.: HIST. & SOC. JUST., <https://justice.tougaloo.edu/location/wisconsin/> (last visited Jan. 26, 2021); see also Tom I. Il Romero, *No Brown Towns: Anti-Immigrant Ordinances and Equality of Educational Opportunity for Latinos*, 12 J. GENDER RACE & JUST. 13, at 29 (2008) ("Professor Loewen found that from 1890 until the passage of the federal Fair Housing Act in 1968, thousands of municipalities-most outside of the American South-used home-rule and or police powers to keep African Americans, as well as Native Americans, ethnic Mexicans, Japanese, Chinese, and Jews out of their communities. Largely driven by irrational and emotional fears surrounding Black migration out of the South, transformations in the structure and form

the 72 counties in Wisconsin, 69 of the counties have had towns reported as sundown towns.⁸¹ Many of these communities remain all white to this day⁸² and these all-white communities control what laws are enacted and how they are enforced.

With the amount of segregation in this state as a result of sundown towns and discriminatory practices, white individuals in rural Wisconsin can go their whole life without meeting someone from a different race. Although, a white person who has been through the criminal justice system has more likely than not, been able to meet someone of a different race and have had a meaningful conversation about race. But by having this constitutional provision that bans them from holding public office, the state is in turn banning what is likely some of the only people in some towns or counties that have ever met someone outside of their race. The consequences of this can be seen in the sharp political divide currently seen across the state that has made it difficult for the state legislature to come together on any meaningful legislation. It is not by chance that the two major political parties in Wisconsin tend to disagree most strongly on issues

of the United States industrial economy, and the deep-rooted racism and xenophobia of White supremacy, municipal citizens utilized the full power and force of their local governmental institutions to keep their communities homogenous.”); Anna Diamond, *The True Story of the Green Book Movie*, SMITHSONIAN MAG. (Dec. 2018), <https://www.smithsonianmag.com/arts-culture/true-story-green-book-movie-180970728/> (“It was well after dark on a Saturday night in January 1963 when the Don Shirley Trio took the stage in Manitowoc, Wisconsin. The program of show tunes, jazz and classical music, the local paper reported, was ‘brilliant and exciting and warmly received by the large crowd.’ But its famed leader and pianist, Don Shirley, who was black, knew his welcome was conditional. A hateful sign stood at Manitowoc’s city limits: ‘N----, don’t let the sun go down on you in our town.’”); Scott Seyforth, *The Life and Times of Carson Gulley*, 99 WIS. MAG. OF HIST. 2, at 9 (Summer 2016) (“In his travels around Wisconsin in the 1950s, Gulley was often one of the only African American speakers invited into communities he visited, giving talks in communities that had no African American residents. In fact, some were considered sundown towns, communities that intentionally kept African Americans out by custom or law. Hotels in most of the towns where he spoke would not accept African Americans. Often after speaking by invitation to hundreds of people, Gulley would have to drive back to Madison after the evening’s engagement or find people in the community with whom to stay.”). Note that there is no official record of sundown towns in the state of Wisconsin, but the historical accounts and demographics have led experts to believe that these communities were not welcoming to people of color.

⁸¹ See Loewen, *supra* note 80.

⁸² *Race and Ethnicity in Wisconsin*, STAT. ATLAS, <https://statisticalatlas.com/state/Wisconsin/Race-and-Ethnicity> (Sept. 4, 2018).

that tend to disproportionately harm Black and Brown communities.⁸³ It is a direct result of two different experiences in this state determined by the color of skin you were born with, and the white community's lack of understanding how truly awful some of these experiences can be.⁸⁴

SOLUTION

So where does the state begin to address the problem? First, the state must recognize that the problem exists. The summer of 2020, thousands of Black Lives Matter protestors took to the streets across Wisconsin.⁸⁵ Some protestors marched for 200 days,⁸⁶ some protestors marched 750 miles from Milwaukee, Wisconsin to Washington D.C.,⁸⁷ and some protestors rioted and damaged property.⁸⁸ The

⁸³ Katherine J. Cramer, *The Grievances of the White Working Class*, 16 CONTEXTS 20, at 21 (2017) ("In my decade of observation, there is an enduring sense that White folks outside urban centers are hard-working Americans, playing by the rules but unable to get ahead because the system is rigged against them. They think that communities like theirs are locked in a dying economy, regardless of how hard they try. They believe White folks get less respect than they deserve these days, and that others—racial and ethnic minorities, urban elites, public employees, neighbors on disability—are taking far more than they deserve. This sense of grievance is powerful because there are so many identities wrapped up in it. There is the rural versus urban divide. There is racism. There is class identity and partisan identity, too.").

