

FELON VOTING RIGHTS: THE SUPPRESSION OF THE AFRICAN AMERICAN VOTE

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Freedom and justice cannot be parceled out in pieces to suit political convenience. I don't believe you can stand for freedom for one group of people and deny it to others.

- Coretta Scott King²

I. HISTORICAL DEVELOPMENT.....	34
A. Historical Reasoning Regarding Barriers to Felon Voting Rights	34
B. Rooted Disenfranchisement of Felons	35
C. Historical Background of Racial Discrimination in Felon Voting Rights- The Voting Rights Act of 1965 and the Civil War: How Race Plays a Part in Voting Disparities.....	35
i. Voting Rights Act of 1965.....	37
a. Threats to the Voting Rights Act of 1965 and More Barriers on the Black Vote: Shelby County, Alabama v. Holder	38
D. Today in Context: Racial Disparities with the Suppression of Felon Voting.....	39
II. STATISTICS	40
A. Incarceration Levels in the United States	40
B. Felon Statistics	40
i. How Many People Are Felons and Disenfranchised in Accordance with Disfranchisement Classification?	40
C. Disenfranchisement Numbers Across States.....	41
D. Detailed: How Many Black Men and Women are Now Felons and Disenfranchised Today.....	42

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2. Okla Jones, *Remembering Coretta Scott King: The Impact of The Author, Activist and Civil Rights Leader* ESSENCE (Apr. 27, 2022), <https://www.essence.com/news/remembering-coretta-scott-king-impact/>.

III.STATE DISENFRANCHISEMENT LAWS AND INITIATIVES..... 42

 A. Difficulties in Making Generalities of the U.S.
 Disenfranchisement Laws: Four Categories 42

 B. Where States Are Now 43

 i. New Initiatives by States and Bills 43

 ii. Failed Efforts of the States 43

 iii. Hindered Efforts: Subliminal Barriers..... 44

IV.ANALYSIS: NATIONAL STANDPOINT IN THE FUTURE..... 45

 A. Looking Forward: If More Black Citizens Had the Right
 to Vote and Minority Representation 45

V.CONCLUSION..... 48

 A. Tackling the Issue 48

 i. Mass Incarceration: 49

 ii. Hurdles by States:..... 49

 iii. Advocacy: 50

I. HISTORICAL DEVELOPMENT

A. *Historical Reasoning Regarding Barriers to Felon Voting Rights*

The barriers to felons exercising voting rights can be traced to early colonial law, which was usually applied to the more serious crimes.³ “Criminal disenfranchisement has an extensive history in Ancient Greece and Ancient Rome, as well as in medieval Europe and the English law of attainder.”⁴ All of these places give several examples of previous forms of loss of citizenship rights. For example, Ancient Greece imposed a *status of atimia*, which resulted in many offenders losing an abundance of citizenship rights. In Medieval Europe, the legal doctrine of “civil death” not only stripped citizenship rights completely from individuals but also, in serious enough cases, the risk of death and injury.⁵ The list goes on in regard to the previous traditions of

3. Erin Kelly, *Racism & Felony Disenfranchisement: An Intertwined History*, BRENNAN CENTER FOR JUSTICE (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>.

4. Jeff Manza & Christopher Uggen., *Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States*, 2 PERSP. POL. 491, 492 (2004).

5. *Id.*

disenfranchisement that were once used around the world. “The permanent removal of civil and political rights for criminal offenders, in pre-modern politics, has been universally abandoned in the modern world,” but the United States has had a different approach to the development of the right to vote in comparison to other democratic countries.⁶

B. Rooted Disenfranchisement of Felons

Although they are typically traced back to early colonial law in Northern America and Ancient Greece and Rome, these restrictions have been a part of U.S. law since the inception of our nation.⁷ Historians point out that felony disenfranchisement laws are rooted in the Jim Crow era and were implemented to suppress Black electoral power.⁸ The practice of felony disenfranchisement grew tremendously during and after the Civil War.⁹ “Many states—not just Confederate states—used felony disenfranchisement laws and other racist laws to dilute the voting power of the black population after the Civil War.”¹⁰ This included “lawmakers—especially in the South—implement[ing] a slew of criminal laws designed to target Black citizens. Nearly simultaneously, many states enacted broad disenfranchisement laws that revoked voting rights from anyone convicted of *any* felony.”¹¹

C. Historical Background of Racial Discrimination in Felon Voting Rights- The Voting Rights Act of 1965 and the Civil

6. *Id.*

7. Tierra Bradford, *Zero Disenfranchisement the Movement to Restore Voting Rights*, COMMON CAUSE, at 1, <https://www.commoncause.org/page/zero-disenfranchisement/>.

