SILENCED in FLORIDA: Citizens Without a Vote

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

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Fall, 2012

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OVERVIEW

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

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

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

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

HISTORY

In 1865, the same year in which the Thirteenth Amendment abolished slavery, Florida began using Black Codes to criminalize freedmen. By the 1870s an estimated 95 percent of incarcerated Floridians were black.[iii] While speaking to the 1865 Florida legislature, seemingly anticipating abolishment of slavery signaled the emergence of the black vote, the governor of Florida stated:

> *"Of course we could never accede to the demand for negro suffrage, should it be made…"*[iv].

The following year the legislature rejected the Fourteenth Amendment, which granted citizenship to every person born or naturalized in the United States.

On the heels of the Black Codes and public opposition to the notion that freedmen may someday be able to vote, Florida amended its constitution in 1868. To gain readmission to the Union however, Florida had to extend the right of suffrage to all men of voting age and it had to ratify the Fourteenth Amendment.

After much debate around the voting rights of freedmen, an amended constitution was introduced. The proposed constitution did not include felony disenfranchisement (though it had first appeared in Florida's constitution in 1838) and it keyed legislative apportionment – and thereby political power – to population. It was rejected by delegates to the Constitutional Convention however, in favor of a version which institutionalized a multi-faceted plan to prevent accrual of political power in the black community, including permanent disenfranchisement of individuals convicted of a felony.[v] The list of felony offenses however, had grown. For instance, it came to include larceny the definition of which had been expanded under the Black Codes to include theft of agricultural products. Prior to the abolishment of slavery however, such theft was not a criminal offense but rather a civil matter addressed privately by the owners of the products, e.g. slave masters.

While historical records indicate the felony disenfranchisement scheme adopted in 1868 was part of a broader plan to prevent "a negro legislature" the state continues to preserve the scheme. For instance, as recently as 1968 Florida amended its constitution to remove the list of enumerated felony offenses but retained language disenfranchising all persons convicted of a felony. Moreover, in recent years the governor has expanded the reach of felony disenfranchisement by instituting a requirement that all persons convicted of a felony wait five years after completing all the terms of their sentence (including periods of probation or parole), before seeking restoration of their voting rights. This waiting period does not take into account the time an application may remain pending before the clemency board however, which can amount to several years in and of itself.

The governor of Florida has the authority to issue an Executive Order granting automatic restoration of voting rights to all individuals convicted of a felony and who are no longer incarcerated, or to any subset of individuals such as all persons convicted of a non-violent felony offense or to all individuals who have completed all the terms of their sentence. To eliminate felony disenfranchisement altogether however, will require a constitutional amendment as Florida's disenfranchisement scheme is imbedded within it. Florida's constitution can be amended in a number of ways including through ballot initiative, by constitutional convention, legislative joint resolution, through the taxation and budget reform commission, or through the constitutional revision commission. The latter however, meets every 20 years; the next review is expected in 2017.[vi]

IMPACT

Over the past 10 years alone Florida's disenfranchisement scheme has held more than 1 million citizens in the margins of democracy. Today that number stands at approximately 1.5 million, of which nearly 1.3 million have completed all the terms of their sentence.[vii]

- In line with its race-based beginnings, today's felony disenfranchisement scheme silences more than 500,000 African Americans in Florida alone– representing nearly ¼ of Florida's black voting age population. This rate is the highest in the nation.

Under the guise of state-sanctioned disenfranchisement, Florida strips more than 500,000 African Americans of their voting rights.

In advance of the 2000 Presidential Election, Florida used its felony disenfranchisement scheme as pretext for quietly purging their voter registration rolls. Many voting-eligible people, who did not have a felony conviction, first learned their registration had succumbed to the state's disenfranchisement laws when they attempted to vote.

- The general election proceeded with over **1,100** wholly eligible voters wrongly disenfranchised.
- About **54** percent of those voters, including those disenfranchised by other efforts, were people of color.
- In the year 2000, Florida was also the deciding state in the race for the Presidency. The office was won by an estimated **537** votes.

In January 2011, Florida Governor Rick Scott significantly expanded the reach of the state's 144 year-old disenfranchisement scheme by tacking on an additional post-release waiting period of five years. The state asserts the waiting period ensures returning citizens are no longer inclined to offend.

- By design, however, the five-year waiting period does not start upon release from incarceration.
- Rather, the re-enfranchisement countdown begins after the returning citizen has completed all post-release supervision.
- Ironically, periods of post-release supervision – such as probation or parole – are already designed as a tool for the formerly convicted to prove their readiness to remain in the community.[viii]
- Overall, there are an estimated 107,000 Floridians on probation or parole and an additional 1.3 million formerly convicted citizens who, despite completing all the terms of their sentence, cannot vote.

