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How Felon Disenfranchisement Legislation Alters Citizenship and How it Can Be Challenged.

by

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Abstract

Elements of “civil death” were put into heavy practice in the reconstruction era, as the U.S. sought to use disenfranchisement as a means of restricting the integration of “undesirable” groups, specifically the recently emancipated African-Americans. Many states have since done away with restrictions on the voting rights of ex-offenders beyond completion of their sentence and sentence requirements; however, Iowa, Florida, and Kentucky employ strict standards for granting re-enfranchisement—nearly impossible for most to complete. Elsewhere in the U.S. there has been a move from disenfranchisement; Virginia’s Governor recently reinstated franchise rights to ex-offenders through executive order and has continued to do so on a rolling basis, while Vermont and Maine have no restrictions on their citizens’ suffrage rights.

In the absence of a national consensus on the issue, the purpose of political science in academia is to identify relations between the topic, power, and power identity and how each of these influences and is codified into relevant law. These laws, in turn, influence power, and as laws are passed variously at the state level throughout time, the changes in political zeitgeist at the time these laws are passed informs a variety of differing tones of disenfranchisement legislation. From a thorough examination of literature reviews, state legislation, and court decisions throughout American history comes a greater understanding of the nature and consequences of felon disenfranchisement and civic death on modern society.

Introduction

Felony disenfranchisement is not a new idea. Criminals in Rome and Greece were not permitted to participate in many civic activities, including voting. “Civil death,” the term used to describe the loss of civil privileges, spread throughout Europe after Rome’s fall. When English colonists arrived in the Americas, English common law traditions were brought along. However, many other elements of the so called “civil death” were abolished—entering into contracts, or prohibiting the guilty party from inheriting or passing down an estate, for example—though felons and ex-felons voting and public office holding privileges remain. Disenfranchisement has since then evolved, and has been codified into legislation, written into the U.S. Constitution and even legitimized at the Supreme Court level through court cases.

More than five million U.S. citizens are estimated to be unable to vote due to state felony disenfranchisement policies.¹ Disenfranchisement severely affects some communities’ political voices, especially those of minority groups. According to the data compiled by the Sentencing Project, 2.5% of the white population is unable to vote, compared to 7.66% of otherwise eligible black voters’ population.² If prison populations and felony convictions continue to rise, fewer groups will be able to vote. Minority voices are already so underrepresented in legislative bodies, especially within single-member districts (or constituencies).³ Disenfranchisement

¹ Jeff Manza, Clem Brooks, Christopher Uggen. “Public Attitudes Toward Felon Disenfranchisement in the United States”, *Public Opinion Quarterly* (2004): 274.

² <http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>. Last accessed September, 2015.

³ Electoral districts that return one office holder to a legislative body that has multiple members.

disproportionately affects minorities, as it further denies them the right to have their voices heard on important policy issues that will, in turn, also harm their interests in public, and private, life.

For the entire U.S., Uggen and Manza estimate that “the disenfranchised population is composed of approximately 35 percent ex-felons, 28 percent probationers, 9 percent parolees, but only 27 percent prison and jail inmates,”⁴ meaning that of the 5.8 million disenfranchised felons, the majority (approximately 77 percent) are no longer serving prison sentences.

Currently, there are more black men in prison than ever before; there are more black men disenfranchised today than in 1870 when the Fifteenth Amendment was passed.⁵ With such high numbers of disenfranchised people, most notably people of color, it is surprising to find that this practice of “civil death” has continued into the twenty first century, especially after the fierce fights of recent history by those attempting to gain suffrage rights.

What scholars in political science still need to know is why civil death has continued to be applied in so extreme a way to convicts in Iowa, Florida, and Kentucky—even after the reconstruction era has long since ended. Particularly troublesome is that Iowa, Florida, and Kentucky seem to be the extreme outliers in that they impose what are effectively lifetime disenfranchisement policies on their felons. Why is it, then, that these three states continue to impose harsh restrictions when the rest of the states are moving away from civil death as retribution for crimes? Some scholars theorize that some state legislatures may have racial and political motivations for the continued practice of long term civil death. Recent acknowledgments of *de facto* racial bias in the application of sentencing leading to large

⁴ Christopher Uggen, and Jeff Manza, “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States.” *American Sociological Review* (2002): 794.

