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FOREWORD: NEVER AGAIN

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Immediately following the Civil War African-American's enjoyed a brief moment in the sun. With the strong presence of the federal government wedged between the manacles of southern racism and the keys of opportunity, many African-Americans thrived and excelled in the political and economic life of the nation. Two major factors caused a swift and cancerous halt to this period of time that historians have labeled Reconstruction: the federal government removed its dagger from the throat of southern racism and only a small percentage of African-Americans were ready and able to partake in the mainstream of American life.[2]

A cursory canvassing of the nation's political and economic landscapes today reveal a devastating movement to abort the second period of Reconstruction in America.[3] The primary catalyst in this open warfare on African-American dignity and prosperity is the federal government.

When Andrew Johnson replaced Abraham Lincoln as president of our nation, he brought with him the sinister notion that "less federal government" was good for the nation. This unfortunate retrenchment ideology was a cup of poison to African-Americans and an elixir of life for southern racism. It sounded the death-knell to the historical greatness that America held out for mankind.

Ronald Reagan was ushered into the office of president of our nation waving a flag that said "less federal government" was good for the nation. Unlike the Andrew Johnson era, when aggressive racism was confined to southern states, Reagan's retrenchment ideology came at a time when aggressive racism beat from the breasts of Americans scattered throughout the nation. Moreover, "less federal government" in the Andrew Johnson era meant removal of federal troops from southern states. The most prominent feature of the current retrenchment era is the systematic castration and mutilation of federal laws that were intended to provide African-Americans with an opportunity to participate in all aspects of American society.

A primary instrument in the present "less federal government" era is the United States Supreme Court. With the precision of a surgeon removing part of a patient's brain, the Supreme Court has methodically engaged in the process of invalidating and reducing to impotency laws that were designed to combat racism.

Retrenchment under the knife of the Supreme Court has been carved out in several ways. In the case of *Shaw v. Reno*,[4] the Supreme Court empowered white voters to challenge the constitutionality of majority-minority voting districts, even where white voters are unable to allege that their vote had been diluted because of the configuration of the district.[5] The negative significance of *Shaw* may properly be understood if one considers the finding of two commentators that a change from at-large voting to single member district voting, in the cities of eight southern states with a population of at least 10,000, resulted in the election of 200 additional African-American city council members.[6]

In the area of employment discrimination the Supreme Court has been relentless in the campaign to increase the rate of unemployment among African-Americans. The decisions reached in *Wards Cove Packing Co. v. Antonio*,[7] *Patterson v. McLean Credit Union*,[8] and *St. Mary's Honor v. Hicks*[9] have cast an ominous white cloud over the struggle to terminate racially motivated employment discrimination.

Affirmative action policies and programs on the state and federal level have been eviscerated by illogical and draconian decisions by the Supreme Court. In *Adarand Constructors, Inc. v. Pena*[10] the Supreme Court overruled its decision in *Metro Broadcasting, Inc. v. FCC*,[11] in order to hold that federal affirmative action programs are subject to constitutional attack. In *City of Richmond v.*

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[1] Justice of the West Virginia Supreme Court.

[2] See generally, Eric Foner, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION (1988).

[3] The second period of Reconstruction in America began properly when Dr. Martin Luther King, Jr. launched the Civil Rights movement with the Montgomery bus boycott in late 1955. See generally, ALDON D. MORRIS, THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR SOCIAL CHANGE (1984).

[4] 113 S.Ct. 2816 (1993). For a discussion of this case and its aftermath see, A. Leon Higginbotham, Jr., Gregory A. Clarick and Marcella David, *"Shaw v. Reno: A Mirage of Good Intentions with Devastating Racial Consequences,"* 62 FORDHAM L. REV. 1593 (1994); and Richard H. Pildes and Richard G. Niemi, *"Expressive Harms, Bizarre Districts and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno,"* 92 MICH. L. REV. 438 (1993).