8. Benjamin Barber, *Tackling Felony Disenfranchisement Before the Midterm Elections*, FACING SOUTH (June 8, 2022), <https://www.facingsouth.org/2022/06/tackling-felony-disenfranchisement-midterm-elections>.

9. Eric Myers, *Millions of Black Americans Are Stripped of the Right to Vote Each Year*, Immigration and Human Rights Law Review (Jan. 17, 2021), <https://lawblogs.uc.edu/ihr/r/2021/01/17/millions-of-black-americans-are-stripped-of-the-right-to-vote-each-year/>.

10. Bradford, *supra* note 7.

11. Myers, *supra* note 9.

War: How Race Plays a Part in Voting Disparities

“A felony disenfranchisement law is ‘race-neutral’ on its face. However, historically, the U.S. has had a biased criminal justice system in which race is tied to criminal punishment.”¹²

As previously mentioned, the Civil War and the expansion of suffrage to Black men were two historical events that led to state legislators seeking more ways to block that access, which eventually led to felony disenfranchisement.¹³ By the end of the Civil War, states were already incarcerating African Americans at a higher rate than whites.¹⁴ As history tells its story, white people after this time were able to avoid punishment more often than their Black counterparts, who were arrested and convicted.

Post-Civil War amendments to the Constitution should have expanded the rights of Blacks to vote. The Thirteenth Amendment was ratified on December 6, 1865, and abolished slavery in the United States.¹⁵

[I]n 1868, the Fourteenth Amendment was ratified, conferring citizenship on all persons born or naturalized in the country and extending equal protection and due process requirements. In 1870 the Fifteenth Amendment was ratified, which provided that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Fifteenth Amendment, in theory, overcame any state law that prohibited African Americans from voting. Congress also passed the Enforcement Act of 1870 to impose criminal penalties on those who interfered with Fifteenth Amendment protections and the Force Act of 1871 which imposed federal oversight of federal elections.¹⁶

Thus, slavery was outlawed at this point, and the right to citizenship was granted to African Americans, the suppression of Black Americans did not end there nor translate to the ability to

12. Bradford, *supra* note 7.

13. Kelly, *supra* note 3.

14. *Id.*

15. *13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)*, NATIONAL ARCHIVE, <https://www.archives.gov/milestone-documents/13th-amendment>.

16. Lauren Handelsman, *Giving the Barking Dog a Bite: Challenging Felon Disenfranchisement Under the Voting Rights Act of 1965*, 73 *FORDHAM L. REV.* 1875, 1887 (2005).

vote.¹⁷ “Section One of the Fifteenth Amendment of the U.S. Constitution plainly states: ‘The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.’”¹⁸ Yet, U.S. citizens with felony convictions continued to be disenfranchised.¹⁹ “The Thirteenth Amendment carved out an exception to allow states to impose involuntary servitude on those who were convicted of crimes.”²⁰ States became “particularly likely to pass punitive ‘felon disenfranchisement laws’ in the fifteen years after the civil war, as this expansion of voting rights for Black men occurred.”²¹ “The theory was simple—convict them of crimes, strip away the right to vote, imprison them, and lease them out as convict labor and Blacks would be returned to a condition as close to slavery as possible.”²²

Some disenfranchisement laws were established before the Civil War, but the modern laws became significantly broader post-Civil War, expanding disenfranchisement to all *felonies*.²³ Between 1865 and 1880, at least 13 states broadened felony disenfranchisement laws.²⁴

i. Voting Rights Act of 1965

Prior to 1965, “[t]he 15th Amendment to the Constitution removed racial barriers to voting in 1870, but states continued to practice voter discrimination and continued to deny Black voters a chance to participate in elections.”²⁵ In 1965, President Lyndon B. Johnson signed the Voting Rights Act into law, banning racially

17. *Voting Rights for African Americans*, LIBRARY OF CONGRESS <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-african-americans/>.

18. U.S. CONST. amend. 15.

19. Myers, *supra* note 9.

20. Kelly, *supra* note 3.

21. *Id.* at 2.