⁵ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2006), 180.

numbers of disenfranchised minorities by the State of Virginia seem to offer some legitimacy to this claim.

Supreme Court Case Law

Disenfranchisement legislation has not been successfully challenged under the Equal Protections clause of the Fourteenth Amendment⁶ nor the Voting Rights Act. The Fourteenth Amendment to the U.S. Constitution has been used in the past to challenge disenfranchisement for felons, but challenges remain unsuccessful at every turn. Neither state courts nor the Supreme Court have found the equal protections clause persuasive in granting franchise to felons. In fact, the Fourteenth Amendment has been used by State and Federal courts to further legitimize the State's rights to revoke the franchise of those convicted of crimes. It is important to understand the ways in which the Supreme Court of the United States upholds civil death so that we might identify ways in which to successfully challenge constitutional justifications for disenfranchisement.

Section two of the Fourteenth Amendment⁷ was originally written to encourage the former Confederate states to enfranchise Black citizens; if the franchise was not granted to adult males 21 years of age or older (except for those found guilty of treason or "other crimes"), the

⁶ U.S. CONST. amend. XIV

⁷ *U.S. Constitution amendment XIV §2*. reads:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

state's representation in congress was to be reduced. That is, supposing the former Confederate states did not grant the franchise as implied in Section 2, former slaves would be excluded from the population count of the state for apportionment of representation in Congress purposes. However, despite the numerous disenfranchisement methods used by former Confederate states, none of the states lost a single seat in the House of Representatives when Congress was reapportioned.⁸ Put simply, the clause was never enforced and former Confederate states freely imposed policies that disenfranchised black voters for decades.

It is precisely because of section two of the Fourteenth Amendment that the U.S. continues to allow states to disenfranchise people convicted of felony crimes. The Supreme Court of the United States granted *certiorari* to the Supreme Court of California in 1974. *Richardson v. Ramirez*⁹ was decided a year after the California Supreme Court's decision.¹⁰ In what has become the most significant case dealing with voter disenfranchisement, the Court outright rejected a Fourteenth Amendment challenge brought by three convicted felons from California. Justice Rehnquist delivered the opinion of the court, holding that, although a unique case because it was brought under Section 1¹¹ and the lesser known Section 2 of the Fourteenth Amendment ultimately granted the States the right to disenfranchise felons. Upon examining the legislative history of §2, the court found that “throughout the floor debates in both the House and

⁸ Gabriel J Chin. “Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?” *The Georgetown Law Journal* (2004): 260.

⁹ 418 U.S. 24 (1974)

¹⁰ The Supreme Court of California, in *Ramirez v. Brown*, granted declaratory judgement, restoring the voting rights to felons in the state under the equal protections granted in the Fourteenth amendment.

¹¹ U.S. CONST. amend. XIV Section 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

the Senate, in which numerous changes of language in [Section] 2 were proposed, the language ‘except for participation in rebellion, or other crime’ was never altered.”¹²

Cherie Dawson-Edwards discusses the possibility that the “evolving standards of decency” test could be a means to achieving re-enfranchisement in all states, as well as an argument for why the Supreme Court can, and should, reconsider its position on state-level felony disenfranchisement.¹³ First described in *Trop v Dulles*,¹⁴ the test is used on conjunction with the Eighth Amendment to the U.S Constitution, which prohibits the States and Federal Government from imposing cruel and unusual punishments. Chief Justice Warren delivered the opinion of the court, stating “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.”¹⁵ Chief Justice Warren continues, writing that the Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”¹⁶

The evolving standards of decency test has been used decide SCOTUS cases regarding the death penalty,¹⁷ utilizing public opinion, the opinions of scholars, psychologists, and sociologists, and changing state legislation to educate their decisions. If we follow precedent set by SCOTUS cases that utilize the evolving standards of decency test, then it can be concluded that standards are indeed shifting away from long term disenfranchisement, because the civil

¹² *Richardson*, 418 U.S. at 45

¹³ Cherie Dawson-Edwards. “Enfranchising Convicted Felons: Current Research on Opinions Towards Felon Voting Rights.” *Journal Of Offender Rehabilitation* (2008): 14-15.

