SILENCED:
Citizens Without a Vote

This general examination of the enduring and far-reaching impact of felony disenfranchisement – the practice of stripping American Citizens of their right to vote – is one in a series produced by the Voting Rights Initiative of the National Association for the Advancement of Colored People. The series includes this national overview as well as state-specific examinations of felony disenfranchisement in Florida, North Carolina, Virginia, Kentucky, and Iowa.
INTRODUCTION

Firmly rooted in the nation’s most insidious elements of race relations, felony disenfranchisement is this country’s enduring nod to Jim Crow—a continued bridge between states, the continual circumvention of the Thirteenth, Fourteenth, and Fifteenth Amendments and the goal of preventing accrual of political power in the black community.

Part and parcel to its rapid expansion, were changes to criminal codes that facilitated disenfranchisement for petty offenses such as larceny and miscegenation while exempting offenses—such as murder—believed to be most often committed by white men.

With more than 5.8 million citizens unable to vote as a result of a felony conviction, amounting to one out of every 40 adults, the United States is the only democratic nation recognized for stripping so many citizens of their voting rights even after they are no longer incarcerated.

Seventy-five percent of the nation’s disenfranchised—an estimated 4.3 million people—are no longer incarcerated. As a result, the returning citizen population includes many individuals who are parents, workers, neighbors, and taxpayers forced to live in the margins of democracy despite practicing responsible citizenship.

HISTORY

While felony disenfranchisement existed in the United States prior to the emergence of Jim Crow, the list of offenses resulting in disenfranchisement was narrow (e.g. treason and election-related offenses). Moreover, because only white men were allowed to vote at that time, the impact of disenfranchisement was also narrow. While in 1850 only 35 percent of states disenfranchised people with felony convictions, after 1866, following the abolition of slavery and the initial emergence of the Fourteenth Amendment, the number of states turning to felony disenfranchisement increased. With full citizenship on the horizon for newly freed slaves in 1866,
the customary gatekeepers’ of the franchise began expressing their opposition to it’s expansion. This opposition was not limited to confederate states however. While the ardent resistance appeared to have failed with ratification of the Fourteenth Amendment in 1868, the tone had been firmly set: black suffrage would not be tolerated.

“I believe, sir, that the white race, politically, should have some superior and distinctive position; and that the black race, but yesterday freed from slavery, educated in ignorance, mentality and dependence, wallowing in contented obfuscation, and satisfied oblivion … is no race that can command or justly deserve the suffrage from me, when the gift of that suffrage would of necessity injure my country and affect my race.”
– Delegate Stephen Colahan (New York Constitutional Convention, 1967)

In the years following abolition of slavery, the granting of citizenship to former slaves, and the prohibition of voting barriers based on race, color, or former condition of servitude in 1870, much of the nation plummeted into a cat-and-mouse approach to abridging voting rights. Many states, in particular Southern states, began testing – through application – various prerequisites to successful exercise of the franchise. Stripping individuals of their voting rights under the cover of felony convictions rapidly emerged as the darling of disenfranchisement because it was presumed legal (i.e. it existed in some states prior to the Civil War) and because it was touted as race-neutral. The backdrop however, including the expansion of criminal codes coupled with the emergence of ‘Black Codes’ to facilitate the criminalization of former slaves, was ripe with race-based intentions:

“Fortunately, the opportunity is offered the white people of the State in the coming election to obviate all future danger and fortify the Anglo-Saxon civilization against every assault from within and without, and that is the calling of a constitutional convention to deal with the all important question of suffrage.”
– Daily Register, Columbia, South Carolina, October 10, 1894

“The crime of wife-beating alone would disqualify sixty percent of the Negroes.”
– John Field Bunting (Alabama Constitutional Convention, 1901)

“This plan [which included felony disenfranchisement laws] will eliminate the darkey as a political factor in this State in less than 5 years, so that in no single county... will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”
– Carter Glass, Delegate (Virginia Constitutional Convention 1901-02)

More than 120 years since it emerged as a tailored mechanism for thwarting the black vote in an effort to keep political power in the white community, felony disenfranchisement now strips 5.8 million citizens of their voting rights.
IMPACT

Today 48 states and the District of Columbia strip citizens of their voting rights at some point in the process of answering to a felony conviction. Four states – Virginia, Florida, Kentucky, and Iowa – permanently disenfranchise all individuals convicted of a felony, even when they are no longer incarcerated. Overall, this approach has pushed more than 5.8 million citizens into the margins of democracy, including 4.3 million (75%) who have returned to the community.\textsuperscript{vi}

- As inherently rooted, felony disenfranchisement strips some 2.2 million voting-eligible African Americans of their voting rights, amounting to 1 in every 13 African American adults.\textsuperscript{vii}

Society has long since conceded that a previous history of breaking social contract is grounds for heightened scrutiny, coupled with the expectation that the individual will not stray from responsible citizenship again. The irony of 4.3 million returning citizens who cannot vote however, is that even those practicing responsible citizenship cannot truly lay claim to it.