22. Jeffery Robinson, *The Racist Roots of Denying Incarcerated People Their Right to Vote*, ACLU (May 3, 2019), <https://www.aclu.org/news/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote>.

23. Kelly, *supra* note 3, at 3.

24. *Id.*

25. *Voting Rights Act of 1965*, NAACP, <https://naacp.org/find-resources/history-explained/legislative-milestones/voting-rights-act-1965> (last visited July 6, 2023).

discriminatory practices in voting, including literacy tests.²⁶ This essentially was to protect Black voters. Legislators intended for this to be an “end to all” of issues surrounding the passage of the 1965 Voting Rights act, but this was not the case.²⁷

a. *Threats to the Voting Rights Act of 1965 and More Barriers on the Black Vote: Shelby County, Alabama v. Holder*

Some 57 years after the Voting Rights act of 1965 was passed, and almost 10 years since the Supreme Court’s decision in *Shelby County, Alabama v. Holder* found Section 4 of the Act unconstitutional, “the promise of the Act remains in more jeopardy than ever.”²⁸

Shelby County, Alabama, filed suit against the U.S. Attorney General in Federal District Court for the District of Columbia to hold Section 4(b) and 5 of the Voting Rights Act unconstitutional—seeking a declaratory judgment and permanent injunction.²⁹ “Section 5 required certain jurisdictions with a history of discrimination to submit any proposed changes in voting procedures to the U.S. Department of Justice or a federal district court in D.C.—before it goes into effect—to ensure the change would not harm minority voters.”³⁰ In September 2011, the court upheld the constitutionality of Section 5 of the Act.³¹ “In May 2012, the U.S. Court of Appeals for the District of Columbia Circuit agreed with the district court that Section 5 was constitutional.”³² The Supreme Court granted certiorari and on June 25, 2013, ruled that the coverage formula in Section 4(b) of the Voting Rights Act — which determines which jurisdictions are covered by Section 5—was unconstitutional because it is based on an old formula.³³ The Supreme Court justified its decision based

26. *Id.*

27. *Id.*

28. Barbara H. Combs, *Voter Suppression and Racial Oppression: An Old Game with a Contemporary Twist*, 59 *PHYLON* 25, 25 (2022).

29. *Shelby County, Ala. v. Holder*, 570 U.S. 529, 529 (2013).

30. *Shelby County v. Holder*, BRENNAN CENTER FOR JUSTICE (Aug. 4, 2018), <https://www.brennancenter.org/our-work/court-cases/shelby-county-v-holder>.

31. *Id.*

32. *Id.*

33. *Id.*

on Northwest Austin guidance, stating that the Voting Rights Act “imposes current burdens and must be justified by current needs” and concluded that “a departure from the fundamental principle of equal sovereignty requires a showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.”³⁴ The Supreme Court’s rationale included that Section 4’s formula is unconstitutional in light of current conditions.

The Supreme Court stated in its 5-4 decision:

[C]overage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.³⁵

This landmark case eliminated critical protections of voting discrimination. It trickled down to stricter voter ID laws, and overall, the dilution of the Black vote by ongoing discrimination from once-before covered jurisdictions.

D. Today in Context: Racial Disparities with the Suppression of Felon Voting

Although today many states do not associate felony disenfranchisement with specific crimes that target particular races as an initiative during the post-Reconstruction era, a great number of African Americans are still affected.³⁶ The number of disproportionate people of color arrested, prosecuted, and convicted trickles down to the systemic effect of disenfranchisement. “The widespread disenfranchisement disproportionately impacts people of color. According to statistics in 2017, one in every thirteen voting-age African American either could not vote, or the

34. *Shelby County*, 570 U.S. at 530.

35. *Id.* at 531.

36. Kelly, *supra* note 3.

disenfranchisement rate was four times greater than any other American in the United States.”³⁷

NCAAP President Derrick Johnson, in the wake of protests over the killing of George Floyd, defined systemic racism as “structural racism or institutional racism, as ‘systems and structures that have procedures or processes that disadvantage African Americans.’”³⁸ “Election law reform aimed at making it harder for people to vote operates as a form systemic racism that has the effect- and arguably the aim and intent—to disadvantage Black Americans.”³⁹

II. STATISTICS

A. *Incarceration Levels in the United States*

In the United States, African Americans have the highest incarceration rates. As of October 2022, African Americans accounted for 60,922 inmates, which translates to 38.4% of the overall prison population. Asians accounted for 2,296, or 1.4% of the population; Native Americans, 4,073 inmates, which is 2.6% of the population; and whites accounted for 91,313 inmates, making up 57.6% of the population.⁴⁰ Although the percentages of African Americans in prison seem drastically lower than their white counterparts, minorities, especially African Americans, are targeted and convicted at higher rates than whites.⁴¹

B. *Felon Statistics*

i. How Many People Are Felons and Disenfranchised in Accordance with Disfranchisement Classification?