¹⁴ 356 U.S. 86 (1958).

¹⁵ *Trop v Dulles*, at 100.

¹⁶ *Ibid.* 101.

¹⁷ Also see *Atkins v. Virginia* 536 U.S. 304 (2002); *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989); *Coker v. Georgia*, 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (2002).

death legislation in the majority of states is becoming less extreme and the long term loss of franchise rights is becoming far less common, despite a select few continuing to impose long term disenfranchisement.

The States and Their Disenfranchisement Policies

Each state has considerable autonomy in enacting their own disenfranchisement legislation per the U.S. Constitution.¹⁸ Forty-eight states and the District of Columbia currently disenfranchise felons at various phases of the criminal process (during prison sentences, probation, and so on). Twenty-eight states include felons on probation, and thirty-eight restrict rights for felons on parole. But, most shockingly, some states restrict the franchise for ex-offenders for up to five years after their sentences and all requirements have been completed. Three states—Iowa, Kentucky, and Florida—restrict franchise rights for felons for what could end up being the rest of their life.¹⁹ So why do some states choose not to impose civil death on felons, and why do some choose to make the process of franchise reinstatement so difficult as to dissuade people from completing the process? Below is a discussion of relevant state civil death legislation, beginning with recent changes to legislation in Kentucky and Virginia, two states with historically stringent disenfranchisement laws.

Signed just two weeks before leaving office in November of 2015, the then Governor of Kentucky, Steve Beshear (D), signed an executive order restoring voting rights to more than 100,000 felons. Although the order excluded those individuals convicted of treason, bribery,

¹⁸ U.S. CONST. amend. XIV Section 2.

¹⁹ Brian Pinaire, Milton Heumann, and Laura Bilotta, "Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons," *Fordham Urban Law Journal* 30 (2002): 1522.

sexual or violent crimes, it was a step in the right direction. Kentucky was, until 2015, one of only four states that did not automatically restore voting rights to felons after the completion of the terms their sentences. The order was, however, rescinded just a few weeks later, in December of 2015, by the new governor of Kentucky, Matt Bevin (R). Governor Bevin claimed that although he is a supporter of restoration of voting rights, “it is an issue that must be addressed through the legislature and by the will of the people,”²⁰ thus reversing Beshear’s order. Though leaving in place the franchise rights that had been restored by Beshear, Governor Bevin rejected the idea that the governor should have the power to make decisions such as reinstatement of voting rights without the citizens of the state having voted on it. Governor Bevin chooses, instead, to leave disenfranchisement legislation up to the will of the state lawmakers and constituents.

When Iowa State Governor, Terry Branstad (R), took office in August 2011, he rescinded an earlier executive order that had restored voting rights to felons after their sentences were completed. Branstad’s executive order, signed January 2011, mere hours after taking office, requires that ex-felons have their court costs, fines and restitution paid off before voting rights can be restored.²¹ It would appear that Governor Branstad believes that felons should earn back their franchise. But what the Governor has implemented in reality is something akin to the poll taxes used in the Jim Crow era.²²

²⁰ “Bevin Rescinds Voting Rights To Ex-Felons, Changes Kentucky Marriage Licenses,” last modified December 22, 2015.

<http://wfpl.org/gov-bevin-rescinds-voting-rights-to-non-violent-felons-changes-marriage-licenses/>

²¹ Brandon Sample, “Voting Rights Must Be ‘Earned’ Back, Says Iowa Governor.” *Prison Legal News* 22 (2011): 37.