⁸⁴ *Id.* See generally KATHERINE J. CRAMER, *THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER* (2016) (illustrating interviews with voters across the state of Wisconsin regarding their personal views on politics).

⁸⁵ Lainey Seyler & Talia Soglin, *See the more than 45 communities in Wisconsin that have had protests against police brutality and racial inequality*, MILW. J. SENTINEL (Feb. 5, 2021, 12:51 PM), <https://www.jsonline.com/in-depth/news/2020/06/27/wisconsin-communities-protested-police-brutality-see-photos-waupaca-brookfield-madison-milwaukee/5343563002/>.

⁸⁶ Ricardo Torres, *'We're celebrating that we're still here': Organizers mark 200 days of protesting with a cookout*, MILW. J. SENTINEL (Dec. 19, 2020, 5:21 PM), <https://www.jsonline.com/story/news/local/milwaukee/2020/12/19/organizers-mark-200-days-milwaukee-area-protesting-cookout/3976567001/>.

⁸⁷ Grace Hauck, *Some with bleeding feet, group of determined Milwaukee marchers make it to DC: 'It's indescribable'*, USA TODAY (Aug. 28, 2020, 11:40 AM), <https://www.usatoday.com/story/news/nation/2020/08/28/milwaukee-group-walks-750-miles-march-on-washington/3445158001/>.

⁸⁸ Rob Mentzer, *More Than 100 Arrested in Milwaukee, 15 in Madison After Vandalism Follows Sunday Protests*, WPR (June 1, 2020, 4:00 PM), <https://www.wpr.org/more-100-arrested-milwaukee-15-madison-after-vandalism-follows-sunday-protests>; Noreen Nasir & Michael Tarm, *Kenosha unrest causes \$2M in damage to city-owned property*, ABC

lengths these protestors were willing to go are indicative of the growing frustration over people of color being unjustly treated by the justice system and it is compounded by the racial inequities these communities further face in health, education and employment. Yet despite the lengths protestors were willing to go to be heard, Republican leadership in Wisconsin has characterized the work of leading a legislative task force on racial disparities as a “political loser.”⁸⁹

In the book, *The Politics of Resentment*, Katherine J. Cramer conducted interviews with voters across Wisconsin. What she noticed in many of these interviews is a significant rural-versus-urban divide and resentment between the two.⁹⁰ This is significant because, almost half of the state population is concentrated in urban areas which are racially diverse, while the other half of the state population lives outside these urban areas and are predominantly white.⁹¹ This is also significant because rural areas in Wisconsin strongly lean Republican, while urban areas in the state strongly lean Democrat.⁹² The 2020

NEWS (Sept. 1, 2020, 3:49 PM), <https://abcnews.go.com/US/wireStory/kenosha-unrest-2m-damage-city-owned-property-72747127>.

⁸⁹ Melanie Conklin, *Hintz: Vos and Steineke use speakers task forces to avoid action*, WIS. EXAM’R (Feb. 4, 2021), <https://wisconsinexaminer.com/2021/02/04/hintz-vos-and-steineke-use-speakers-task-forces-to-avoid-action/>; E-mail from James Steineke, Majority Leader, Wisconsin State Assemb., to Robin Vos, Speaker, Wisconsin State Assemb. (Aug. 24, 2020, 8:17 PM CST), <https://upnorthnewswi.com/wp-content/uploads/sites/3/2021/02/Fwd-Task-force.pdf> (“So this is how I see the task force. Leading it for anyone is probably a political loser, because if you get nothing done you get hammered by the left, part of the middle and the press. You get something done you probably get some kudos from the press but the left and the right will have some issues with it. I don’t have any delusions of grandeur beyond this seat. Cty Exec maybe, but that’s it and whatever I do with this would have little impact either way. Anyone else that did it would have to be in a similar spot. And you’d have to trust them not to be too malleable or too intransigent. Tough needle to thread. My proposal is for us to sit down and figure out some guardrails. Things we could give on, things we wouldn’t. Then I’d sketch out a plan on how to proceed, making sure it takes some time but yet there will be enough activity to show progress. I truly think if we do this right we have an opportunity to show how Evers could get things done if his admin weren’t so damned political. We could also make some inroads with voters we don’t normally reach. Worse case scenario, we show a willingness to work on these issues and make the Democrats say no to things.”).

