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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 CIVIL DIVISION
13

14 **KIM RHODE et al.,**

15 Plaintiffs,

16
17 **v.**

18 **ROB BONTA, in his official capacity**
19 **as Attorney General of the State of**
California, et al.,

20 Defendant.
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3:18-cv-00802-BEN-JLB

**DECLARATION OF MICHAEL
VORENBERG**

Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

DECLARATION OF MICHAEL VORENBERG

I, Michael Vorenberg, declare under penalty of perjury that the following is true and correct:

1. I have been asked by the Office of the Attorney General of the State of California to prepare an expert report on the history and tradition of “background checks” for firearms (guns and ammunition) during the period of the U.S. Civil War and Reconstruction. This Declaration is based on my own personal knowledge and experience, and, if I am called as a witness, I could and would testify competently to the truth of the matters discussed in this Declaration.

I. PROFESSIONAL QUALIFICATIONS

2. I am an associate professor of history at Brown University. I received my A.B. from Harvard University in 1986, and my Ph.D. in history from Harvard in 1995. After receiving my Ph.D., I began a postdoctoral fellowship at the W.E.B. Du Bois Institute at Harvard, and then served as an assistant professor of History at the State University of New York at Buffalo. I joined the faculty at Brown University in 1999, and have taught history there ever since.

3. I have concentrated my research on the history of the U.S. Civil War and Reconstruction. My first book, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*, was published by Cambridge University Press in 2001. The book was a Finalist for the Gilder Lehrman Lincoln Prize. I am also the author of *The Emancipation Proclamation: A Brief History with Documents*, published by Bedford/St. Martin’s in 2010. I am the author of a number of articles and essays on Reconstruction and the law. These include: “The 1866 Civil Rights Act and the Beginning of Military Reconstruction,” in Christian Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866 from Reconstruction to Today* (Southern Illinois University Press, 2018); “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” in Alexander

1 Tsesis, ed., *The Promises of Liberty: The History and Contemporary Relevance of*
 2 *the Thirteenth Amendment* (Columbia University Press, 2010); “Reconstruction as a
 3 Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions*
 4 *in the History of Postbellum America* (Oxford University Press, 2006); and
 5 “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (Dec.
 6 2005), 416-26.

7 4. I have provided expert testimony in *Miller v. Bonta*, a lawsuit in the
 8 Southern District of California (Case No. 3:19-cv-01537-BEN-JLB) and *Rupp v.*
 9 *Bonta*, a lawsuit in the Central District of California (Case No. 8:17-cv-00746-JLS-
 10 JDE), both challenging California’s regulations of assault weapons; *Wiese v. Bonta*,
 11 a lawsuit in the Eastern District of California (Case No. 2:17-cv-00903-WBS-KJN)
 12 and *Duncan v. Bonta*, a lawsuit in the Southern District of California (Case No.
 13 3:17-cv-01017-BEN-JLB), both challenging California’s regulations of large-
 14 capacity magazines; *Ocean State Tactical LLC v. Rhode Island*, a lawsuit in the
 15 District of Rhode Island (Case No. 1:22-cv-246-JJM-PAS) challenging that state’s
 16 regulation of large-capacity magazines; *Oregon Firearms Federation, Inc. v.*
 17 *Brown*, a lawsuit in the District of Oregon (Case No. 2:22-cv-01815-IM)
 18 challenging that state’s regulation of large-capacity magazines; *National*
 19 *Association for Gun Rights v. City of Naperville, Ill.*, a lawsuit in the Northern
 20 District of Illinois (Case No. 1:22-cv-04775) challenging the state of Illinois’ and
 21 the City of Naperville’s regulation of assault weapons; and *National Association of*
 22 *Gun Rights v. Campbell*, a lawsuit in the District of Massachusetts (Case No. 1:22-
 23 cv-11431) challenging the state of Massachusetts’ regulation of assault weapons
 24 and large-capacity magazines.

25 5. My curriculum vitae is attached as Exhibit A.

26 6. I am being compensated at a rate of \$250 per hour.

II. SUMMARY OF OPINIONS

7. This Declaration provides results of an investigation into qualifications imposed by federal, state, and local governments on the ability of individuals to acquire and possess firearms and ammunition during the Reconstruction period of U.S. History (1863-1877), with special focus on the period during Reconstruction when the Fourteenth Amendment to the U.S. Constitution was created, ratified, and enforced (1866-1876).

8. The phrase “background checks,” which commonly appears as shorthand for investigations of those seeking to acquire and possess firearms and ammunition, did not enter American parlance until the twentieth century, but the principle behind background checks—that one’s past record can disqualify a person from the full rights of gun ownership—goes back at least as far as the eighteenth century. U.S. legal authorities have always understood and often enforced the principle that one’s past unlawful actions can be a bar to access to firearms. This Declaration examines one period in particular, the era of the Fourteenth Amendment, when authorities demanded that respect for the law be a requirement for access to firearms.

9. During the era of the Fourteenth Amendment, loyalty to the Union and its laws—federal, state, and local—was requisite to one’s being assured the rights and privileges promised by the Amendment. Indeed, loyalty was at the core of the Amendment, and was enshrined in the Amendment’s third clause, which imposed restrictions on office-holding on those who either had “engaged in insurrection or rebellion” against the country or had “given aid or comfort” to the insurrectionists.¹ Although the language of the Amendment’s third clause mentioned only restrictions on office-holding, the congressional debates on the clause reveal that rights beyond office-holding were to be restricted. The disloyal were to be denied civil rights (which would necessarily include rights of firearms possession) and the loyal were

¹ U.S. Const. amend. XIV, § 3.

1 to be guaranteed those rights.² Loyalty was also at the core of laws passed in
 2 conjunction with the Amendment and to enforce the Amendment.³ In all these
 3 measures, loyalty was measured by one's *past* actions, not merely by promises to
 4 be loyal in the future. During Reconstruction, law enforcers could ask anyone to
 5 swear an oath vowing past loyalty, and they investigated oath-takers for past
 6 disloyalty. Failure to satisfy the stringent standards of loyalty of the era was
 7 regarded by authorities as a sign of possible unlawful, even insurrectionary or
 8 treasonous behavior in the future. To preserve the security of the nation, of the
 9 states, and of local communities, authorities imposed proscriptions on the once-
 10 disloyal, whose past actions were regarded as unlawful. Proscriptions included
 11 explicit bans in the law, most commonly the denial of voting rights, but they also
 12 included non-statutory restrictions by civilian and military policing forces,
 13 including the denial of firearms and ammunition. Indeed, the policing of firearms
 14 acquisition and possession by pro-Union authorities during Reconstruction was
 15 considered by lawmakers a priority. Lawmakers during Reconstruction were
 16 chiefly concerned with the nation falling back into Civil War.⁴ To prevent that
 17 from happening, lawmakers took steps to keep firearms from those who had been
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 20 ² Mark A. Graber, *Punish Treason, Reward Loyalty: The Forgotten Goals of*
 21 *Constitutional Reform after the Civil War* (Lawrence: University Press of Kansas,
 22 2023), 111-30; Jonathan Truman Dorris, *Pardon and Amnesty under Lincoln and*
 23 *Johnson: The Restoration of the Confederates to Their Rights and Privileges, 1861-*
 24 *1898* (Chapel Hill: University of North Carolina Press, 1953), 319-25. On firearms
 25 possession as a civil right included in the Fourteenth Amendment, see Nicholas J.
 26 Johnson, David B. Kopel, George A. Mocsary, E. Gregory Wallace, and Donald
 27 Kilmer, *Firearms Law and the Second Amendment: Regulation, Rights, and Policy*
 28 (3rd ed., New York: Wolters Kluwer, 2022), 465-71.