²² *Ibid.*

Following in the footsteps of former Governor Beshear, Virginia's Governor, Terry McAuliffe (D), signed an executive order in April 2016 restoring the rights of all Virginians with felony convictions. The decision came after a recognition that Virginia was one of only four states that "maintain[s] so stringent a felon disenfranchisement law"²³ and that these laws have a disproportionate effect on Black citizens.²⁴ The action restores the rights of any person who has completed both a sentence and the supervised release period, for any and all felony convictions, its intention to restore the rights of as many as 206,000 people. Of course, this order does not apply to individuals in the future, and only covers those who were eligible on the 22nd of April, but in the same statement the Governor promised to continue to review rights restoration on an ongoing basis.

Vermont, unlike the Forty-eight other states that impose civil death, does not disenfranchise convicted felons. Vermont's constitution, ratified in 1793, does include provisions for the disenfranchisement of criminals. However, this provision has been interpreted to include only election fraud.²⁵ There have been recent (unsuccessful) attempts to include other types of crime. During the 2001-2002 legislative session, bill H.0286 was sponsored and introduced by nineteen representatives. The bill called for the disenfranchisement of convicted felons; it would amend the language of Sec. 1. 17 V.S.A. § 2121 to read:

§ 2121. ELIGIBILITY OF VOTERS

²³ "Summary of the Governor's Restoration of Rights Ordered April 22nd, 2016."

https://commonwealth.virginia.gov/media/5843/restore_rights_summary_4-22.pdf. Published April 22, 2016.

²⁴ An estimated one in five Black Americans of voting age are disenfranchised in Virginia. Christopher Uggen, Sarah Shannon, and Jeff Manza, "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," *The Sentencing Project* (2012): 2.

²⁵ "All elections, whether by the people or the Legislature, shall be free and voluntary: and any elector who shall receive any gift or reward for the elector's vote, in meat, drink, moneys or otherwise, shall forfeit the right to elect..." <http://legislature.vermont.gov/statutes/constitution-of-the-state-of-vermont/>. Last accessed May 18, 2016.

Any person who, on election day:

(1) is a citizen of the United States; (2) is a resident of the state of Vermont; (3) has taken the voter's oath; ~~*[and]*~~ (4) is 18 years of age or more; and (5) is not serving a sentence or on probation or parole as the result of a felony conviction may register to vote in the town of his or her residence in any election held in a political subdivision of this state in which he or she resides.

26

At this time, the political environment in Vermont is not supportive of what could have been a moralistic restriction on voting freedoms. Jim Condos, Vermont's Secretary of State released a statement on the 50th anniversary of Voting Rights Act, exemplifying the state of Vermont's attitude towards fair and equal suffrage rights, writing:

As Vermont's Chief Election Officer, I find it important to celebrate the steps our country has taken in ensuring that every eligible citizen has the right and ability to vote without unnecessary barriers to the process... I am proud of Vermont's efforts in adopting sound administrative practices which expand voting opportunities for all citizens.²⁷

Currently, the only crime that prevents an individual from voting in Vermont is election fraud, for which a conviction has not been handed down within Vermont; at least not in the living memory of any citizen of Vermont.

The State of Maine's constitution, ratified in 1820, provides the state legislation with the right to enact laws that exclude persons convicted of bribery at an election or under the influence of a bribe while voting, for a period no longer than 10 years.²⁸ Additionally, section 6-A of the State of Maine's constitution provides strong language that appears to be protective of the civil

²⁶ <http://www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/H-286.HTM>. Last accessed May 18, 2016.

²⁷ Secretary of State Praises 50th Anniversary of Voting Rights Act, <http://vermont.gov/portal/government/article.php?news=5582>. Last accessed May 18, 2016.