“As a result of the dramatic expansion of the criminal justice system in the last 40 years, felony disenfranchisement has affected

37. *Id.* at 2.

38. *Id.* at 29.

39. Combs, *supra* note 28.

40. *Inmate Race*, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/about/statistics/statistics_inmate_race.jsp (last visited Dec. 10, 2022).

41. Myers, *supra* note 9.

the political voice of many communities.”⁴² As of 2016, 6.1 million Americans were unable to vote due to state felony disenfranchisement policies.⁴³ As mentioned previously, disenfranchised individuals are categorized into four different sectors: (1) those convicted felons who are currently incarcerated in prison or jail; (2) those felons who were previously incarcerated and released on parole; (3) those felons on probation and; (4) those who completed their entire sentences.⁴⁴ According to the previously mentioned data report, the number of individuals in prison or jail that are disenfranchised in the United States accounts for 23% of those in prison or jail; 26% of those on probation and/or parole; and 51% of those who completed their sentence.⁴⁵ In a more recent study, disenfranchisement estimated numbers for those individuals in prison were approximately 24%; those on probation and/or parole at 33%; and those post-sentenced disenfranchised individuals at 43%.⁴⁶ In 2022, according to The Sentencing Project, “an estimated 4.6 million Americans [we]re barred from voting due to a felony conviction.”⁴⁷

C. Disenfranchisement Numbers Across States

Currently, disenfranchisement data across states varies, and is difficult to set a particular figure due to each state having its own laws and approaches pertaining to who is disenfranchised and when they will be disenfranchised. (For example, some states have laws requiring post-sentence individuals to be disenfranchised for five years before they could reapply versus states that may completely disenfranchise those who are on parole.)

In a generalized sense, a research report from 2021 stated:

In 23 states, felons lose their voting rights only while incarcerated, and receive automatic restoration upon release. . . .

42. Nazgol Ghandnoosh, *Trends in U.S. Corrections*, THE SENTENCING PROJECT (May 17, 2021), <https://www.sentencingproject.org/reports/trends-in-u-s-corrections/>.

43. *Id.*

44. Manza & Uggen., *supra* note 4.

45. Ghandnoosh, *supra* note 42.

46. Chris Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, SENTENCING PROJECT (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

47. *Id.*

In 14 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation. . . . In 11 states, felons lose their voting rights indefinitely for some crimes or require a governor's pardon in order for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation) or require additional action before voting rights can be restored.⁴⁸

D. Detailed: How Many Black Men and Women are Now Felons and Disenfranchised Today

According to data in a research report from 2022, felon disenfranchisement for voting age Americans, non-African Americans unable to vote accounted for 3.2% of ineligible, and African Americans accounted for 5.3% of ineligible in the United States.⁴⁹ In a more recent 2020 report, estimates were compiled of the disenfranchised populations in accordance with U.S. Census data and those reported in felony disenfranchisement. The ultimate conclusion was that “[o]ne in 16 African Americans of voting age is disenfranchised, a rate 3.7 times greater than that of non-African Americans. Over 6.2% of the adult African American population is disenfranchised compared to 1.7% of the non-African American population.”⁵⁰

In 2022, The Sentencing Project estimated 5.3% of the African American voting-eligible population is currently disenfranchised due to a felony conviction.⁵¹ This number is significantly lower than the 2016 and 2020 studies, but the Sentencing Project suggests the decline in state prison populations and jails during the Covid-19 pandemic and significant reform implemented over the years contribute to this.⁵²

III. STATE DISENFRANCHISEMENT LAWS AND INITIATIVES

A. Difficulties in Making Generalities of the U.S.

48. *Felon Voting Rights*, NCSL (Apr. 26, 2023), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx#Table%20One>.