³ Harold M. Hyman, *To Try Men's Souls: Loyalty Tests in American History*
 (Berkeley: University of California Press, 1959), 257-66; Dorris, *Pardon and*
Amnesty under Lincoln and Johnson, 325-38.

⁴ Graber, *Punish Treason, Reward Loyalty*, 162 (Republican lawmakers'
 "overarching concern with preventing rebel rule").

1 lawbreakers, including and especially past insurrectionaries, on the assumption that
2 these people were most likely to lead the nation back into Civil War.

3 10. A crucial system used by Reconstruction-era authorities to keep firearms
4 out of the hands of potential insurrectionaries was the administration of loyalty
5 oaths that required those who took them to have clean legal records. Law enforcers
6 investigated those who took the oath, looking for past connections to the
7 Confederacy, past legal transgressions, and past declarations of intentions to
8 jeopardize the safety and existence of the Union. Law enforcers made efforts to
9 deny firearms to or seize firearms from those who refused to take the oath along
10 with those who took the oath but were found by investigation to have lied under
11 oath about their past lawfulness and loyalty. In interrogating the loyalty of those
12 who possessed or wished to possess firearms, law enforcers during the era of the
13 Fourteenth Amendment were performing tasks analogous to modern background
14 checks.

15 **III. THE SCOPE OF THIS DECLARATION AND ITS CONNECTION**
16 **TO THE HISTORY AND TRADITION OF FIREARMS**
REGULATION IN THE UNITED STATES

17 11. This Declaration covers the era of the Fourteenth Amendment. The
18 resolution submitting the Amendment to the states for ratification was passed by
19 Congress in 1866, and ratification was completed in 1868. But the era of the
20 Fourteenth Amendment is here defined as beginning in 1863—the standard starting
21 point of Reconstruction, but also the point at which elements that would make their
22 way into the Fourteenth Amendment began to take shape—and ending in 1872,
23 when national, state, and local authorities had made their last concerted efforts to
24 enforce the Amendment.

25 12. The geographic scope of this Declaration is for the most part limited to
26 the American South, and in particular those regions of the South that rebelled
27 against the U.S. during the Civil War. The Fourteenth Amendment was created
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1 with this region in mind, and the ancillary and enforcing legislation accompanying
2 the Amendment were all aimed primarily at the South.

3 13. Why is the period of the Fourteenth Amendment so important to examine
4 if one wants to understand the history and tradition of firearms regulation in general
5 and background checks in particular? As the U.S. Supreme Court declared in
6 *McDonald v. City of Chicago*, 561 U.S. 742 (2010) , and reaffirmed in *New York*
7 *State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Second
8 Amendment did not apply to the states (i.e., did not restrict state laws) until and
9 because of the Fourteenth Amendment. The public meaning of the Fourteenth
10 Amendment at the time of its adoption was that it applied the Second Amendment
11 to the states. But it was also the public meaning of the Fourteenth Amendment that
12 enjoyment of Second Amendment rights required proof of past law-abiding
13 behavior, specifically past, unbroken loyalty to the United States. Acts passed by
14 the federal government during the era of the Fourteenth Amendment, including acts
15 specifically to enforce the Amendment, empowered state and federal law
16 enforcement officials to administer oaths that served as proof of past law-abiding
17 behavior. The acts also empowered law enforcement officials to investigate the
18 veracity of the oaths taken by examining the background of the people who took
19 them.

20 **IV. RESEARCH MATERIALS AND METHODOLOGY**

21 14. In preparing this Declaration, I researched standard scholarly works on
22 the era of the Fourteenth Amendment. I also researched original documents from
23 the era. These included newspaper and magazine articles contemporary to the
24 period studied. The articles are accessible in commonly used databases by
25 historians, such as Chronicling America and ProQuest Historical Newspapers. To
26 research pamphlets and documents from local and state governments during the era,
27 I relied on the HathiTrust digital library and ProQuest Civil War Era. For U.S.
28 government documents of the era, I used the Hein Online database.

1 15. My research sought information on requirements linked to the
2 privileges granted by the Fourteenth Amendment in general and firearms
3 possession and usage in particular. The research covered the entire period of
4 Reconstruction (1863-1877) but focused especially on the era of the Fourteenth
5 Amendment (1863-1872).

6 **V. FINDINGS**

7 16. From the moment that southern states began declaring themselves
8 seceded from the Union, in 1860-61, and then into the actual Civil War and beyond,
9 oaths of allegiance to one's community, state, and nation were regular features of
10 political life in the Union.⁵ These oaths were commonly known as "loyalty oaths."
11 In the Union during the Civil War, loyalty oaths were regularly administered to
12 local, state, and national office-holders, as well as to members of certain
13 professions, such as the clergy and lawyers. The form of these oaths was simple—
14 and they will be called "simple oaths" throughout this Declaration. The simple oath
15 was a pledge to be loyal to the Union and to abide by the U.S. Constitution,
16 sometimes to one's state constitution, and to all acts adopted by civil law-making
17 bodies of one's jurisdiction (local, state, and national), as well as to all measures
18 imposed on civilian populations by U.S. military authorities. Simple oaths dealt
19 with one's loyalty at the present and in the future. They did not require that one
20 pledge to have been loyal in the past as well. As we shall see, policies requiring
21 only a simple oath would give way by the time of the era of the Fourteenth
22 Amendment to policies requiring a more soon stringent oath that affirmed one's
23 past loyalty in addition to one's loyalty at present and in the future.⁶

24 ⁵ The Confederacy as well as the Union required oaths of allegiance.
25 Because the Confederacy lost the Civil War, the oaths used by Confederate
26 authorities during the Civil War became irrelevant to post-war loyalty policies in
27 the Union, including such policies during the era of the Fourteenth Amendment.
28 Thus the issue of Confederate loyalty oaths is not covered in this Declaration.

⁶ William A. Blair, *With Malice toward Some: Treason and Loyalty in the*

1 17. Even before the era of the Fourteenth Amendment, local and state
 2 authorities during the Civil War might require of the citizenry more stringent
 3 standards of loyalty that looked to one's past behavior and reputation. Such
 4 stringent examinations by Union authorities of people's past records was
 5 particularly important in matters of arms-bearing, as communities in the North
 6 faced legitimate threats of armed insurrection from Confederate sympathizers in
 7 their midst. The danger of such armed conspirators was most severe in the
 8 Midwest, where there were populations with significant familial and political ties to
 9 the Confederacy. The presence of pro-Confederate sympathizers in the Midwest
 10 led to the much-publicized treason trials in Indiana in 1864. (These trials were the
 11 background to the 1866 U.S. Supreme Court case *Ex Parte Milligan*; Lambdin
 12 Milligan was one of those Indianans convicted of treason.) In this political climate
 13 in the Midwest, it was common for legal authorities to surveil and regulate those
 14 who sought to acquire firearms. For example, in one Ohio community, authorities
 15 declared that "arms and ammunition be disposed of with discretion and only to
 16 parties of undoubted Union sentiments." Officials in this community—known by
 17 their detractors as "district spies"—regularly investigated those who sought to
 18 obtain arms and ammunition or permits to deal in arms and ammunition.⁷

19 18. Despite their presence in the North during the Civil War, loyalty tests
 20 were most common in the South during the war, in the form of pro-Union loyalty
 21 oaths imposed on those in U.S. army-occupied areas of the South. The primary
 22 function of these oaths was to identify southerners who could be counted on to
 23 support the U.S. government as regions in the South underwent a restoration from
 24 pro-Confederate to pro-Union affiliation. The form of these oaths was simple—that

25 *Civil War Era* (Chapel Hill: University of North Carolina Press, 2019); 140-47,
 26 269-71; Harold Melvin Hyman, *Era of the Oath: Northern Loyalty Tests during the*
 27 *Civil War and Reconstruction* (1954; repr., New York: Octagon Books, 1978),
 28 21-47.