Despite the prevalence of felony disenfranchisement and in particular the fact that permanent disenfranchisement exists in four states, the idea of stripping individuals of their citizenship – even in the face of criminal conduct – has been frowned upon by the courts. Even when considering an individual convicted of desertion in \textit{Trop v. Dulles} the Supreme Court did not find loss of citizenship appropriate.\textsuperscript{viii}

\textit{“Citizenship is not a license that expires upon misbehavior. The duties of citizenship are numerous, and the discharge of many of these obligations is essential to the security and wellbeing of the Nation. The citizen who fails to pay his taxes or to abide by the laws safeguarding the integrity of elections deals a dangerous blow to his country... [b]ut citizenship is not lost every time a duty of citizenship is shirked. And the deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be.”}\textsuperscript{ix}

Some distinguish felony disenfranchisement from the Court’s reasoning in \textit{Trop} by characterizing felony disenfranchisement as a mere partial loss of citizenship, rather than a complete loss. This distinction however, fails to recognize that felony disenfranchisement – in any degree – consumes one

\textbf{Approximately 1 out of every 40 voting-eligible adults in the United States have been stripped of their voting rights as a result of a felony conviction.}

\textbf{Nationally, 2.5\% of the voting-age population has lost its voting rights, but within the African American population alone, that number jumps to nearly 8\%.}
of the most significant “duties of citizenship:” voting. In addressing the importance of the vote in a subsequent case, the Supreme Court described voting as “the essence of a democratic society.” That same year, it also described it as follows:

“No right is more precious in a free society than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”

LOOKING FORWARD

Scholarly research coupled with ongoing public scrutiny of the effects of race on incarceration rates in the United States has increasingly called into question the nation’s ongoing reliance on felony disenfranchisement. Moreover, scrutiny of the history and impact of felony disenfranchisement in the United States is rapidly extending beyond our borders as other nations take affirmative steps to prevent de facto disenfranchisement or move away from existing schemes altogether.

In Israel, which does not practice disenfranchisement but lacked the mechanisms to allow inmates to vote, the High Court of Justice required the Government to accommodate inmate voting. Additionally, since 2002, the High Courts in Canada, South Africa, the United Kingdom, Austria, and Australia have abolished broad sweeping disenfranchisement schemes; some have abolished permanent disenfranchisement altogether. Of particular interest is the Australian High Court’s 2007 decision because the Australian constitution – like the United States – does not contain an affirmative right to vote. In Roach v. Electoral Commissioner, the High Court examined a 2006 amendment to Australia’s Electoral Act which disenfranchised all incarcerated individuals. Prior to 2006 the Act only permitted disenfranchisement of individuals serving three or more years. Despite lacking an affirmative right to vote, in invalidating the 2006 amendments, the High Court found that the Australian constitution was grounded in universal suffrage and that blanket disenfranchisement could not be reconciled with that principle of governance. Similarly, blanket felony disenfranchisement – in particular permanent disenfranchisement as is practiced in Virginia, Florida, Kentucky, and Iowa – cannot be reconciled with the notion of universal suffrage set forth in the United States Constitution.
Felony Disenfranchisement: At-A-Glance

Nationally, 1 out of every 13 voting-eligible African-Americans has been stripped of their voting rights.

In FL, KY, and VA more than one in five African Americans have been stripped of their voting rights, amounting to more than 20 percent of their adult voting-age population.

Nationally, approximately 606,000 African Americans are incarcerated and nearly 1 million more have completed all the terms of their sentence but still cannot vote. Overall, more than 2.2 million African Americans are disenfranchised. Nationally however, 5.8 million voting-eligible citizens cannot vote; only ¼ quarter of them are in jail.
RECOMMENDATIONS

- **Promote responsible citizenship.** Voting is the cornerstone of democracy and one of the many duties of responsible citizenship. Promote steadfast, responsible citizenship by ensuring all citizens of voting age are able to cast a ballot of their own free will that gets counted.

- **Cleanse the nation of this vestige of Jim Crow.** Felony disenfranchisement as we know it today is rooted in the nation’s hostile response to the abolishment of slavery and the constitutional amendments that were ratified shortly after. Moreover, the residual of ‘Black Codes’ can be seen today as race remains inextricable from criminalization resulting in the disproportionate incarceration of people of color and in particular, of black and brown men. As a result, there can be no reasonable justification for preserving felony disenfranchisement. Cleanse the nation of this vestige of Jim Crow by eliminating it altogether.

- **Uphold American values of opportunity and redemption.** The United States holds itself out as a nation of equal opportunity. Felony disenfranchisement is contrary to that notion however, as it stands squarely between opportunity and the Americans who need it most. Additionally, obligating individuals to live in the shadow of their prior mistakes is an affront to the notion of redemption. Truly uphold American values of opportunity and redemption by eliminating felony disenfranchisement outright.

- **Bring the nation into the new millennium.** Increasingly the international community is shedding its disenfranchisement schemes. Between 2002 and 2007 alone Canada, South Africa, the United Kingdom, Austria, and Australia made such advances. If the United States is to remain a leader among democratic nations, it must step whole-heartedly into the new millennium by wholly eliminating felony disenfranchisement.

COMMUNITY ACTION STEPS

- **Promote Proactive Change.** Use mass public education to spotlight the impacts of felony disenfranchisement. Emphasize the fact that most of the disenfranchised are your community residents.

- **Understand the Options.** Abolishing felony disenfranchisement can be challenging because it is often written into state’s constitutions. In addition to understanding your legislative process, you may also have to learn the process for amending your state constitution.

- **Identify Likely and Unlikely Allies.** Stripping individuals of their voting rights harms the formerly convicted, their families, the communities they call home, and the nation’s image as a true democracy. This means those who might stand with you in opposition to felony disenfranchisement are likely to come from diverse sources and with diverse backgrounds.

- **Send a Clear and Succinct Message.** Let the Governor, state legislators, and the public know community supports full citizenship for everyone. Use online petitions, email, fax, phone, and in-person campaigns to make your position clear. Host town hall meetings and other forums to shed light on community’s support for full citizenship for all people – invite public officials to attend.

www.naacp.org
References


ii. Id. at 5.


v. Uggen, Shannon, & Manza at 1.

vi. Uggen, Shannon, & Manza at 5.

vii. Uggen, Shannon, & Manza at 1 & 17.


ix. Id. at 92-93.


x. Only Maine and Vermont do not disenfranchise individuals convicted of a felony even during periods of incarceration.