49. Ghandnoosh, *supra* note 42.

50. Uggem et al., *supra* note 46.

51. *Id.*

52. *Id.*

Disenfranchisement Laws: Four Categories

As mentioned, it is difficult to discuss generalities about felon disenfranchisement, as each state in the United States sets its own voting qualifications governed by only a few federal mandates.⁵³ Taking this lack of inability to generalize into consideration, from 2016 to 2020, at least 13 states expanded to some degree voting rights for ex-felons, including the Southern states of Alabama, Florida, Kentucky, Louisiana, and Virginia.⁵⁴

B. Where States Are Now

i. New Initiatives by States and Bills

Only Maine, Vermont, Washington D.C., and the Commonwealth of Puerto Rico do not restrict the voting rights of any with a felony conviction, including those in prison.⁵⁵ This has scarce effect on African Americans as Maine and Vermont have the highest White populations in the United States, and under less than 3% of Black citizens.⁵⁶ However, some states over this 3% are making enfranchisement initiatives. “In 2020, Washington, D.C. became the first jurisdiction in the country to restore voting rights for people in prison.”⁵⁷ In 2020, in Iowa, “Governor Reynolds signed an executive order automatically restoring the voting rights to most people who have completed their sentences.”⁵⁸

ii. Failed Efforts of the States

On the other hand, some states are posing more difficulties with these initiatives. Mississippi remains among the fewer than ten states nationwide that do not automatically restore voting rights to people convicted of felonies after they complete their

53. ANDREW DILTS, PUNISHMENT, AND INCLUSION: RACE, MEMBERSHIP, AND THE LIMITS OF AMERICAN LIBERALISM 2 (2014).

54. Barber, *supra*, note 8.

55. Jean Chung & Kevin Muhitch, *Voting Rights in the Era of Mass Incarceration: A Primer*, SENTENCING PROJECT (July 28, 2021), <https://www.sentencingproject.org/app/uploads/2022/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf>.

56. Wilson Ring, *Census: Minority Population Growing in VT, 2nd Whitest State*, AP NEWS (Aug. 12, 2023 5:25 PM) <https://apnews.com/article/race-and-ethnicity-census-2020-vermont-721d8201122a857b4565b4a37bd77d24>.

57. *Id.*

58. *Id.*

sentence. Early in 2022, the Mississippi legislature passed Senate Bill 2536, a Republican-sponsored proposal, that would have made it easier for individuals with felony convictions to regain their voting rights after completing their sentences. However, Republican Governor Tate Reeves vetoed it.⁵⁹ Notably, Mississippi was also one of the states with the lowest voter turnout in the U.S. in 2020.⁶⁰

Mississippi's original 1890 constitutional convention delegates were determined to stop newly enfranchised Black voters from wielding political power.⁶¹ They faced a "significant roadblock" in the Fifteenth Amendment, which "explicitly prohibited states from preventing people from voting based on their race."⁶² Their solution was "a plan that would effectively prevent Black people from voting without explicitly saying that was their intent . . . [by] enact[ing] a poll tax and literacy tests, measures that would become widespread across the south, as a way of keeping people from voting."⁶³ But Mississippi also enacted a provision, section 241, which disqualified individuals convicted of specific felonies from voting based on prejudice as "their efforts were to include crimes they believed black people were most likely to commit."⁶⁴

iii. Hindered Efforts: Subliminal Barriers

Several states have additional barriers that essentially hinder voting rights of felons in the examples provided below:

Florida:

In 2018, Florida lawmakers decided to end felony disenfranchisement by passing a constitutional amendment

59. *Felon Voting Rights*, NCSL (June 28, 2021), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx#Table%20One>.

60. Sam Levine, *The Racist 1890 Law That's Still Blocking Thousands of Black Americans from Voting*, THE GUARDIAN (Jan. 8, 2022), <https://www.theguardian.com/us-news/2022/jan/08/us-1890-law-black-americans-voting>.