⁷ *Urbana [Ohio] Union*, Aug. 28, 1867, p. 2.

1 is, they required a pledge only of present and future loyalty, with no regard to one's
2 past sympathies.

3 19. This simple oath for southerners seeking to renounce their Confederate
4 affiliation and restore their standing as U.S. citizens was part of President Abraham
5 Lincoln's wartime reconstruction policy. In December 1863, Lincoln spelled out a
6 proposal for restoring states in rebellion to the Union and bringing one-time
7 Confederates back under the mantle of U.S. citizenship. The loyalty oath that
8 Lincoln proposed was a simple oath. It read as follows:

9 I, [name of oath-taker], do solemnly swear, in presence of Almighty
10 God, that I will henceforth faithfully support, protect, and defend the
11 Constitution of the United States and the Union of the States
12 thereunder; and that I will, in like manner, abide by and faithfully
13 support all acts of congress passed during the existing rebellion with
14 reference to slaves, so long and so far as not repealed, modified, or
held void by congress, or by decision of the supreme court; and that I
will, in like manner, abide by and faithfully support all proclamations
of the President made during the existing rebellion having reference to
slaves, so long and so far as not modified or declared void by decision
of the supreme court. So help me God.⁸

15 This oath, or variations of it, which covered only a person's present and future
16 loyalties and law-abiding behaviors, became the standard oath used by U.S.
17 officials and their allies during the Civil War at the state and local level.

18 20. However, some of Lincoln's fellow Republican lawmakers believed that
19 a more stringent oath should be applied, one that looked not only to the oath-takers'
20 present and future but also to their past. Specifically, this oath included a statement
21 of one's *past* record of loyalty and lawfulness. This oath was commonly known as
22 "the ironclad oath" or "the test oath." Congress began applying the oath to federal
23 officeholders and jurors in 1862 and expanded the categories of people who had to
24 take it over the course of the Civil War. The standard ironclad oath read as follows:

25 I, [name of oath-taker], do solemnly swear (or affirm) that I have never
26 voluntarily borne arms against the United States since I have been a
citizen thereof; that I have voluntarily given no aid, countenance,

27 ⁸ Roy P. Basler, ed., *Collected Works of Abraham Lincoln* (New Brunswick,
28 N.J.: Rutgers University Press, 1953), 7: 54.

1 counsel, or encouragement to persons engaged in armed hostility
 2 thereto; that I have neither sought nor accepted nor attempted to
 3 exercise the functions of any office whatever, under any authority or
 4 pretended authority in hostility to the United States; that I have not
 5 yielded a voluntary support to any pretended government, authority,
 6 power or constitution within the United States, hostile or inimical
 7 thereto. And I do further swear (or affirm) that, to the best of my
 knowledge and ability, I will support and defend the Constitution of
 the United States, against all enemies, foreign and domestic; that I will
 bear true faith and allegiance to the same; that I take this obligation
 freely, without any mental reservation or purpose of evasion, and that I
 will well and faithfully discharge the duties of the office on which I am
 about to enter, so help me God.⁹

8 The ironclad oath embraced the principle that in the determination of one's
 9 qualification for U.S. citizenship, one's past record relating to the law was at least
 10 as important as one's pledge to abide by the law in the future.

11 21. The ironclad oath was part of the proposed reconstruction plan offered by
 12 Republicans in Congress as an alternative to Lincoln's proposed reconstruction
 13 plan. Under Lincoln's proposed reconstruction plan of December 1863, the simple
 14 loyalty oath rather than the ironclad oath was to be the oath applied to southerners
 15 during the Civil War who sought to establish that they were Unionists, not
 16 Confederates. The congressional reconstruction plan offered as an alternative to
 17 Lincoln's became known as the Wade-Davis bill, named for its sponsors Senator
 18 Benjamin Wade and Representative Henry Winter Davis. The bill called for
 19 southern civilians to take an ironclad oath.¹⁰ Congress passed the Wade-Davis bill
 20 in June 1864, but President Lincoln pocket-vetoed the measure. In August 1864,
 21 Wade and Davis issued a "manifesto" denouncing Lincoln's reconstruction policy

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 23 ⁹ Howard Gillman, Mark A. Graber, and Keith A. Whittington, *American*
 24 *Constitutionalism*, vol. 2, *Rights and Liberties* (New York, Oxford University
 25 Press, 2014), reprint at
 26 [https://global.oup.com/us/companion.websites/fdscontent/uscompanion/us/static/co](https://global.oup.com/us/companion.websites/fdscontent/uscompanion/us/static/companion.websites/9780199751358/instructor/chapter_6/testoaths.pdf)
[mpanion.websites/9780199751358/instructor/chapter_6/testoaths.pdf](https://global.oup.com/us/companion.websites/fdscontent/uscompanion/us/static/companion.websites/9780199751358/instructor/chapter_6/testoaths.pdf) (accessed
 August 11, 2023).

27 ¹⁰ [https://www.archives.gov/milestone-documents/wade-davis-](https://www.archives.gov/milestone-documents/wade-davis-bill#:~:text=Be%20it%20enacted%20by%20the,governor%2C%20whose%20pay%20and%20emoluments)
 28 [bill#:~:text=Be%20it%20enacted%20by%20the,governor%2C%20whose%20pay%20and%20emoluments](https://www.archives.gov/milestone-documents/wade-davis-bill#:~:text=Be%20it%20enacted%20by%20the,governor%2C%20whose%20pay%20and%20emoluments) (accessed August 11, 2023).

1 as too lenient on one-time Confederates and urging authorities to adopt the
2 ironclad-oath policy in place of Lincoln's simple-oath policy. The position taken
3 by Wade and Davis and their adherents was one of a number of factors that led to
4 them being labeled Radical Republicans by their detractors (whereas Lincoln's
5 faction of the Republican Party was known as "moderates" or "conservatives").
6 The so-called Radicals failed to pass a congressional reconstruction policy prior to
7 1865, the year in which the Civil War ended and Lincoln was assassinated. Thus, a
8 universal ironclad-oath policy remained a proposal only, not the law, up to the point
9 that Lincoln was succeeded by President Andrew Johnson. Johnson adopted
10 reconstruction policies similar to those of Lincoln. Like Lincoln, he opposed
11 ironclad oaths in favor of simple oaths. However, within two years of his taking
12 office, Johnson would find himself on the outs of the political party that had
13 installed him in the Executive Office. He and his followers by 1867 were a
14 minority faction of the Republican Party, and those once denounced as "radicals"
15 were now mainstream Republicans. Under this regime, which would orchestrate
16 the adoption of the Fourteenth Amendment, ironclad oaths became the norm across
17 the South.

