Introduction

Sleeping at a dangerous time!
— Rev. Fluney Jackson

Growing up in rural Louisiana, my grandparents were a treasure trove of advice and sound wisdom that far outpaced their formal education. My grandfather, a sharecropper with a fifth-grade education, taught himself to read. My grandmother worked as a domestic well into her eighties. They raised my mother and aunt, provided a loving family environment for many nonbiological children in the community, and hosted me and my siblings for occasional sleepovers.

On those crisp Saturday mornings when the sun would peek between the cotton curtains with the small faded pattern, my grandpa would allow me to sleep a few extra minutes, but not too much. He would tiptoe into my room off the front porch and say in a stern but loving voice, “Sleeping at a dangerous time!” As a child, I had no idea what that meant. I certainly did not sense any danger after a peaceful night of sleep.

Several decades have passed since my grandfather’s morning alarm, and only now can I fully understand it. After being a civil rights attorney for nearly thirty years, the full context and impact of my grandfather’s admonition rings like a clarion bell. It is against the backdrop of history aided by the cogency of unobstructed vision and experience that a young woman can understand the words of a wise elder. My grandfather’s warning was not about sleeping at all. It was a caution that things were happening while I slept comfortably. I was sleeping at a time when vigilance was needed. I have never forgotten his warning, and I offer it today.
As a country, we have slept through the continuous assault on access to the ballot box in the name of stricter voting requirements, meritless claims of rigged elections, and baseless voter-fraud proclamations. These laws, however, have created a crisis. In the past, these efforts had the primary purpose of eliminating African American voters from the voter rolls. In the new millennium, the enacted laws not only seek to abolish members of a political party but, with the same result, to eliminate voters of color. Obstructionists use race as a political proxy, and substitute party for race by targeting Democratic Party voters and adopting laws that seek to disenfranchise, frustrate, and eliminate minority, poor, and elderly voters. A premeditated strategy composed of laws and deceptive practices has taken root and is eroding the very basis of American democracy—the right to vote! We are, as my grandfather cautioned many years ago, “sleeping at a dangerous time.”

The proliferation of election administration legislation on the federal and state level since the 2000 presidential election has amassed legislative measures that affect access to the ballot. The new requirement of government-issued photo IDs as the sole means of voter identification in some states has been criticized as the new poll tax. Additionally, intimidation via threats of incarceration and deportation, vote caging, voter purges, and voter deception tactics have become the new ways to inhibit and dissuade citizens from casting a ballot or showing up at the polls. Moreover, the mid- and late-decade attention to redistricting has become almost daunting in its effort to overly politicize and racialize the right to vote for a representative form of government. Any one of these new-millennium methods standing alone may not cause concern. When taken together, however, the cumulative effect is the disenfranchisement of eligible voters in numbers that, in some instances, silence and, in others, severely frustrate the voices of the masses. These new-millennium laws are akin to, among other things, the disenfranchising poll taxes, literacy tests, grandfather clauses, and other disenfranchisement measures of the past. We are commanded to meet these assaults on the right to vote with battle-tested and proven
strategies that can preserve the right to vote from the hands of those who seek to return to the days when only certain Americans could exercise the right to vote without fear.

These are not new attacks on the right to vote. Laws have been proposed and enacted that specifically sought to affect voters of color since the late 1800s and the passage of the Fifteenth Amendment. Moreover, the courts have also been involved in endorsing and restricting these types of laws.

*Uncounted* examines this phenomenon through the lenses of history, race, law, and the democratic process. It seeks to educate and create power within communities that are severely and regularly disenfranchised. Surely, a way exists that can expand the franchise without sacrificing integrity. What has worked to combat these perennial disenfranchising methods? How do voter ID and other new-millennium methods affect voter participation and confidence? Are these new mechanisms similar in effect to Jim Crow–era laws of the past? Consider this: If you could get rid of voters, eligible voters, without violence and within legal means, would you try it? What if the affected voters were predisposed to vote against you, or so you believed? Would you use or propose laws that had this effect? What role could courts play in endorsing or revoking these laws?

Enfranchisement-minded grassroots organizers, advocacy groups, and determined voters hold the key to unlocking the prize of democracy, the right to vote. *Uncounted* does more than identify new-millennium methods. It explores methods that take away the right to vote, while we sleep. We’re “sleeping” comfortably while the right to vote is suffering debilitating blows in the courts and legislative houses across this nation. This book will address the similarities between the more overt and ferocious methods of affecting access to voting with the contemporary ways that we currently endure. Indeed, it will provide the wakeup call that is needed to move beyond the strangulation of voter access versus voter integrity to methods that provide for unencumbered voter participation. It illuminates these deceptive and conniving methods and wakes us to an eye-opening revelation of the power of the vote and the ongoing efforts
to take the power away from the people. It provides a framework for understanding voter suppression, its roots in the founding and evolution of our democracy, our contemporaneous struggle to vote, and what must be done to dismantle this suppressive system.

Each chapter will discuss the historical counterpoints to a contemporaneous suppressive tactic, the laws that allow these mechanisms to continue, the impact of the disenfranchising devices with accounts from real voters, and solutions to break the cycle of voter suppression. In chapter 1, I introduce the historical context of disenfranchising legislation and reveal the striking similarities between the pre-civil-rights-era methods of violence and intimidation to specifically disenfranchise black voters and the new-millennium methods of disenfranchisement via legislation and litigation. Using my almost-one-hundred-year-old grandmother as the framework for this discussion, I will illustrate the real impact of voting laws on people of color.