61. *Id.*

62. *Id.*

63. *Id.*

64. Ashton Pittman, *Mississippi Voters Ask Supreme Court to Hear Case on 1890 Jim Crow Law*, MISSISSIPPI FREE PRESS (Oct. 31, 2022), <https://www.mississippifreepress.org/28800/mississippi-voters-ask-supreme-court-to-hear-case-on-1890-jim-crow-law>.

known as Amendment 4.⁶⁵ The following year, Republican lawmakers then intended to restrict the impact of Amendment 4 by allowing people with felony convictions the right to vote only if they pay their individual fines, fees, and restitution.⁶⁶ These fines and fees already trap people in cycles of poverty and criminalization, and this law adds additional pressure,⁶⁷ which contributes to the denial of voting rights having a disproportionate impact on communities of color.⁶⁸

Alabama, Arizona, Tennessee, and Iowa:

Alongside Florida's condition eligibility for re-enfranchisement on payment of some or all financial obligations, other states mimic those hurdles. Alabama conditions re-enfranchisement after a first felony on payment of fines, fees, court costs, and victim restitution; Arizona conditions restoration after a first felony on payment of restitution; Tennessee conditions restoration on payment of court costs, fines, fees and child-support obligations; and Kentucky requires repayment of all restitution to be eligible to apply for restoration of civil rights.⁶⁹ Further, Iowa conditions eligibility for re-enfranchisement for people convicted of homicide crimes before July 4, 2005, on repayment of court costs, restitution, and fines (or being current on a payment plan).⁷⁰

IV. ANALYSIS: NATIONAL STANDPOINT IN THE FUTURE

A. *Looking Forward: If More Black Citizens Had the Right to*

65. *Supreme Court Allows Florida to Enforce "Pay-to-Vote" System*, EQUAL JUSTICE INITIATIVE (Jul. 17, 2020), <https://eji.org/news/challenge-to-florida-disenfranchisement-law/>.

66. *Id.*

67. Nicholas Turner & Sam McCann, *How Mass Incarceration Shapes Our Elections*, VERA (Oct. 26, 2022), <https://www.vera.org/news/how-mass-incarceration-shapes-our-elections>.

68. Chung & Muhitch, *supra* note 55.

69. *Guide to State Voting Rules That Apply After a Criminal Conviction*, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (June 2022), <https://www.justice.gov/voting/file/1507306/download>.

70. Uggen et al., *supra* note 46; *Guide to State Voting Rules That Apply After a Criminal Conviction*, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (June 2022), <https://www.justice.gov/voting/file/1507306/download>.

Vote and Minority Representation

As of 2021, Black Americans of voting age are nearly four times as likely to lose their voting rights than the rest of the adult population.”⁷¹

When we break these figures down by race and ethnicity, disparities in the criminal justice system are linked to disparities in political representation. This clearly affects the Black voice as 5.3% of the African American voting-eligible population is currently disenfranchised due to a felony conviction compared to the 1.5% of the adult non-African American population.⁷² The Sentencing Projects estimates African American disenfranchisement in 2022 is lower than in previous years as it stands at 5.28% compared to the 6.26% in 2020; 7.44% in 2016, 7.66% in 2010; and 8.25% in 2004.⁷³ It used American Community Survey data to obtain denominators for the African American voting-eligible population.⁷⁴

The table below provides a visual for changes in the eligible voter population across race and ethnicity:

71. Chung & Muhitch, *supra* note 55.
72. Uggen et al., *supra* note 46.
73. *Id.*
74. *Id.*

Black eligible voter population in the U.S. is projected to reach 32.7 million in 2022, up slightly from 2018

U.S. eligible voter population change, by race and ethnicity, 2018-2022

	2022 EV pop.	EV pop. change, 2018-22	% change in EV pop., 2018-22
Hispanic	34,550,000	4,700,000	16%
Black	32,700,000	750,000	2%
Asian	13,350,000	1,050,000	9%
Total	241,300,000	7,650,000	3%

Note: Eligible voters are U.S. citizens ages 18 and older. Hispanics are of any race. Black eligible voters include those who say their race is Black alone and non-Hispanic, Black and at least one other race and non-Hispanic, or Black and Hispanic. Asians likewise include those who say their race is Asian alone and non-Hispanic, Asian and at least one other race and non-Hispanic, or Asian and Hispanic. Estimates are rounded to the nearest 50,000. Percentages and changes are calculated from unrounded numbers.

Source: Pew Research Center projection for Nov. 1, 2022; Pew Research Center analysis of 2018 American Community Survey (IPUMS).

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75

This change in eligible votes is not a positively significant increase for African Americans. It can be presumed the more this number changes, the higher the minority representation.