18 22. Two related factors led ironclad oaths to replace simple oaths as the
19 means by which southern whites were readmitted to national citizenship after the
20 Civil War. First, Andrew Johnson became increasingly unpopular with Republican
21 voters, in large part because of his leniency toward former Confederates. Johnson
22 was liberal in granting pardons and amnesty to one-time Confederates. He also
23 opposed measures popular among congressional Republicans for assuring equal
24 rights to African Americans. Such measures included the Civil Rights Act of 1866,
25 the act renewing the Freedman's Bureau (also of 1866), and the constitutional
26 amendment that would become the Fourteenth Amendment (passed by Congress in
27 1866, ratified by the states in 1868). As mainstream Republicans turned against
28 Johnson, they likewise tended to reject his preferred oath—the simple oath—in

1 favor of the ironclad oath. The second factor leading mainstream Republicans to
2 embrace an ironclad-oath policy was the clear evidence cropping up across the
3 southern landscape that simple oaths were failing to keep southern whites from
4 remaining steadfast in their insurrectionary, white supremacist leanings. By late
5 1866, former Confederates who had taken the simple oath had regained control of
6 southern state governments and had begun passing measures and taking actions that
7 punished and disfranchised loyal white and Black Unionists. Included among such
8 measures were “Black Codes,” which were designed to keep newly freed African
9 Americans in a state of subservience akin to slavery. Many of the “Black Codes”
10 included clauses that prohibited Blacks from carrying or even possessing firearms.
11 These neo-Confederate regimes ruling southern states through much of 1866 did
12 little or nothing to prevent violence against white and Black Unionists. Indeed, the
13 state laws prohibiting access to firearms to Blacks made violence by disloyal white
14 supremacists against Blacks all the more likely. Thus, the spring and summer of
15 1866 witnessed two of the worst massacres of Blacks during Reconstruction, one in
16 Memphis and one in New Orleans. These massacres, along with the policies of the
17 neo-Confederate regiments generally, helped persuade mainstream Republicans that
18 reconstruction policies based on simple loyalty oaths were insufficient; ironclad
19 oaths must be imposed on any southern white seeking to become re-categorized as a
20 loyal and lawful American.

21 23. Some of the first ironclad oaths in the post-war South appeared at the
22 state level—specifically in Arkansas, Tennessee, and West Virginia, where
23 Republicans rather than neo-Confederates controlled the state governments. In
24 these states, ironclad oaths were required of whites who wanted to vote, to hold
25 office, to serve as government employees, and even to be members of certain
26 professions, including doctors, lawyers, and clergymen.¹¹ The iron-clad oath policy

27 ¹¹ Kenneth R. Bailey, “Test Oaths, Belligerent Rights, and Confederate
28

1 was most strictly and widely imposed in Tennessee, the pro-Union government of
 2 which was seen as a model state regime by Republicans and a nightmare-scenario
 3 by former Confederates.¹² Not by coincidence, Tennessee became not only the first
 4 formerly seceded state to impose ironclad oaths vigorously, but also the first such
 5 state to restrict militia service and gun-access generally to those who took the
 6 ironclad oath.¹³

7 24. Ironclad-oath policies imposed by southern states were challenged by
 8 some former Confederates and ultimately were ruled upon by the U.S. Supreme
 9 Court in the “Test Oath Cases” of 1866-67.¹⁴ The Court accepted much of the
 10 plaintiffs’ argument that ironclad oaths were potentially tantamount to ex post facto
 11 laws and violative of Fifth Amendment rights against self-incrimination. However,
 12 the Court’s ruling in the Test Oath Cases had little effect. As historians have
 13 shown, in practice, Republicans at both the state and national level continued to
 14 impose ironclad oaths, and these oaths became the law of the land, making the
 15 Court’s ruling irrelevant.¹⁵

16
 17 Money: Civil War Lawsuits Before the West Virginia Supreme Court of Appeals,”
 18 *West Virginia History*, 1-22; Randy Finley, “In War's Wake: Health Care and
 19 Arkansas Freedmen, 1863-1868,” *Arkansas Historical Quarterly*, 51 (Summer
 20 1992), 148; Hyman, *To Try Men's Souls*, 163-66. The first post-war state
 21 constitution of Virginia also included an ironclad-oath policy, even though that
 22 state would briefly end up under the control of former Confederates. See Nicole
 23 Myers Turner, *Soul Liberty: The Evolution of Black Religious Politics in*
 24 *Postemancipation Virginia* (University of North Carolina Press, 2020), 55.

22 ¹² Ted Tunnell, “Creating ‘The Propaganda of History’: Southern Editors and
 23 the Origins of ‘Carpetbagger and Scalawag,’” *Journal of Southern History*, 72
 24 (Nov. 2006), 807-08.

24 ¹³ Ben H. Severance, *Tennessee's Radical Army: The State Guard and Its*
 25 *Role in Reconstruction, 1867-1869* (Knoxville: University of Tennessee Press,
 26 2005), 35-36.

26 ¹⁴ Hyman, *Era of the Oath*, 107-20.

27 ¹⁵ Philip S. Paludan, “John Norton Pomeroy, State Rights Nationalist,”
 28 *American Journal of Legal History*, 12 (Oct. 1968), 279-80; Hyman, *To Try Men's*
 29 *Souls*, 260-61.

25. The struggle over ensuring loyalty and law-abiding behavior among southern whites was the context in which the 39th Congress, dominated by Republicans, created the measure that would become the Fourteenth Amendment. Congressional discussion and debate of the proposals that would cohere into the Amendment began in December 1865 and ended in June 1866. The Amendment is best-known for its first clause, which speaks of “privileges and immunities” and of “due process” and “equal protection.” But, as the scholar Mark Graber has argued, the drafters of the Amendment were as interested in, if not more interested in, the third clause, which contained language excluding certain southern whites from citizenship. In other words, according to Graber, the Amendment was as much about denying citizenship to potentially disloyal southern whites as it was about assuring citizenship to Blacks and unquestionably loyal southern whites. Graber’s study focuses especially on the “exclusion resolution” that eventually appeared in the Amendment’s third clause. As the book’s title indicates, a primary goal of the Amendment was to “punish treason” and “reward loyalty.”¹⁶

26. The Fourteenth Amendment would not be ratified until 1868, but even before that date, the same Republican Congressmen who had drafted the measure passed other laws that required ironclad oaths of those known to have been or even suspected to have been Confederates or Confederate sympathizers. One of the most significant of these measures was the Reconstruction Act of 1867, which empowered local, state, and national authorities to administer ironclad loyalty oaths. The ironclad oaths administered typically included a pledge that the person taking the oath had never engaged in “armed hostility” against the United States. This broad language covered activity that went beyond acts of outright treason and insurrection. It covered any activity in which a person had carried out armed aggression against loyal Unionists. Thus, ironclad oaths might proscribe from the

¹⁶ Graber, *Punish Treason, Reward Loyalty*, 38-40.

1 privileges of citizenship those who had engaged in unauthorized guerrilla activities
2 or those who had simply committed armed robbery or assault against loyal
3 Unionists.

4 27. The oath-taking system established by the 1867 Reconstruction Act
5 replaced the “Provost Marshal system” established during the Civil War. During
6 the war, U.S. Provost Marshals of occupying armies in the South would administer
7 oaths to members of a community wishing to be considered for reinstatement to
8 U.S. citizenship. Names of oath-takers were recorded in a log book, and members
9 of local Provost Marshals’ officers would be cognizant of which members of the
10 community had refused to take the oath. The local roll of oath-takers acted in effect
11 as a database for local law enforcement officers of who could be entrusted with the
12 privileges of citizenship, which included voting, the receipt of food rations from the
13 U.S. army, the admission to professions, and the purchase and sale of firearms and
14 ammunition. With the Reconstruction Act of 1867, the work of registering and
15 monitoring oath-takers—along with the duty of knowing who had refused to take
16 the oath—passed to local and state constabularies and judges. Meanwhile, the U.S.
17 army remained empowered to oversee the oath-taking system administered by
18 civilian officials. If a local U.S. commander deemed that a community lacked loyal
19 civilian law enforcers and judges, he could assume the duties of overseeing the
20 monitoring of oath-taking. By this point—that is, by 1867, the year of the
21 Reconstruction Act—almost all oaths were ironclad oaths. Thus, by statute and by
22 the power vested in civilian law enforcement officials and U.S. army officers, the
23 law regulated who was deemed loyal by requiring an examination of people’s past
24 records.