²⁸ Maine State Constitution: 2013 Arrangement Section 13. <http://www.maine.gov/legis/const/>. Last accessed June 8, 2016.

rights of its citizens.²⁹ If one accepts the definition of civil rights as provided by Cornell University Law School's Legal Information Institute, then the right to vote can correctly be included under the umbrella term "civil rights."³⁰

Voting and Power

A study conducted by Christopher Uggen and Jeff Manza found that the rate of felon disenfranchisement in the U.S. was high enough to alter the outcomes in around seven senate elections and at least one presidential election.³¹ Uggen and Manza also found that the 2000 election could have been reversed had ex-felons alone had been allowed to vote.³² Unsurprisingly, Uggen and Manza also find that the citizenry's ideology influences disenfranchisement policy, which finds its most stark examples in the policy and ideologies of states like Florida and Kentucky compared to Vermont and Maine. Both Vermont and Maine are considered "safe Democrat" voting states, and each have constitutions with express disenfranchisement policies, restricting only those guilty of gross voter misconduct.

Empirical analysis shows that the groups most likely to vote are those with education, power, and social privilege. However, as Lanning points out, the groups who should be "least satisfied with the status quo, the poor, the less educated, and the socially marginalized" are less

²⁹ *Ibid.* Section 6-A provides: "no person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof."

³⁰ Cornell University Law School, Legal Information Institute provides: "A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, and assembly; the right to vote; freedom from involuntary servitude; and the right to equality in public places." Last accessed June 9, 2016.

³¹ Christopher Uggen, Jeff Manza, "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review* (2002): 794.

³² *Ibid.*

likely to vote than groups with social capital.³³ As Shatema Threadcraft notes, however, a fair assessment of the practices of these marginalized groups—especially black women—has to be considered within the context of both “historical events and contemporary circumstances.”³⁴ So, while some might scoff and brush off the fact that these groups do not vote, or only turn out when it benefits them most, there is a legitimate and deeper reasoning for this in practice and functionally.

Minorities and poor groups are being systematically excluded from the franchise guaranteed to citizens of the U.S, so it is no wonder that these groups would not find voting legitimate. Behrens, Uggen, and Manza write that “by restricting the voting rights of a disproportionately nonwhite population, felon disenfranchisement laws offered one method for states to avert ‘the menace of negro domination.’”³⁵ Changes in voting laws have been met with sharp increases in African-American imprisonment, and in many Southern States, Behrens et. al. writes, “the percentage of nonwhite prison inmates nearly doubled between 1850 and 1870. Whereas 2% of the Alabama prison population was nonwhite in 1850, 74% was nonwhite in 1870, though the total nonwhite population increased by only 3%.”³⁶ This racially biased practice has continued to modern times, despite anti-discrimination laws and the “colorblind” policy that it touted by the U.S. legal system.

³³ Kevin Lanning, “Democracy, Voting, and Disenfranchisement in the United States: A Social Psychological Perspective.” *Journal Of Social Issues* (2008): 435.

³⁴ Shatema Threadcraft, “Intimate Injustice, Political Obligation, and the Dark Ghetto.” *Journal of Women in Culture and Society* (2014): 736.

³⁵ Angela Behrens, Christopher Uggen, and Jeff Manza, “Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States.” *American Journal Of Sociology* 109 (2003): 598.

³⁶ *Ibid.*

Equality in society (or, legal parity), assumes that all citizens will have the law applied equally to them. Legal parity cannot be claimed when African-American men occupy a disproportionately large number of beds in prisons. For example, the State of Iowa's African-American population was 2.9% of 3,046,355 in 2010 (the year of the last census), and yet they occupy an estimated quarter of the prison population in Iowa. With a prison population of over 8,000³⁷ people, one quarter is astounding, especially when only 89,148 African-Americans live in Iowa, compared to a population of approximately 2.7 million White identified people.³⁸

The disenfranchisement of criminals is a punitive measure taken by states and applied in a racially biased way, and the argument for any restrictions of civil rights is essentially punitive. However, as Kevin Lanning points out, most of the legislation for “restrictions of suffrage derive[s] from the position that certain individuals lack the autonomy or ability to make independent judgements... [and] if democracy is characterized by an autonomous citizenry in which citizens act as equals, then when significant numbers of citizens abstain or are denied the right to participate, government necessarily becomes less democratic.”³⁹ If this is true, and some convicted individuals are incapable of exercising autonomy, then these individuals should not share governance—after all, they cannot make politically responsible choices for themselves. But, this also means, as Lanning has pointed out, that our democratic system may not be as democratic as it is thought to be.