[5] In White v. Regester, 412 U.S. 755 (1973), the Supreme Court held that African-American voters had to prove that their voting strength was diluted by the configuration of a voting district, in order to make out a successful racial gerrymandering claim.

[6] BERNARD GROFMAN AND CHANDLER DAVIDSON, QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990, at 320 (1994).

[7] 490 U.S. 642 (1989). The Congressional Black Caucus was able to lead a successful campaign to undo some of the dire effects of *Wards Cove* and *Patterson*, through passage of the Civil Rights Act of 1991, 42 U.S.C. 1981(b) and 2000e-2(k).

[8] 485 U.S. 617 (1989).

[9] 113 S.Ct. 2742 (1993).

[10] 115 S.Ct. 2097 (1995).

[11] 497 U.S. 547 (1990).

Croson[12] the Supreme Court placed an intolerable burden on state and local governments to justify voluntary affirmative action programs.

The plight of school desegregation has taken a turn in the wrong direction due to insensitive decisions reached by the Supreme Court. In *Board of Education of Oklahoma Schools v. Dowell,*[13] the Supreme Court set destructive precedent by releasing school boards from court-mandated desegregation plans, even though segregation still existed in school districts. In the case of *Freeman v. Pitts,*[14] it was held that racial isolation of schools brought on by "white flight" from school districts could not be remedied. In *Missouri v. Jenkins*[15] the Supreme Court disapproved of a district court's funding remedy for desegregation, which required monetary expenditure to fight the effects of "white flight" from school districts.

This brief review of the Supreme Court's vigorous efforts to promote the current era of "less federal government" should suffice to bring about an understanding that "less federal government" translates into the systematic destruction of African-American dignity and prosperity. This is exactly what happened when Andrew Johnson spearheaded this innocuous ideology.

Now it was pointed out earlier that two primary factors caused the death of the first Reconstruction period in America. Up to this point I have endeavored to review the federal judiciary arm of one of those factors, in the war to destroy the second period of Reconstruction in America. That is, I have touched upon the judiciary efforts to remove the federal government as a wedge between racism and African-American dignity and prosperity. This temporal review should give some indication of the forceful seriousness with which this struggle is being waged.

If the conditions that existed for African-Americans during the first Reconstruction period existed today, I would not hesitate in proclaiming that the second Reconstruction period and African-American dignity and prosperity will be utterly destroyed. In spite of the aggressive and militant efforts to bring about "less federal government" today, all that symbolizes this second period of Reconstruction for African-Americans will not and cannot be destroyed. The winning formula for this proposition is simple: the African-American men and women that existed during Andrew Johnson's abdication of his duties are not the same African-American men and women that intermingle in American society today.

It was quite easy during Andrew Johnson's time to translate "less federal government" into the systematic destruction of African-Americans. This was so because the vast majority of African-Americans during that time were not physically, psychologically, intellectually or spiritually able to fight-off the new form of subjugation America had in store for them.

The African-American man and woman of today are fully equipped to protect the freedoms our foreparents could not hold onto. While the hour may seem ominous, there is a "dying the death of fighting back" spirit pervasive in the African-American community today. We witnessed that spiritual strength in a symbolic way when more than a million African-American men descended upon Washington, D.C. in 1995.

And so, as Dr. King was fond of saying, "I'm not worried about anything." America has thrown an old challenge to the African-American community, a challenge that our foreparents were not ready to undertake. Today we are ready. With or without federal intervention, NEVER AGAIN will African-Americans be subjugated in any form by America. While there is no blueprint to victory, we can be assured that through our collective strength and determination African-American dignity and prosperity will exist as long as America exists.

In reviewing the critical issues that stream through this edition of "Race and Ethnicity Ancestry Law Digest," the reader should bear in mind that it is through forums like this that we learn of the work that must be done.

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[12] 488 U.S. 469 (1989).
[13] 498 U.S. 237 (1991).
[14] 112 S.Ct. 1430 (1992).
[15] 115 S.Ct. 2038 (1995).