25 28. The system of tracking community members’ past records via oath-
26 administration was replicated in other facets of the U.S. Reconstruction program.
27 For example, the U.S. Southern Claims Commission, established in 1871 to allow
28 southerners who had always been loyal to file claims for property seized by military

1 personnel during the war, required claimants to take ironclad oaths.

2 Commissioners were empowered to investigate claimants' records in regard to prior
3 illegal and disloyal activity and to disqualify those who were found to have acted in
4 ways that contradicted the ironclad oath that claimants had taken. Similarly, under
5 the congressional acts passed in 1870 and 1871 that enforced the Fourteenth and
6 Fifteenth Amendments—known popularly as “The Enforcement Acts” or “The Ku
7 Klux Klan” acts—civilian and army investigators regularly administered ironclad
8 oaths in their efforts to uncover violations of loyal Unionists' civil and political
9 rights.¹⁷

10 29. It should be noted that not all elements of the oath-taking system
11 established during the era of the Fourteenth Amendment were spelled out in federal
12 and state statutes. Statutes most commonly mentioned the administration of oaths
13 in the context of establishing voter rolls for elections. However, much about the
14 process of administering oaths and investigating the veracity of oath-takers was not
15 spelled out in statutes. Rather, civilian and military law enforcers were understood
16 to have discretion to administer the oath system in whatever way best “kept the
17 peace.” In other words, the day-to-day operation of the oath system at the local
18 level followed the American tradition of police powers, by which law was
19 embodied not only in explicit statutes but also in the discretionary actions of those
20 empowered to “keep the peace.” Included in peace-keeping, of course, was the
21 maintenance of public safety in regard to dangerous weapons. Thus, law enforcers
22 in the era of the Fourteenth Amendment could be expected to consult loyalty-oath
23 records in determining who might be prevented from obtaining or possessing a
24 dangerous weapon.

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26 ¹⁷ See, for example, *U.S. Congressional Serial Set*, vol. 1308, 40th Cong., 1st
27 sess., Sen. Exec. Doc. 14, “Message of President communicating correspondence
28 on reconstruction, and opinions of Attorney General on construction of
reconstruction acts,” pp. 141-42. On the use of ironclad oaths by the Southern
Claims Commission, see Hyman, *To Try Men's Souls*, 265.

30. One example from the historical record—many might be given—will help illuminate this point about the oath-taking system being integrated into traditional (though non-statutory) policing to ensure public safety. In Laurens, South Carolina, in October 1870, a man named Joseph Crews was both a leader of the local, pro-Union militia and a member of the board of canvassers. In this latter role, he had a record of all who were registered to vote in the community. This list necessarily represented those adult men in the community who had taken the ironclad oath. Those adult men in the community who were not on the list obviously had not taken the oath or had taken the oath but been disqualified because of past transgressions. The list thus served as a database of sorts for Crews as he determined who could protect the community and who threatened the community. It was crucial for Crews to have this database, as the community had been terrorized by Ku Klux Klansmen during September and early October, and he sought to do what he could to quell the violence. He gathered known loyal men into militia companies (most of these men were Black, some were white) and had them gather all the guns and ammunition that they could find from stores in town and place them under guard in Crews’s house and in one other guarded location. His purpose was to ensure that none of these weapons was purchased or seized by those known to be disloyal—that is, those who had failed to pass the test-oath requiring a record of law-abiding behavior. This sequence of events was analogous to modern-day episodes in which law-enforcers use background checks to keep dangerous weapons out of the hands of those who have committed past unlawful conduct and are most likely to use them for unlawful purposes in the future.¹⁸

¹⁸ Descriptions of Ku Klux Klan activity in and around Laurens, South Carolina prior to this episode, including attacks and killing of Black Americans, may be found here: “The Ku-Klux reign of terror. Synopsis of a portion of the testimony taken by the Congressional investigating committee. No. 5 (1872), <https://www.loc.gov/resource/rbpe.23700800/?st=text> (accessed August 11, 2023). The episode involving Crews, the voter lists, and the dangerous weapons, is described here: *U.S. Congressional Serial Set*, vol. 1529 (1871-72), 42nd Cong.,

1 **VI. CONCLUSION**

2 31. During the era of the Fourteenth Amendment, federal, state, and local
 3 governments qualified access to the privileges and immunities protected by that
 4 Amendment—including the acquisition and possession of firearms—on sworn and
 5 evidenced past loyalty to the Union. To ensure that only loyal southerners enjoyed
 6 the privileges and rights afforded by the Amendment, all southerners were required
 7 to swear oaths of loyalty, and government officials were authorized to, and did,
 8 conduct investigations into the past behavior of those who took the oaths. Today,
 9 disloyalty to the United States is not an express bar to enjoying Second Amendment
 10 rights, but the use of contemporary background checks as an investigative tool to
 11 ensure that persons prohibited from acquiring and possessing firearms—due to, for
 12 example, a past felony conviction—are analogous to the oath requirements and
 13 investigations of the Reconstruction era.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on August 15, 2023 at Providence, Rhode Island.

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 18 Michael Vorenberg

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 27 _____
 28 2nd sess., “Affairs in Insurrectionary States,” pt. 1, “Report and Minority Views,”
 pp. 554-56.

EXHIBIT A

CURRICULUM VITAE

Michael Vorenberg
Associate Professor of History
Brown University

Education Ph.D. in History, Harvard University, November 1995 (American History)
 A.M. in History, Harvard University, March 1990 (American History)
 A.B. in History, Harvard University, June 1986, *summa cum laude* (Ancient History)

Professional Appointments

Associate Professor of History (with tenure), Brown University, 2004-
Vartan Gregorian Assistant Professor, Brown University, 2002-2004
Assistant Professor, History Department, Brown University, 1999-
Assistant Professor, History Department, SUNY at Buffalo, 1996-99
Post-Doctoral Fellow, W.E.B. Du Bois Center, Harvard University, 1995-96
Lecturer, History and Literature Program, Harvard University, 1995-96

Scholarship

Books

Lincoln's Peace: The Elusive End of the American Civil War (forthcoming
with Alfred A. Knopf).
The Emancipation Proclamation: A Brief History with Documents (Bedford/St.
Martin's, 2010).
*Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth
Amendment*. Cambridge: Cambridge University Press, 2001.
(Paperback edition, 2004.)

Chapters in Books

"The 1866 Civil Rights Act and the Beginning of Military Reconstruction," in Christian
Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866
from Reconstruction to Today* (Carbondale, Ill.: Southern Illinois University
Press, 2018), 60-88.
"The Thirteenth Amendment," in *1865: America Makes War and Peace in Lincoln's
Final Year* (Carbondale, Ill.: Southern Illinois University Press, 2015), 7-21.
"Liberté, Égalité, and Lincoln: French Readings of an American President," in Richard
Carwardine and Jay Sexton, eds., *The Global Lincoln* (New York: Oxford
University Press, 2011), 95-106.
"Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence," in
Alexander Tsesis, ed., *The Promises of Liberty: The History and Contemporary
Relevance of the Thirteenth Amendment* (New York: Columbia University Press,
2010).