³⁷ <http://www.doc.state.ia.us/DailyStatistics>. Last modified June 10, 2016.

³⁸ <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. Last accessed June 10, 2016.

³⁹ Kevin Lanning, “Democracy, Voting, and Disenfranchisement in the United States,” 433.

Bryan Miller and Laura Agnich interviewed 54 disenfranchised men from Florida to determine the meaning ex-offenders attribute to their disenfranchisement.⁴⁰ The majority of the men interviewed identified with the three major political parties in the U.S. (31 identified as Democrats; 8 as Republicans; and 10 as Independents).⁴¹ It was also found that six had never been able to vote: they were already convicted of felonies by the age of 18. Additionally, the men interviewed had only a slightly lower rate of voting than the national average prior to losing their voting privileges, but fifty-one said they would vote if they “were legally permitted to do so.”⁴² When asked what the ex-offenders thought the purpose of disenfranchising felons was, most recognized that it was a punishment, but felt that the punishment extended for too long, or that it did not make much sense, simply stating that “[it’s] part of the punishment. They don’t want us to be part of their society anymore.”⁴³

There is an identity associated with ex-offenders that outside communities place upon them: that they are uneducated, that they are nothing more than criminals, that they are subhuman. But, the men and women subjected to prison and criminal stigma are not simply creations of their own choice. Tommie Shelby writes that “a person’s life prospects are [not] completely determined b their particular social circumstances he or she is born into... but each individual’s life prospects are obviously deeply shaped by a social structure that he or she did not choose.”⁴⁴ There is an awareness of their situation that most may not attribute to ex-offenders (as

⁴⁰ This is somewhat problematic as it discludes an entire class of people from a sample; the men were recruited from post-incarceration communities and would appear to be self-selecting. Additionally, the men were required to have finished all of the terms of their sentences, including parole and probation.

⁴¹ Bryan Lee Miller, and Laura E. Agnich. “Unpaid debt to society: exploring how ex-felons view restrictions on voting rights after the completion of their sentence.” *Contemporary Justice Review* (2016), 76.

⁴² *Ibid.*

⁴³ Bryan Lee Miller, and Laura E. Agnich. “Unpaid debt to society,” 78.

⁴⁴ Tommie Shelby, “Justice, Deviance, and the Dark Ghetto.” *Philosophy & Public Affairs*, (2007), 130.

is made blindingly apparent by Miller and Agnich in their research); one interviewee noted that there was a definite bias in the implementation of the U.S. legal system:

I really do think that's sad, you know what I'm saying, when you really look at the ration (sic) of, you know, Puerto Ricans, Whites, Blacks, Mexicans or whatever that's in jail you know what I'm saying, we're [Blacks] more, I feel like it's aimed at us, not being racist or biased, I think it's, it's kind of aimed at us to a certain degree, you know what I'm saying.⁴⁵

This individual (and others) recognized that, although the laws may not be written in a racially biased way, that minorities are disproportionately impacted by disenfranchisement legislation.

It is telling of the political culture in Vermont and Maine that the two do not restrict felons from voting, and more so telling that the two states do not prevent felons from running or holding political office. Maine links elected officials qualifications to voter qualifications, thus no restrictions are made for holding office because no restrictions are made on registration to vote.⁴⁶ Similarly, Vermont only requires that the individual gather enough signatures to get their name on the ballot. Iowa, Kentucky, and Florida, on the other hand, will only grant the right to hold office again once the civil rights of the felon have been restored. One might recognize that this indefinitely bars the individual from holding office, because their voting rights can only be restored by pardon or executive order⁴⁷—so long as the legislations remains the same in those states.