⁹⁰ CRAMER, *supra* note 84, at 17.

⁹¹ *Id.* at 13.

⁹² *Id.* at 105.

Presidential Election results were divided in Wisconsin nearly 50/50 percent with a difference of approximately 20,000 votes.⁹³

Cramer argues that political values in rural communities are guided by a sense of distributive injustice, a sense that people in rural areas don't get their fair share of help from the government.⁹⁴ Voters in rural areas believe that cities like Madison and Milwaukee suck up all the state resources and they are left with the short end of the stick.⁹⁵ Further, there's this belief that city dwellers live a different lifestyle and have different values relating to the economy and employment.⁹⁶ Cramer argues that although race is a contributing factor in the political divide it is not all encompassing.⁹⁷ All this to say, it is not the aim of this Comment to imply that white supremacy persists in the state of Wisconsin because white people simply do not like people of color. Rather, it is more likely that it persists out of a lack of resources and differing perspectives on who deserves help, and this is where the political divide gets its strength.

But the racial disparities in Wisconsin should not be treated as a political issue. Treating issues involving race as a political matter allows the issue to be ignored and therefore white supremacy is maintained and communities of color continue to suffer. As long as fixing, or not fixing, racial disparities within the state continue to be political platforms, they will never be treated with the seriousness that they deserve and Wisconsin will continue to be one of the worst places to live for people of color. Until Republican leadership, or Republican voters begin to acknowledge the State's history of white supremacy and how it has affected communities of color, legislative measures aimed at closing racial disparity gaps will continue to be dismissed as political or urban power grabs.

Accordingly, the state must then begin to change what it can, starting with a constitutional amendment removing the language that bars individuals convicted of a felony or misdemeanor violating

⁹³ WIS. ELECTION COMM'N, STATEWIDE RESULTS ALL OFFICES (Dec. 1, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/Statewide%20Results%20All%20Offices%20%28pre-Presidential%20recount%29.pdf>.

⁹⁴ CRAMER, *supra* note 84, at 25

⁹⁵ *Id.* at 72-82.

⁹⁶ *Id.* at 83-103.

⁹⁷ *Id.* at 87.

public trust from running for and holding public office. In order to do this the state legislature would need to either call a constitutional convention,⁹⁸ or follow the three-part procedure previously mentioned which requires constitutional amendments pass by both houses of the legislature for first consideration, be referred to the legislature chosen at the next general election without changes for second consideration, and finally submitted to the public to be voted on by ballot at the next election.⁹⁹

Further, the state should implement resources from an organization such as the Government Alliance on Race & Equity (G.A.R.E.) which provides tools such as trainings and frameworks to help recognize how policies can create racial inequities and how to address those inequities.¹⁰⁰ G.A.R.E. “is a national network of government entities working to achieve racial equity and advance opportunities for all” groups of people.¹⁰¹ Jurisdictions in Wisconsin that have already joined the network include the City of Oshkosh, the City of Wauwatosa, the City of Middleton, the City of Racine, Milwaukee County, Dane County and Kenosha County.¹⁰² Larger jurisdictions across the country that have joined include Chicago, Dallas, Detroit, Los Angeles, New York City, state agencies in California and Oregon, and the State of Minnesota.¹⁰³

G.A.R.E. believes that there are six strategies that are critical to close racial equity gaps, remove policies driving those gaps and increase success for all groups:

1. The use of a racial equity framework that clearly articulates racial equity, implicit and explicit bias, and individual, institutional and structural racism;

⁹⁸ WIS. CONST. art. XII, § 2.

⁹⁹ WIS. CONST. art. XII, § 1.