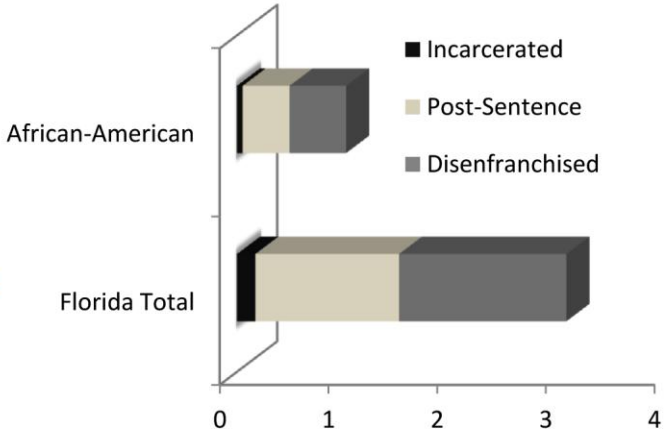
The new clemency rules preserve Florida's ability to maintain a disenfranchised population of more than 1 million.

Felony Disenfranchisement: At-A-Glance

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

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

Florida deprives more than 1.5 million citizens of their right to vote. Over 1.3 million of them have returned to the community. Overall, Florida silences more voting-eligible citizens than any other state.



SOLUTIONS

- **Immediate First Steps.** Promote messaging which realigns Florida with the American values of redemption, rehabilitation and responsible citizenship through Executive Order or legislative initiatives granting automatic restoration of voting rights to all persons who, while having been convicted of a felony-level offense, are no longer incarcerated. Ensure unfettered re-enfranchisement by ensuring the Order eliminates the need for formal application to the clemency board or any other governing or decision-making agency, before rights can be restored. Rather, require all detention facilities as well as post-release supervisory agencies to inform returning citizens that their right to vote has been automatically restored.

- **Institutionalize American Values.** Permanently align the State of Florida with the American values of redemption, personhood and responsible citizenship by abolishing the state's felony disenfranchisement scheme altogether.

COMMUNITY ACTION STEPS

- **Promote Proactive Change.** Use mass public education to spotlight the impact felony disenfranchisement has on voting-eligible Floridians. Emphasize the fact that most of Florida's disenfranchised voters are community residents.
- **Understand the Options.** Abolishing felony disenfranchisement can be challenging because it is often written into the state constitution. In addition to understanding your legislative process, you may also have to learn about the various options for amending the constitution as set forth in Article XI of the Florida state constitution.
- **Identify Likely and Unlikely Allies.** Stripping individuals convicted of a felony-level offense of their voting rights negatively impacts the formerly convicted, their families, the communities they call home, and the nation's image as a true democracy. This means the base of people that may stand with you in opposition to felony disenfranchisement can be diverse.
- **Send a Clear and Succinct Message.** Let the Governor, state legislators, and the public know community supports full citizenship for everyone. Use online petitions, email, fax, phone, and in-person campaigns to make your position clear. Host town hall meetings and other forums to shed light on community's support for full citizenship for all people – invite public officials to attend.

SAMPLE RESOURCES and REFERENCES

- Uggen, Christopher and Shannon, Sarah (University of Minnesota), and Manza, Jeff (New York University) (2012), *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*
- Brennan Center for Justice at New York School of Law, *Johnson v. Bush* Court Cases. Available at: http://www.brennancenter.org/content/resource/johnson_v_bush.
- Sentencing Project (2012), *Felony Disenfranchisement: An Annotated Bibliography*

References

[i] Uggen, C. and Shannon S. (University of Minnesota) & Manza J. (New York University) for The Sentencing Project, *State-level Estimates of Felon Disenfranchisement in the United States, 2010* at 1 (July 2012).
[ii] *Id.* at 5.
[iii] Brennan Center for Justice at New York University School of Law and Florida Rights Restoration Coalition, *History of Florida's Felony Disenfranchisement Provision* (March, 2006).
[iv] 1865 Fla. House J. 39-41. See also, complaint filed by plaintiffs in *Johnson v. Governor of Florida* at 17 (September, 2000) available at: http://www.brennancenter.org/page/-/d/flacomplaint92100.pdf.
[v] *Supra,* note iv.
[vi] Florida State Constitution, Section II (providing for review of the constitution by the Constitution Revision Commission every 20 years)
[vii] *Supra,* note 1 at 16.
[viii] *See:* U.S. Department of Justice, U.S. Parole Commission ("Parole has a three-fold purpose: (1) through the assistance of the United States Probation Officer, a parolee may obtain help with problems concerning employment, residence, finances, or other personal problems which often trouble a person trying to adjust to life upon release from prison; (2) parole protects society because it helps former prisoners get established in the community and thus prevents many situations in which they might commit a new offense; and (3) parole prevents needless imprisonment of those who are not likely to commit further crime and who meet the criteria for parole. While in the community, supervision will be oriented toward reintegrating the offender as a productive member of society.