- “Did Emancipation Create American Citizens?: Abraham Lincoln’s View” (in Russian), in Victoria Zhuravleva, ed., *Abraham Lincoln: Lessons of History and the Contemporary World* (Moscow: Russian State University for the Humanities Press, 2010).
- “Abraham Lincoln’s ‘Fellow Citizens’—Before and After Emancipation,” in William A. Blair and Karen Fisher Younger, eds., *Lincoln’s Proclamation: Emancipation Reconsidered* (Chapel Hill: University of North Carolina Press, 2009), 151-169.
- “The Thirteenth Amendment Enacted,” in Harold Holzer and Sara Vaughn Gabbard, eds., *Lincoln and Freedom: Slavery, Emancipation, and The Thirteenth Amendment* (Carbondale, Ill.: Southern Illinois University Press, 2007).
- “After Emancipation: Abraham Lincoln’s Black Dream,” in John Y. Simon, Harold Holzer, and Dawn Vogel, eds., *Lincoln Revisited* (New York: Fordham University Press, 2007).
- “Slavery Reparations in Theory and Practice: Lincoln’s Approach,” in Brian Dirck, ed., *Lincoln Emancipated: The President and the Politics of Race* (DeKalb: Northern Illinois Univ. Press, 2007).
- “Reconstruction as a Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions in the History of Postbellum America* (New York: Oxford University Press, 2006).
- “The World Will Forever Applaud: Emancipation,” in Aaron Sheehan-Dean, ed., *The Struggle for a Vast Future: The American Civil War* (Oxford, UK: Osprey, 2006).
- “Emancipating the Constitution: Francis Lieber and the Theory of Amendment,” in Charles R. Mack and Henry H. Lesesne, eds., *Francis Lieber and the Culture of the Mind* (Columbia: Univ. of South Carolina Press, 2005).
- “The Chase Court (1864-1873): Cautious Reconstruction,” in Christopher Tomlins, ed., *The United States Supreme Court: The Pursuit of Justice* (Boston: Houghton Mifflin, 2005).
- “Bringing the Constitution Back In: Amendment, Innovation, and Popular Democracy during the Civil War Era,” in Meg Jacobs, William Novak, and Julian Zelizer, eds., *The Democratic Experiment: The Promise of American Political History* (Princeton: Princeton University Press, 2003).
- “The King’s Cure: Abraham Lincoln and the End of Slavery,” in Charles Hubbard, ed., *Lincoln Reshapes the Presidency* (Mercer, Penn.: Mercer Univ. Press, 2004).
- “Rutherford B. Hayes,” in Alan Brinkley and Davis Dyer, eds., *The Reader’s Companion to the American Presidency*. Boston: Houghton Mifflin, 2000.
- “Abraham Lincoln and the Politics of Black Colonization,” in Thomas F. Schwartz, ed., *“For a Vast Future Also”: Essays from the Journal of the Abraham Lincoln Association*. New York: Fordham University Press, 1999. (Reprint of article listed below.)

Refereed Journal Articles

- “Spielberg’s *Lincoln*: The Great Emancipator Returns,” *Journal of the Civil War Era*, 3 (December 2013), 549-72.
- “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (December 2005), 416-26.
- “‘The Deformed Child’: Slavery and the Election of 1864,” *Civil War History*, 47 (September 2001), 240-257.
- “Abraham Lincoln and the Politics of Black Colonization,” *Journal of the Abraham Lincoln Association*, 14 (Summer 1993): 23-46.

Non-Refereed Journal Articles

- Review of Cynthia Nicoletti, *Secession on Trial: The Treason Prosecution of Jefferson Davis*, in *American Historical Review*, 124 (June 2019), 1075-76.
- “Emancipation—Then What?,” *New York Times*, “Disunion” Blog, January 15, 2013, http://opinionator.blogs.nytimes.com/2013/01/15/emancipation-then-what/?_php=true&_type=blogs&_r=0
- “Hearts of Blackness: Reconsidering the Abolitionists—Again,” *Reviews in American History*, 32 (March 2004), 33-40.
- “The Battle Over Gettysburg: What Lincoln Would Have Said about September 11, 2001,” *Brown Alumni Magazine*, 103 (Jan./Feb. 2003), 27.
- “Recovered Memory of the Civil War,” *Reviews in American History*, 29 (Dec. 2001), 550-58.

Invited Lectures

- “What is an American?: Abraham Lincoln’s Answer,” Langston Lincoln Lecture, March 29, 2022, York University.
- “A Righteous Peace: Abraham Lincoln, the Civil War, and the End of Slavery,” The Humanities Forum, Providence College, Oct. 18, 2019.
- “How Wars End—or Don’t: The Civil War as a Case Study,” Henry E. Huntington Society of Fellows Lecture, May 8, 2019.
- “Lincoln’s Peace: The Struggle to End the American Civil War,” Occidental College (Billington Lecture), Feb. 21, 2019.
- “The Fate of Slavery after Emancipation,” The Great Lectures Series (as OAH Distinguished Lecturer), New York City, October 14, 2017.
- “Abraham Lincoln, the Thirteenth Amendment, and the Struggle for American Peace and Freedom,” University of Saint Mary Annual Lincoln Lecture, Topeka, Kansas, February 20, 2017.
- “The 14th Amendment as an Act of War,” Boston College, Clough Center, Newton, Massachusetts, September 20, 2016.
- “Born in the USA—So What?” Worcester Polytechnic Institute, Constitution Day University Speaker, Worcester, Massachusetts, September 19, 2016.
- “The Slave Power on the Gallows: The Deeper Meaning of the Execution of Henry Wirz, Confederate Commandant,” University of California, Berkeley, Legal History Workshop, March 29, 2016.

Salmon P. Chase Symposium on the Thirteenth Amendment (participant), Georgetown Law Center, Dec. 4-5, 2015, Washington, DC.

“The Last Surrender: Looking for the End of the Civil War,” presented at The Lincoln Forum, Gettysburg, Pennsylvania, November 17, 2015.

“Voting Rights and the Meaning of Freedom: The View from the Civil War Era,” Annual Lincoln Legacy Lecture, University of Illinois at Springfield, October 15, 2015.

“Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment,” Roger Williams University, October 6, 2015.

“Lincoln and the Jews, Freedom and Discrimination,” Brown Hillel Alumni Association, New York City, May 17, 2015.

“When Should History Say That Slavery Ended in the United States?,” Center for Slavery and Justice, Brown University, May 8th, 2015.

“Lincoln, the Constitution, and the Civil War,” Community College of Rhode Island, April 29, 2015.

“Judgment at Washington: Henry Wirz, Lew Wallace, and the End of the Civil War,” Annual Symposium of Capitol Historical Society, Washington, DC, May 2, 2014.

“Emancipation, Lincoln, and the Thirteenth Amendment,” Dole Forum, Dole Institute of Politics, University of Kansas, Lawrence, Kansas, November 21, 2013.

“Spielberg’s Lincoln and the Relation between Film and History,” Department of History, Loyola University, Chicago, Illinois, November 13, 2013.

“The Appomattox Effect: Struggling to Find the End of the American Civil War,” Newberry Library Colloquium, Chicago, Illinois, November 6, 2013.

“Reconstruction and the Origins of Civil Rights,” National Endowment for the Humanities Summer Institute on Civil Rights History, Harvard University, Cambridge, Massachusetts, July 1, 2013.

“The Origins and Process of Emancipation,” Emancipation at 150 Symposium, Boston College Clough Center, Newton, Massachusetts, April 23, 2013.

“Emancipation—Then What? Citizenship?” Emancipation Proclamation Symposium, University of Michigan, October 26, 2012.