In an August 2022 Pew Research Center survey, 70% of Black registered voters said they would vote for or were leaning toward the Democratic U.S. House candidate in their district in the coming election.⁷⁶ Another 24% were either unsure or said they would back another candidate. Just 6% of Black registered voters said they would back the Republican candidate in the race to represent their district in the House of Representatives.⁷⁷

A poll conducted by The Marshall Project in 2020 asked: “If the election for president were being held today, who would you vote for?” Based on the people of color responses: (this poll was only separated by POC and white inmates), 54% of inmates who participated in the poll stated they would vote for individuals who associate with the Democratic party. (These individuals included Bernie Sanders, Joe Biden, Elizabeth Warren, Kamala Harris, Tom Steyer, Pete Buttigieg, Andrew Yang, Amy Klobuchar, Cory

75. Mohamad Moslimani, *Key Facts About Black Eligible Voters in 2022*, PEW RESEARCH CENTER (Oct. 12, 2022), <https://www.pewresearch.org/fact-tank/2022/10/12/key-facts-about-black-eligible-voters-in-2022/>.

76. *Id.*

77. *Id.*

Booker, and Julian Castro.)⁷⁸ Nineteen percent of individuals stated they would vote for Donald Trump, and 29% said they don't know or would not vote.⁷⁹ The poll also raised the question: "What party do you most identify with?" Forty-five percent of the Black respondents voted for the Democratic party; 11% voted for the Republican party; 29% were independent.⁸⁰ These numbers potentially suggest expanding voting rights to Blacks may result in a higher Democratic turnout in Presidential and local elections.

V. CONCLUSION

A. *Tackling the Issue*

Today, many states are making initiatives to restore felon voting rights. However, many different factors hinder these initiatives. "Felony disenfranchisement is a policy of white supremacy. Coupled with more than 40 years of mass incarceration, felony disenfranchisement has worked to silence the African American's political voice in ways that echo the 'Black codes' of the 1860s and the Jim Crow laws of the 1950s."⁸¹ "Today, one in 19 African American adults have lost their right to vote because of a felony conviction (a rate that's 3.5 times greater than that of all other Americans), according to The Sentencing Project."⁸²

As discussed below, felon disenfranchisement "not only does felony disenfranchisement contribute to the class and race bias in the electorate, but it also has generational impacts."⁸³ As more and more African Americans and other people of color are disenfranchised, their families become more discouraged and less politically engaged, resulting in their communities losing out on needed resources.⁸⁴

78. Nicole Lewis et al., *What Do We Really Know About the Politics of People Behind Bars*, MARSHALL PROJECT (Mar. 11, 2020), <https://www.themarshallproject.org/2020/03/11/what-do-we-really-know-about-the-politics-of-people-behind-bars>.

79. *Id.*

80. *Id.*

81. Lewis Webb Jr., *Restoring the Right to Vote for All*, AM. FRIENDS SERV. COMM. (Oct. 26, 2022), <https://www.afsc.org/blogs/news-and-commentary/restoring-right-to-vote-all>.

82. *Id.*

83. *Id.*

84. *Id.*

This is an issue bigger than policy reform, which would be the easiest answer. This study highlighted the roots of suppression of the Black vote, the rates at which African Americans are incarcerated and disenfranchised, state initiatives, and hurdles placed on these voting rights by the states. It is fair to conclude that many aspects of the American criminal justice system and political system suppress Black voting in regarding felon disenfranchisement. It is bigger than states simply stating: “We will restore voting rights,” as this is an issue with many variables.

This issue may potentially be solved by policy reform, addressing mass incarceration, slowing down arbitrary hurdles by the states that make voting more difficult for ex-felons; spreading awareness of the disproportionate effects of disenfranchisement; advocating for those individuals who experience incarceration and their families; and pushing for more advocates with real-life testimonies of having their rights restored in their home states.

Below highlights the multiple variables that come into the conversation regarding felon disenfranchisement and potential solutions.

i. Mass Incarceration:

“The reality is that black and brown people are more vulnerable to felony disenfranchisement laws because they are overly represented in the criminal justice system.”⁸⁵ Addressing mass incarceration in the United States, specifically of African Americans who are incarcerated at a higher rate, can be a preventative measure against unnecessary disenfranchisement down the line.

ii. Hurdles by States:

The voting hurdles placed by states such as poll taxes and outstanding fines keep individuals with felony convictions away from the polls like Florida’s 4 Amendment provision. “Rather than setting up arbitrary hurdles to basic rights, states must provide good-faith paths forward for people who have been involved in the criminal legal system. Narrowing the electorate based on interactions with the criminal legal system disproportionately denies already overpoliced communities the chance to exercise

85. Bradford, *supra*, note 7.

their rights.”⁸⁶ To protect African Americans, states need to be held accountable for what roots back to strategies to “cheat the system” on the 13th, 14th, and especially the 15th Amendment. Studies tracing back history rationally relate the subliminal, hindering efforts by these states and the effect on African Americans.