⁴⁵ Bryan Lee Miller, and Laura E. Agnich. "Unpaid debt to society: exploring how ex-felons view restrictions on voting rights after the completion of their sentence." *Contemporary Justice Review*, (2016): 78.

⁴⁶ Andrea Steinacker, "The Prisoner 's Campaign: Felony Disenfranchisement Laws and the Right to Hold Public Office," *BYU Law Review*, (2003): 806.

⁴⁷ Andrea Steinacker, "The Prisoner 's Campaign," 805.

Conclusion

The right to franchise and hold office are basic fundamental rights, rights that are ardently protected by the constitution and by the U.S. Supreme Court. Suffrage is the simplest way for citizens to have their voices heard in important policy decisions. When such massive amounts of people are losing the right to vote and to hold office, the system becomes less democratic. When the autonomy of millions of people is violated by the restriction of the suffrage right, it should be seen as suspect; when the suffrage rights of an equally large number of people are revoked for life, and autonomy in the government is no longer feasible for them, democracy is no longer functioning as it should. However, when people discuss the problems with the U.S. political system, they are focused on the two-party system. Felony and ex-felon disenfranchisement, however, remain largely out of the public eye.

The people that are aware of ex-felon disenfranchisement, and of the effects, tend to disagree with imposing these harsh restrictions, especially the imposed long term and lifetime restrictions. Indeed, the states have been moving away from strict disenfranchisement policy since the 1940s, and when legislation fails to recognize the problematic application, the state's governors have been taking action through executive order to make the changes necessary to create a more equitable situation for all. When Governor Terry McAuliffe (Virginia) signed the executive orders to reinstate voting rights for felons in Virginia, state leadership commended the action citing biases in the application of justice and the state's history of racial discrimination that plagued Virginia. Likewise, the former Governor of Kentucky, Steve Beshear, signed his executive order under the presumption that the disenfranchisement policies are harmful to the people that are subjected to them. To have officials in power recognizing the inherent bias and

harmful nature of this type of legislation, even when it has been shown to benefit them, demonstrates just how objectionable these policies are.

A conviction status in every state means legal discrimination in housing, benefits, and employment. In many of them it means a loss of voice and, feasibly, of citizenship in that one of the hallmark of citizenship in the United States is marked by the protection of civil rights, of which the right to suffrage is a part. When the basic rights of so many citizens are being denied because of crimes that are so rarely violent in nature, and especially those crimes that are theorized and understood by many scholars to be racially biased, in application, it is time for the U.S. to reexamine its use of an antiquated system of punitive punishment. If this cannot be accomplished via the channels of legislative action, then it must be fought in the courts.

The Supreme Court has the legal authority to rule unconstitutional as needed, the current system of disenfranchisement policy in the U.S.; they need only to apply the correct test when the right case comes across their desks. The Court need only listen to the current scholarship and recognize the legislative changes the states have made since the 1940s to know that the standard for decency has changed fundamentally over time. Indeed, more and more states are softening their disenfranchisement legislation and permitting the restoration of voting rights earlier in the phases of passing through the justice carceral system, while a select few are holding tight to their legally protected racist legislation.

It is possible that over time the last few holdouts will join the rest of the states in relaxing their felon and ex-felon disenfranchisement legislation. But it has taken the states 70 years to alter legislation enough to get us here today. To “wait and see” what the final few states will act, and to wait much longer, is to admit that the lives of those most affected by this institution do not

matter as much as the racist principles of a small fraction of outlier states; it is a violation of the very constitution we so ardently defend and adhere to. That the U.S. Constitution provides a bit of leeway in state's rights to disenfranchise its criminals does not mean that it protects to do so in so egregious a way. The Supreme Court of the United States has the power to interpret the Constitution and legislative rules, and it has been demonstrated here and in other scholarly work that the Supreme Court has the precedential tools necessary to legitimately interpret the current legislation in Kentucky, Iowa, and Florida as unconstitutional. They need only accept the overwhelming evidence offered to them.

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