“Blood, Allegiance, Belief: The Meanings of Citizenship in the Civil War Era,” University of Michigan Law School, January 31, 2012.

“American by War: The People and Their Nations during the Civil War,” Phillips Andover Academy, Andover, MA, Nov. 17, 2011.

“Birthright and the Myth of Liberal Citizenship,” JANUS Forum, Brown University, Nov. 15, 2011.

“American by War: The People and Their Nations during the Civil War,” Western Kentucky University, Bowling Green, KY, Oct. 12, 2011.

“The Elections of 1860 and 2010 and the Politics of Citizenship,” Colby College Symposium on the American Civil War Sesquicentennial, Waterville, Maine, November 10, 2010.

“Americans Debate Citizenship—Then and Now,” Brown Club of England, October 12, 2010, London.

“War Powers, *Ex Parte Merryman*, and the Relevance of the American Civil War,” American Bar Association Workshop for High School Teachers, Washington, D.C., June 19, 2010

- “Originalism and the Meanings of Freedom,” Georgetown Law School, Washington, D.C., March 30, 2010.
- “Abraham Lincoln, Politician,” Rotary Club of Rhode Island, Warwick, R.I., November 6, 2008.
- “Lincoln the Citizen,” Abraham Lincoln Symposium, National Archives, Washington, D.C., September 20, 2008.
- “Emancipation and its Meaning in Current Scholarship,” National Endowment for the Humanities Summer Institute on “Slavery and Emancipation,” Philadelphia, Pennsylvania, July 28, 2008.
- “Lincoln the Citizen—Or Lincoln the Anti-Citizen?,” Abraham Lincoln Symposium, Springfield, Illinois, February 12, 2008.
- “The Tangled History of Civil Rights and Citizenship in the Civil War Era,” University of Virginia School of Law, November 2007.
- “Civil Liberties and Civil Rights: The Civil War Era,” American Bar Association, Chicago, May 2006.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” Boston College School of Law, April 2007.
- “Forever Free: The Meanings of Emancipation in Lincoln’s Time and Ours,” St. Louis University, December 7, 2006.
- “Slavery Reparations in Historical Context,” Connecticut College, New London, Connecticut, March 2, 2006.
- “Abraham Lincoln, The Civil War and the Conflicting Legacies of Emancipation,” presented as part of the “Forever Free” series, Providence Public Library, Providence, R.I., January 26, 2006.
- “Abraham Lincoln, War Powers, and the Impact of the Civil War on the U.S. Constitution,” presented at symposium on “War Powers and the Constitution,” Dickinson College, Dickinson, Penn., October 3, 2005.
- “Reconsidering Law, the Constitution, and Citizenship,” presented at “New Directions in Reconstruction” symposium, Beaufort, S.C., April 15-18, 2004.
- “Abraham Lincoln, Slavery, and Modern Legacies,” Public History Series, University of Las Vegas, Nevada, February 12, 2004.
- “Oaths, African Americans, and Citizenship,” University of Nevada at Las Vegas Law School, February 12, 2004.
- “Reconsidering the Era of the Oath: African Americans Before Union Military Courts during the American Civil War,” presented to the Law and History symposium, Northwestern University Law School, Chicago, Ill., November 3, 2003.
- “Racial and Written Constitutions in Nineteenth-Century America,” presented to the workshop of the Department of History, Boston College, Newton, Massachusetts, March 2003.
- “Abraham Lincoln, Abolition, and the Impact of the Civil War on the Cult of the Constitution,” presented at the Social Law Library, Suffolk University, Boston, Massachusetts, February 2002.

- “Francis Lieber, Constitutional Amendments, and the Problem of Citizenship,” presented at The Francis Lieber Symposium, University of South Carolina, Columbia, S.C., November 2001.
- “How Black Freedom Changed the Constitution,” presented at the “Writing the Civil War” symposium, Atlanta History Center, Atlanta, Georgia, September 2001.
- “From a Covenant with Death to a Covenant with Life: The Constitution’s Transformation during the American Civil War,” presented as the Annual Constitutional Anniversary Lecture, National Archives, Washington, D.C., September 2001.
- “New Perspectives on Abraham Lincoln, Emancipation, and the Civil War,” presented to the Civil War Round Table of Rhode Island, Cranston, Rhode Island, June 2001.
- “Historical Roots of the Modern Civil Rights Movement: The Constitution,” presented at the Civil Rights Summer Institute, Harvard University, Cambridge, Massachusetts, June 2001.
- “Race, Law, and the Invention of the State Action Doctrine in the Late Nineteenth Century,” presented at the Columbia University Law School, New York City, April 2001.
- “A King’s Cure, a King’s Style: Lincoln, Leadership, and the Thirteenth Amendment,” presented at the “Abraham Lincoln and the Legacy of the Presidency” conference, Lincoln Memorial University, Harrogate, Tennessee, April 2001.
- “The Tangled Tale of Civil War Emancipation,” presented at the University of Richmond, Richmond, Virginia, March 2001.
- “The King’s Cure: Abraham Lincoln, the Thirteenth Amendment, and the Fate of Slavery,” presented at the Abraham Lincoln Institute of the Mid-Atlantic, Washington, D.C., March 2001.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” presented at the Boston College School of Law, Newton, Mass., April 2000.

Papers Read or Discussed

- “Prisoners of Freedom, Prisoners of War: An Untold Story of Black Incarceration--And How it Might be Told,” Brown Legal History Workshop, Oct. 28, 2019.
- “Bearer of a Cup of Mercy: Lew Wallace’s American Empire,” Henry E. Huntington Library, Research Fellows Meeting, Feb. 6, 2019.
- “Anti-Imperialism and the Elusive End of the American Civil War,” presented at the “Remaking North American Sovereignty” Conference, Banff, Alberta, Canada, July 31, 2015.
- “The Election of 1864: Emancipation Promised, Emancipation Deferred,” presented at The Annual Meeting of the Organization of American Historians, Atlanta, Georgia, April 11, 2014.
- “The Appomattox Effect: Struggling to Find the End of the American Civil War,” Department of History, Northwestern University, Evanston, Ill., Nov. 15, 2013.

- “Birth, Blood, and Belief: Allegiance and the American Civil War,” presented at the Elizabeth Clark Legal History Workshop Series, Boston University School of Law, Nov. 16, 2011.
- “French Readings of Lincoln’s Role in the Creation of American Citizenship,” presented at the conference on European Readings of Abraham Lincoln, His Times and Legacy, American University of Paris, Paris, France, October 18, 2009.
- “Was Lincoln’s Constitution Color-Blind?,” presented at the Abraham Lincoln Bicentennial Symposium, Harvard University, Cambridge, Mass., April 24, 2009.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” presented at conference on Slavery, Abolition, and Human Rights: Interdisciplinary Perspectives on the Thirteenth Amendment, April 17, 2009
- “Did Emancipation Create American Citizens?—Abraham Lincoln’s View,” presented at the conference on Abraham Lincoln: Issues of Democracy and Unity, Russian State University, Moscow, Feb. 8, 2009.
- “The Racial and Written Constitutions of Nineteenth-Century America,” Cogut Center for the Humanities, Brown University, Nov. 4, 2008.
- “Civil War Era State-Building: The Human Cost,” Boston University Political History Workshop, March 19, 2008.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” annual meeting of the *Law and Society Association*, Montreal, May 30, 2008.
- “Claiming Citizenship: Black and White Southerners Make Their Cases During the Civil War,” presented at the annual meeting of the *Southern Historical Association*, Memphis, November 2004.
- “Imagining a Different Reconstruction Constitution,” presented at the annual meeting of the Social Science History Association, Baltimore, November 2003.
- “West of Reconstruction: Resolving Mexican-American Property and Citizenship in the Civil War Era,” presented at the annual meeting of the *American Historical Association*, San Francisco, California, January 2002.
- “The Limits of Free Soil: The Resolution of Mexican Land Claims during the American Civil War,” presented at the annual meeting of the *Organization of American Historians*, St. Louis, Missouri, April 2000.
- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Nineteenth-Century America,” presented at the annual meeting of the *American Society for Legal History*, Toronto, Ontario, October 1999.
- “Law, Politics, and the Making of California Free Soil during the American Civil War,” presented at the annual meeting of the *Western History Association*, Portland, Oregon, October 1999.
- “Land Law in the Era of Free Soil: The Case of New Almaden,” *American Society for Environmental History*, Tucson, Arizona, April 1999.

- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Antebellum America,” presented at the annual meeting of the *Society for Historians of the Early American Republic*, Harpers Ferry, W.V., July 1998.
- “The Constitution in African-American Culture: Freedom Celebrations and the Thirteenth Amendment,” presented to the *W.E.B. Du Bois Institute*, Harvard University, Cambridge, Massachusetts, April 1996.
- “Civil War Emancipation and the Sources of Constitutional Freedom,” presented at the annual meeting of the *Organization of American Historians*, Washington, D.C., April 1995.
- “The Origins and Original Meanings of the Thirteenth Amendment,” presented at the annual meeting of the *American Society for Legal History*, Washington, D.C., October 1994.
- “Civil War Emancipation in Theory and Practice: Debates on Slavery and Race in the Border States, 1862-1865,” presented at the *Southern Labor Studies Conference*, Birmingham, Alabama, October 1993.

Service

University

- Anna S. K. Brown Library advisory committee, member, 2016-present.
- Co-Organizer (with Faiz Ahmed, Rebecca Nedostup, Emily Owens), Brown Legal History Workshop, 2015-present.
- Political Theory Project, Advisory Board, 2010-2019
- Organizer and Presenter, “Abraham Lincoln for the 21st Century: A Symposium honoring the Abraham Lincoln Bicentennial,” John Hay Library, Brown University, Feb. 27-28, 2009. Plenary lecture by Benjamin Jealous, president of NAACP, and six symposium participants. Funding secured from Rhode Island Foundation, Rhode Island Lincoln Bicentennial Commission, Brown Provost, Brown Dean of Faculty, History Department, Africana Studies Department

Profession

- Board of Editors, *Journal of Constitutional History*, 2022-present.
- Program Committee, Society of Civil War Historians, 2022 annual conference, 2020-present.
- Cromwell Prize Committee, American Society for Legal Historians, 2014-2017.
- Board of Editors, *Law and History Review*, 2004-2013 (reappointed 2009).
- Advisory Committee, United States Abraham Lincoln Bicentennial Commission, 2002-10.
- Board of Advisors, Lincoln Prize, Gettysburg Institute (2000-present).
- Co-Chair, Local Arrangements Committee, Annual Meeting of the Society for Historians of the Early American Republic, Providence, Rhode Island, Summer 2004.
- Referee for the National Endowment for the Humanities. 2001-2003.
- Committee Member, Local Arrangements Committee, Annual Meeting of the American Society for Environmental History, to be held in Providence, Rhode Island, Spring 2003.

Referee for article manuscripts submitted to the *Journal of American History*,
Law and History Review, *Law and Social Inquiry*, *Journal of the Civil War Era*,
and *Civil War History*.
Referee for book manuscripts submitted to Houghton Mifflin, Harvard University Press,
Oxford University Press, New York University Press, University of Chicago
Press, University of Illinois Press, and University of North Carolina Press.
Advisory Editor for *Proteus* (special issue devoted to the American Civil War,
Fall 2000).

Community

Lecture on American Citizenship and Exclusion, Center for Reconciliation, Providence,
R.I., July 2018.
Instructor in co-taught course at the Rhode Island Adult Correctional Institute (ACI)
through the Brown University BELLS program, 2013.
Lecture on Reconstruction-Era Constitutional Amendments, Barrington, RI, Open
Classroom, April 4, 2013.
Lecture on 150th Anniversary of the Emancipation Proclamation, Wheeler School,
Providence, Rhode Island, January 17, 2013.
Rhode Island Civil War Sesquicentennial Commission, 2011- .
Rhode Island Abraham Lincoln Bicentennial Commission (appointed by
Governor), 2005-2009.
Lecturer on the Brown Steering Committee on Slavery and Justice, The Wheeler
School, Providence, Rhode Island, November 2006.
Seminar leader for National Endowment for the Humanities “We the
People” initiative at Deerfield Historical Society, Deerfield, Mass., April
2006.
Seminar leader for National Endowment for the Humanities “Teaching
American History” initiative at Rhode Island Historical Society,
Providence, R.I., September 2005.
Seminar leader for National Endowment for the Humanities “We the People”
initiative at Deerfield Historical Society, Deerfield, Mass., March 2005.
Advisor to the Burrillville, Rhode Island, School Department, on securing and
administering a “Teaching American History” grant from the United
States Department of Education, 2001-2002.

Academic Honors and Fellowships

Ray Allen Billington Professor, Occidental College/Henry E. Huntington Library, 2018-19.
Pembroke Center for the Study of Women and Gender Fellowship, Brown University, 2016-17.
National Endowment for the Humanities Long-Term Fellowship, Massachusetts Historical
Society, Boston, Massachusetts, 2014.
National Endowment for the Humanities Long-Term Fellowship, Newberry Library,
Chicago, Illinois, 2013.
Finalist, CIES Fulbright Fellowship for University of Rome III (2010-11 competition)
Cogut Center for the Humanities Fellowship, Brown University, Fall 2008.
William McLoughlin Prize for Teaching in the Social Sciences, Brown University, 2007.

Karen Romer Prize for Undergraduate Advising, Brown University, 2007.
History News Network (HNN) "Top Young Historian," 2005 (1 of 12 named in the U.S.).
Vartan Gregorian Assistant Professorship, Brown University, 2002-2004.
Finalist, Lincoln Prize, 2002 (for *Final Freedom*).
American Council of Learned Societies/Andrew W. Mellon Fellowship, 2002-03.
Kate B. and Hall J. Peterson Fellowship, American Antiquarian Society, 2002-03.
Salomon Research Award, Brown University, 2002-2003.
National Endowment for the Humanities Summer Stipend, 2001.
Julian Park Fund Fellowship, SUNY at Buffalo, 1998.
Research Development Fund Fellowship, SUNY at Buffalo, 1997.
Harold K. Gross Prize for Best Dissertation at Harvard in History, 1996.
Delancey Jay Prize for Best Dissertation at Harvard on Human Liberties, 1996.
W.E.B. Du Bois Fellowship, Harvard University, 1995.
Whiting Fellowship in the Humanities, 1994.
Bowdoin Prize for Best Essay at Harvard in the Humanities, 1993.
Indiana Historical Society Graduate Fellowship, 1993.
W. M. Keck Fellowship, Henry E. Huntington Library, 1993.
Everett M. Dirksen Congressional Research Fellowship, 1993.
Mark DeWolfe Howe Fellowship, Harvard Law School, 1993.
Charles Warren Center Research Fellowship, Harvard History Dept., 1991-2.
Derek Bok Award for Distinction in Teaching at Harvard, 1991.
Philip Washburn Prize for Best Senior Thesis at Harvard in History, 1986.