Next, few places have impacted the course of our democratic nation like Selma, Alabama, which served as the pressure point for passage of the 1965 Voting Rights Act (VRA). The VRA has been lauded as the most effective piece of legislation passed in this country’s history. For all of its accomplishments, in 2013, the United States Supreme Court found that one of the most important parts of the act had outlived its usefulness. In Shelby County, Alabama v. Holder, the Court found part of the act unconstitutional and removed protections from a majority of the South, just as the Hayes-Tilden compromise of 1877 had done in post-Reconstruction. In chapter 2, we walk through the history and need for the VRA, using firsthand accounts of the impact of Jim Crow laws, the liberation that the VRA introduced, and the impact since Shelby.

Chapter 3 highlights the hot-button voter ID laws and their impact on voters of color, as well as their historical counterparts, the poll tax and to some extent the grandfather clause. While most scholars have likened voter ID to a poll tax because of the costs in obtaining the underlying documents, such as a birth certificate, other analogies exist that clearly
make the case that voter ID is a poorly veiled attempt to disenfranchise certain voters, an attempt that has as its predecessor Jim Crow–era voting measures.

Chapter 4 introduces two types of deception. This chapter could have been subtitled “Why Whites Vote on Tuesday and Blacks Vote on Wednesday,” deriving from legendary fliers distributed in neighborhoods of color prior to a presidential election, falsely instructing that Republicans (presumably whites) would vote on Tuesday, the actual Election Day, and Democrats (presumably blacks) would vote on Wednesday, the day after the election. This chapter will explore voter deception, the difficulty in pursuing these types of claims, and its similarities to the voter intimidation tactics of the past. It also offers a framework for political deception, in which elected officials spew false and misleading statements and hide behind the cloak of political speech’s seemingly ironclad protection.

Likewise, chapter 5 demonstrates the nexus between voter roll purges and attempts to disenfranchise legitimate voters. Federal law places restrictions on when voter roll purges can occur. With the weakening of federal law through the judicial dismantling of voter protections, however, we have witnessed jurisdictions making questionable purges, particularly near election dates. Moreover, the United States Supreme Court has endorsed this spurious tactic to the detriment of those who are eligible to vote but choose not to vote in every election. Arguably, the purge process in this millennium seems to be on overdrive, with the endorsement of the courts and the federal government’s enforcement agency.

In chapter 6, we meet persons affected by felon disenfranchisement and explore policy and legislative measures that have become extremely successful in this new millennium. I compare the three-fifths compromise to modern-day disenfranchisement. The Fourteenth Amendment of the United States Constitution allows states to disenfranchise their citizens who engage in rebellion or other crime. The process of removing persons who previously committed crimes began in earnest shortly after Reconstruction, but not for those who rebelled against the United
States. Felon disenfranchisement became a mechanism designed to disenfranchise African Americans. Almost 150 years after passage of the Fourteenth Amendment, this mechanism continues to disproportionately disenfranchise people of color.

In a chapter filled with contemporaneous examples, chapter 7 highlights efforts to limit the right to vote of the Latinx population and other people of color. Between July 1, 2011, and July 1, 2012, 1.1 million Hispanics were added to the population of the United States. This accounted for almost half of the 2.3 million population increase that occurred during the same time period. This explosion of Latinx population has caused a considerable increase in legislation requiring proof of citizenship and other anti-immigrant laws. With this level of growth, a number of issues arise regarding access to democracy, including changes to how we count persons in the decennial census. These measures are used to disenfranchise people of color and create a hostile environment similar to those witnessed in previous points in our country’s history. In chapter 8 of this book, I offer my own observations and insights from other civil rights warriors on where we are in history and how we can confront this crisis of voter suppression.

Finally, this book hopes to inform, inspire, and engage a sleeping populace. Uncounted hopes to sound the alarm to the crisis of voter suppression. Democracy is in “dire distress” and “extreme danger.” Throughout the text, I advocate varying measures of a simple objective: educate, legislate, and litigate. In these and other efforts to preserve fundamental rights, advocates are equipped with tools that allow us to perform one or all of these measures. If we educate ourselves, our friends, family members, students, colleagues, and constituents, if we run for office or push our elected officials to represent us in meaningful ways or, when that fails, partner with civil rights and advocacy groups to pursue litigation as a means to obtaining equality, then we will realize our power.

As the daughter and granddaughter of Baptist preachers, I have heard a lot of sermons and read quite a few Bible verses. One verse that continues to perplex me is 2 Timothy 3:5: “having a form of godliness, but
denying the power thereof.” In the voting context, we have a form of democracy, but prevalent and persistent disenfranchising methods have denied it the opportunity to operate in its most powerful form. It is my hope that we will realize our power and exercise the fundamental right to vote freely, without fear and discrimination. Hopefully, this book will provide counterpunches or possibly a knockout blow to end the non-democratic, disenfranchising dynamic that has existed throughout my grandmother’s life and from generation to generation with varying degrees of sophistication. The fight to vote continues.