

Contextual Factors

Felony disenfranchisement laws are strategically set-in place to prevent individuals convicted of a felony from voting. Such laws have been ingrained in United States legislation since the birth of the nation and, although specific laws regarding a convicted felon's right to vote vary by state, voter disenfranchisement laws have been utilized to suppress the voices of vulnerable communities (Bradford, 2019). According to the US Constitution Amendment XV, Section 1, no person should be discriminated against regardless of race, religion, or past servitude in regards to voting. Tennessee's State Constitution Article 4 Section 2 directly violates the US Constitution by barring convicted felons from being able to exercise their right to vote. These laws disproportionately affect low-income communities and communities of color and have "no criminal deterrent or rehabilitative value" (Bradford, 2019). In recent years, attention has gradually shifted to the prevalence of voter disenfranchisement laws, warranting an extensive overview of its history as well as its consequences.

Felony Voter Disenfranchisement can be traced back to as early as 1792, when Kentucky became the first state to disenfranchise individuals convicted of a crime, with the Kentucky State Constitution declaring "laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery, or other crimes and misdemeanors" (Sanders, 2018). Several states followed, including Tennessee in 1834, with Article IV, §2 declaring "Laws may be passed excluding from the right of suffrage, persons who may be convicted of infamous crimes". Many states enacted felony disenfranchisement laws in the wake of the Civil War, with twenty-nine states enforcing felony disenfranchisement laws by 1869 (Chung, 2019).

In 2006, Tennessee legislation was passed that took the voting rights away from convicted felons that were convicted of committing certain heinous felonies (i.e., murder, rape, etc.) (Mauer, 2013). This drastically changed the way that voting would affect Tennessee for years to come. Today, seven percent of Tennesseans have lost their right to vote permanently (Uggens et al., 2016).

The democracy of the United States has been subject to bias and discrimination since its formation, with many states utilizing voter disenfranchisement laws to weaken the voting power of black individuals following the Civil War (Bradford, 2019). The passing of the 15th amendment gave black men the right to vote, followed by the 19th amendment giving black women the right to vote fifty years later. However, efforts were consistently made to interfere with these rights, as many states were already incarcerating black individuals at a much higher rate than white individuals by the end of the Civil War and “race neutral” voter disenfranchisement laws were selectively enforced by a predominantly white criminal justice system (Bradford, 2019). In the post-Reconstruction era, several Southern states tailored their felony disenfranchisement laws to exclude black voters, targeting specific offenses believed to be committed most often by the Black population (Chung, 2019). A notable example of this is in Mississippi, where party leaders upheld felony disenfranchisement for offenses such as burglary, arson, and theft but not for robbery or murder (Chung, 2019).

Furthermore, early efforts such as the “War on the Drugs”, a campaign that disproportionately impacted low-income communities and communities of color, laid the foundation for the current situation of mass incarceration (Bradford, 2019; Sanders, 2018). A 500% increase in the prison population over the last forty years has resulted in a 500% increase in voter disenfranchisement (Sanders, 2018). Additionally, it is important to note that “because

prisons are disproportionately built-in rural areas, but most incarcerated people call urban areas home, counting prisoners in the wrong place results in a systematic transfer of population and political clout from urban to rural areas” (Sanders, 2018). This political dynamic effectively amplifies the votes of people in rural, predominantly white communities while silencing representation in urban low-income communities and communities of color (Sanders, 2018).

The aforementioned contextual factors beg the question of whether or not disenfranchisement laws would exist were it not for the granting of voting rights to marginalized and oppressed populations. Legal arguments have arisen over the last century that echo the racially tainted history of voter disenfranchisement and challenge disenfranchisement policies. In *Richardson vs. Ramirez* 418 U.S. 24 (1974), three men from California who had felony convictions and served time argued that California’s disenfranchisement policies denied them the right to equal protection under the laws of the United States Constitution. Nevertheless, the United States Supreme Court upheld that the voting rights of individuals convicted of a crime to be revoked by individual states to be constitutional, even if the individual has already served their time, citing section two of the 14th amendment as justification (Bradford, 2019). Critics have argued that the language of the 14th amendment does not indicate the prohibition of the application of the Equal Protection Clause to voting rights cases (Chung, 2019). Furthermore, supporters of felony voter re-enfranchisement point out that the Supreme Court’s ruling in *Richardson vs. Ramirez* is inconsistent with prior decisions concerning citizenship and voting rights, in which the court stated that the scope of the Equal Protection Clause “is not bound to the political theories of a particular era but draws much of its substance from changing social norms and evolving concepts of equality” (Chung, 2019). Therefore, it is reasonable to conclude that even if the original indication of the 14th amendment was to enforce felony disenfranchisement,

our present-day interpretation of the Equal Protection Clause should mirror ways in which our concept of equality has evolved.

