

Access Denied: The Impact of Virginia's Felony Disenfranchisement Laws

THE HISTORY

No single existing voting rights inequity seems a starker injustice than the plight of people with felony convictions. Felony disenfranchisement laws are state-level rules that strip voting rights from citizens who have been convicted of certain crimes. If you commit a crime, these laws say, you lose the vote. There are no federal guidelines about them, so their harshness varies from state to state. The most extreme states -- such as Florida, Alabama, Kentucky and Virginia -- bar people with felony convictions from voting for life.

Is it a coincidence that the harshest disenfranchisement laws are in former slave states? Not in the slightest. Like poll taxes and literacy tests, the ostensibly race-neutral disenfranchisement laws were created to keep Blacks from voting. In 1896, for example, Mississippi lawmakers ruled that only a narrow range of offenses -- bribery, burglary, theft, arson, perjury, forgery, embezzlement, bigamy and "obtaining money or goods under false pretenses" -- made you lose the vote. Why not murder or rape? Because: ex-slaves were far more likely to commit or be prosecuted for petty property crimes than serious offenses. Southern lawmakers were not shy about their intentions. "This plan," said one delegate to the Virginia convention of 1902, which established rules similar to Mississippi, "will eliminate the darkey as a political factor in this State in less than five years."

"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

Shortly after implementation of the 1902 constitutional amendments, Virginia's Black electorate plummeted to less than 22,000 registered voters; only ninety days earlier Virginia's rolls reflected as many as 147,000 registered black voters.¹ Thus, in a matter of three months Virginia's scheme to permanently disenfranchise black voters successfully purged over 85% of the black voting populace.

Losing the right to vote after a felony conviction in Virginia is not in any way part of a criminal sentence—it is a "collateral consequence" dictated by state law. In essence,

¹ *The Civil Rights Movement in Virginia*, The Virginia Historical Society online:

www.vahistorical.org/civilrights/vote.htm ("As intended, these measures reduced voting ...and within 90 days more than 125,000 of the 147,000 black voters in the state had been stricken from the rolls.")

people with felony convictions lose their right to vote because of the intersection of two systems—the election law system and the criminal justice system. Both systems have been used independently to discriminate against people of color for much of American history.

"Access Denied: The Impact of Virginia's Felony Disenfranchisement Laws," provides a snapshot of Virginia's disenfranchisement scheme upon the commonwealth's Black electorate in the twenty first century.

THE POWER DEFICIT

Felony disenfranchisement bars as many as 310,000 citizens from the ballot box in the Commonwealth – of which an estimated 160,000 are African American. In fact, Virginia's historical assault on the Black vote now *permanently disenfranchises* nearly 1 in every 6 African Americans living within the Commonwealth. Currently, 52 percent of Virginia's disenfranchised citizens are Black, but Black citizens only constitute less than 20% of Virginia's voting age population.

In 2002, Virginia state prisons released 9,960 inmates of which 63% were Black men.² At this rate, as many as 6,275 Black men will be returning to the community annually without the ability to fully participate in our democracy. These figures become even more salient when one considers that of the 310,000 currently disenfranchised citizens in the Commonwealth, an estimated 243,000 individuals have already completed the conditions of their criminal sentences. This means that as many as 78.4 percent of all disenfranchised citizens in Virginia have already paid their debt to society – yet the Commonwealth continues to silence their voices, treating them as if they are not citizens living within her borders.

Furthermore, Virginia's disenfranchisement laws are steadfastly ensuring an electorate that will inevitably be void of a significant female presence as women are currently the fastest growing segment of individuals populating Virginia's state prisons.³ Between 1996 and 2003, female commitments to Virginia prisons were substantially larger than those of men – 43.4% vs. 29.3% respectively.⁴ Virginia's disenfranchisement scheme not only punishes individuals, but also strips away the political power of communities of color. For example, based upon the findings of a 2004 analysis of prisoner reentry in the Commonwealth in 2002, Richmond City Court committed more than 7 percent of all Virginians who were

² *Supra*, Note 5 at 1.

³ John W. Marshall, *Offender Population Forecasts: FY 2005 to FY 2010*, Secretary of Public Safety, (October 15, 2004) at 23.

⁴ *Id.* See also: Table 2 at 25.

released from prison.⁵ The report also reveals that of those individuals reentering the Richmond community, nearly half returned to neighborhoods where the population was between 46.6% and 98.9% Black.⁶

In another region of the Commonwealth, Norfolk City Court was responsible for committing nearly 8 percent of all Virginians who were released from prison in 2002.⁷ Of those individuals reentering the Norfolk community, one-third returned to communities that are 79 to 100 percent Black.⁸

The impact of disenfranchisement is not isolated to Virginia's more populated areas. For example, Martinsville City which is 42.5 percent Black, released 6.6 disenfranchised individuals for every 1,000 residents.⁹ And while Richmond and Norfolk cities released the highest *number* of permanently disenfranchised individuals, Martinsville due in part to its overall size, is the city with the highest *concentration* of permanently disenfranchised residents.¹⁰

A common argument given to deny the re-enfranchisement of people with felony convictions is the notion of recidivism. A recent report from the Virginia Department of Corrections suggests otherwise.¹¹ The report, which used a three-year post-release evaluation period to analyze recidivism rates for the 8,997 individuals released from prison in 1999, revealed that the recidivism rate was only 29 percent.¹² This finding illustrates that as many as 71 percent of individuals who reenter their communities remain there with no further brushes with the law.¹³ Research studies also show that persons who regain their civil rights and vote are less likely than their counterparts to commit new offenses. Civic participation reduces recidivism and restores voting power to communities that need it.

THE SOLUTION

Virginia's steadfast commitment to disenfranchising individuals with felony convictions will continue to produce an electorate that is conspicuously void of the voices of African Americans. The Governor of Virginia, acting by Executive Order, has the authority to grant an across-the-board restoration of voting rights to all Virginians who have completed the terms of criminal sentences resulting from felony convictions. The Virginia Constitution vests the Governor with plenary power to "restore political disabilities" to any and all people with felony convictions.¹⁵ By exercising his authority, the Governor can restore voting rights to as many as 243,000 citizens in Virginia who have already paid their debt to society; such an act would promote important democratic principles, consistent with his constitutional authority.¹⁶

The spotlight is now on the bureaucrats and the politicians that are creating and are responsible for administering these systems that unfairly keep people from voting. The racially tainted history of felony disenfranchisement laws ought to make citizens of the Commonwealth of all ideological persuasions reconsider their value in our democracy. Felony disenfranchisement laws are undemocratic and unjust in denying citizens their political voice. And in doing so, these repugnant laws not only strip citizens of legitimate self-empowerment, but make a mockery of those of us who have faith that our democratic system can spawn a just society.

¹⁵ Virginia Constitution, Article V, §12.

¹⁶ See Hogan & Hartson L.L.P. Memorandum Re. *Virginia Restoration of Voting Rights* (summarizing Governor's authority to restore political disabilities via Executive Order granting automatic restoration), October 2005.