States should also be accountable for the racist intent behind their legislation. For example, in *Harness v. Watson*,⁸⁷ the “U.S. Fifth Circuit Court of Appeals upheld a provision in Mississippi’s 1890 Constitution that permanently bans people from voting who were convicted of certain felonies that the framers believed were committed mostly by Black people.”⁸⁸ The director of the Impact Litigation Project at the Mississippi Center spoke about the racist intent of the original provision. (“This provision was a part of the 1890 plan to take the vote away from Black people who had attained it in the wake of the civil war.”)⁸⁹

iii. Advocacy:

“If more people were aware of the disproportionate effects of felon disenfranchisement, and the opportunity to advocate for these individuals, then there may be hope to American reform.”⁹⁰ It is a right that is stripped away from many people in this country, especially those of color.⁹¹ The detrimental effects of disenfranchisement are larger than what may meet the eye. “The diminished capacity for participation experienced by returning citizens in turn reduces the likelihood of participation norm transmission to the returning citizen’s family and broader community.”⁹² Many individuals in society lack awareness of the history of systemic racism that affects these ex-felons and their

86. Turner & McCann, *supra* note 67.

87. 47 F.4th 296 (5th Cir. 2022).

88. *Federal Court of Appeals Upholds Mississippi’s 1890 Felon Disfranchisement Law*, MISSISSIPPI CENTER FOR JUSTICE (August 24, 2022), <https://mscenterforjustice.org/federal-court-of-appeals-upholds-mississippi-1890-felon-disfranchisement-law/>.

89. *Id.*

90. Myers, *supra*, note 9.

91. *Id.*

92. Bridgett A. King & Laura Erickson, *Disfranchising the Enfranchised: Exploring the Relationship Between Felony Disfranchisement and African American Voter Turnout*, 47 J. BLACK STUDIES 799, 804 (2016).

families on a daily basis, and “as more and more African Americans and other people of color are disenfranchised, their children and grandchildren become less politically engaged and don’t vote—and their communities continue to lose out on needed resources.”⁹³ “Consequently, enfranchised African American citizens who are in closer proximity to citizens who have carceral contact, which has resulted in the removal of civil rights, should be less likely to participate politically and more specifically, vote.”⁹⁴ It is suggested that in communities where the norm of taking part in political activities is lower or does not exist, participation is expected to be lower.⁹⁵

Joseph Jackson, the director of the Maine Prisoner Advocacy Coalition, grew up with a fear of voting. He stated, “Growing up, voting was not promoted as something positive.” The younger generations of his family inherited this fear.⁹⁶ Spreading awareness of the real effects of disenfranchisement and hearing it through the lens of those who were at one point disenfranchised may push policy reform but also encourage voting by those family members who have disenfranchised citizens in their families, or live in communities where political involvement is not promoted heavily in a positive light. “Formerly incarcerated people and communities most impacted by felony disenfranchisement laws should be at the forefront of reform movements. . . . [T]here are organizers, activists, and organizations that have been doing this work for a long time. They don’t just deserve a seat at the table; they *need* to run the show.”⁹⁷

All in all, “[f]elon disenfranchisement laws remain a serious structural barrier to racial injustice in this country,”⁹⁸ and several practices in the United States, including the highlighted barriers of several states, mirror the concept of institutional racism. Some studies suggest there is not a significant correlation proven by data of this disenfranchisement regarding political turnout today, but as stated previously, many factors come into play regarding this topic, and the effects are still present. Regardless, of a minimal impact or a large impact, voting is crucial to society, and

93. Webb, *supra* note 81.

94. King & Erickson, *supra* note 91.

95. *Id.*

96. Bradford, *supra*, note 7, at 11.

97. *Id.* at 12.

98. Chung & Muhitch, *supra* note 55.

with disenfranchisement laws and other barriers, the democratic participation of our citizens is hindered. Felon disenfranchisement, particularly of African Americans, is an issue that must be tackled and addressed on multiple fronts.