¹⁰⁰ *Our Approach*, GOV'T ALL. ON RACE & EQUITY, <https://www.racialequityalliance.org/about/our-approach/> (last visited Feb. 9, 2021).

¹⁰¹ GOV'T ALL. ON RACE & EQUITY, <https://www.racialequityalliance.org/> (last visited Jan. 26, 2021).

¹⁰² *Where We Work*, GOV'T ALL. ON RACE & EQUITY, <https://www.racialequityalliance.org/where-we-work/jurisdictions/> (last visited Feb. 9, 2021).

¹⁰³ *Id.*

2. The building of a sustainable infrastructure that creates racial equity experts and teams throughout local and regional government;
3. Implementation of racial equity tools that help change existing policies perpetuating inequities, and develop new policies with racial equity in mind;
4. Using data driven measurement to create baselines, set goals and measure the progress and success in achieving those goals;
5. Partnering with local institutions and communities; and
6. Operating with accountability and urgency.¹⁰⁴

By implementing these strategies, G.A.R.E. has seen outcomes that have benefited not only communities of color but white communities as well.¹⁰⁵ By implementing strategies that address the disproportionate amount of youth of color who do not graduate from high school, G.A.R.E. has seen these strategies improve graduation rates for white youth as well.¹⁰⁶ Strategies aimed at reducing incarceration and recidivism rates have resulted financial freedoms from the cost of mass incarceration that have allowed that money to be reinvested in other areas such as education, benefitting society as a whole.¹⁰⁷

By utilizing an organization like G.A.R.E. provides, Wisconsin can begin to create changes that are sustainable and beneficial to all of society.

CONCLUSION

Wisconsin was once known as a progressive state. In 1851, the state adopted the official state motto “Forward” as a nod to Wisconsin’s continuous drive to be a national leader.¹⁰⁸ In 1859, the Wisconsin Supreme Court famously declared the Fugitive Slave Act

¹⁰⁴ GOV’T ALL. ON RACE & EQUITY, *supra* note 100.

¹⁰⁵ *Why Working for Racial Equity Benefits Everyone*, GOV’T ALL. ON RACE & EQUITY, <https://www.racialequityalliance.org/about/our-approach/benefits/> (last visited Feb. 9, 2021).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Wisconsin State Symbols*, WIS. HIST. SOC’Y, <https://www.wisconsinhistory.org/Records/Article/CS2908> (last visited Jan. 26, 2021).

unconstitutional.¹⁰⁹ In 1911, Wisconsin introduced “the nation’s first workers compensation program, a progressive state income tax, and more stringent child labor laws.”¹¹⁰ The following year, in 1912, then New York Senator, but future President, Theodore Roosevelt called Wisconsin a “laboratory for wise experimental legislation aiming to secure the social and political betterment of the people as a whole.”¹¹¹

Sadly, the laws that have been written and enacted in this state over the last 100 years have led our state from a progressive leader in the country, to a state that continues to end up on list after list of worst state to live for people of color.¹¹² The state is a long way from rectifying the problems created by white supremacy but as our country is in a moment of reckoning, it is hopeful that we are headed in the right direction. By acknowledging the history that created these problems, changing what we can and going forward conscious of how our laws and policies affect different communities, Wisconsin can once again become the progressive leader once worthy of the state motto, “Forward!”

¹⁰⁹ *Ableman v. Booth*, 11 Wis. 498, 513 (1859).

¹¹⁰ Dan Kaufman, *The Undoing of Progressive Wisconsin*, THE PROGRESSIVE (Aug. 1, 2018, 12:00 AM), <https://progressive.org/magazine/the-undoing-of-progressive-wisconsin/>.

¹¹¹ Theodore Roosevelt, *Introduction* to CHARLES MCCARTHY, THE WISCONSIN IDEA (1912) <https://digicoll.library.wisc.edu/WIReader/WER1650-1.html>.

¹¹² J. Carlisle Larsen, *Wisconsin Considered One of the Worst States for Racial Disparities*, WIS. PUB. RADIO (Jan. 16, 2017, 4:35 PM), <https://www.wpr.org/wisconsin-considered-one-worst-states-racial-disparities>.