The twenty-fourth and fourteenth amendments of the United States Constitution prohibit the use of poll taxes in voting. However, the restoration of voting rights in states that disenfranchise individuals convicted of a crime is often contingent on the payment of various fines, fees, and other legal obligations, providing states with an opportunity to disenfranchise citizens on the basis of income (Civil Rights Clinic, 2019). Currently, three states deny the right to vote indefinitely for any unpaid Legal Financial Obligations (LFOs) related to a disqualifying conviction (Alabama, Arkansas and Florida); five states deny the right to vote indefinitely for certain unpaid LFOs related to a disqualifying conviction (Arizona, Georgia, Kansas, Tennessee, and Texas); two states deny the right to vote indefinitely for certain types of conditions with unpaid LFOs (Connecticut and South Dakota); four states restore voting rights exclusively by a discretionary constitutional power (Iowa, Kentucky, Mississippi, and Virginia); and thirty-six states and D.C. do not deny disenfranchisement indefinitely due to LFOs (CCRS Staff, 2020).

The Restoration of Voting Rights Movement is gaining significant traction in the fight to restrict and end the use of felony disenfranchisement laws in the United States, resulting in the introduction of 130 bills restoring voting rights in 30 state legislatures, with four of those states considering allowing incarcerated people the right to vote (Bradford, 2019). Currently, only two states, Maine and Vermont, allow incarcerated individuals the right to vote; however, the concerted efforts of nonprofits and grassroots organizations to restore voting rights for incarcerated and convicted felons has increased awareness among the public and among key political figures.

Government officials are paying more attention to the history of voter disenfranchisement and the arbitrariness of the laws, resulting in continual changes being made in disenfranchisement laws across the country (Bradford, 2019). Over the last two decades, 25 states have enacted a range of reforms, variously either eliminating categories of disenfranchisement or introducing practices that serve to ease the rights-restoration process (Amicus Brief in Support of North Carolina Felony Disenfranchisement Lawsuit, 2020). These reforms reflect a recognition that access to the ballot box can improve the likelihood of successful reentry and decrease recidivism (Amicus Brief, 2020). As a result of such efforts, the voting rights of an estimated 1.4 million individuals were restored between 1997 and 2018 (Bradford, 2019).

It is imperative to recognize that activists and organizations in communities that are predominantly affected by voter disenfranchisement have been fighting for the restoration of voting rights for years; such organizations include the Emancipation Initiative (“Ballots over Bars”), The Sentencing Project, Just Leadership U.S.A, and the Prison Policy Initiative (Sanders, 2018). Such efforts demonstrate the rising momentum to make universal voter enfranchisement a reality and serve as a reminder that the United States would not have heightened to this level of progressive reform without them and that any future reform will not be successful without them (Bradford, 2019; Sanders, 2018).

References

- Amicus brief in support of North Carolina felony disenfranchisement lawsuit.* The Sentencing Project. (2020, August 7). <https://www.sentencingproject.org/publications/amicus-brief-in-support-of-north-carolina-felony-disenfranchisement-lawsuit/>
- Bradford, T. (2019, August 27). *Zero disenfranchisement: The movement to restore voting rights.* Common Cause. <https://www.commoncause.org/page/zero-disenfranchisement/>
- Civil Rights Clinic. (2019, July 25). *Can't pay, can't vote: A national survey on the modern poll tax.* Campaign Legal Center. <https://campaignlegal.org/document/cant-pay-cant-vote-national-survey-modern-poll-tax>
- CCRC Staff. (2020, July 29). *Who must pay to regain the vote? A 50-state survey.* Collateral Consequences Resource Center. <https://ccresourcecenter.org/2020/07/29/who-must-pay-to-regain-the-vote-a-50-state-survey/>
- Chung, J. (2019, December). *Felony disenfranchisement: A primer.* In *The Sentencing Project*. <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>
- Sanders, E. (2018, May). *Full human beings*. People's Policy Project. <https://www.peoplespolicyproject.org/projects/prisoner-voting/>
- Mauer, M. (2013, February 20). *The Sentencing Project*. <https://www.sentencingproject.org/wp-content/uploads/2015/12/Letter-in-Support-of-Felony-Disenfranchisement-Reform-in-Tennessee.pdf>.
- TN Const., Article IV, §2
- Uggen, C., Larson, R., & Shannon, S. (2016, October 19). *6 million lost voters: State-level estimates of felony disenfranchisement, 2016.* The Sentencing Project. <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>