

SILENCED in VIRGINIA: Citizens Without a Vote

This examination of the enduring and far-reaching impact of felony disenfranchisement in Virginia – 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 Florida, North Carolina, Kentucky, and Iowa.

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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

The Virginia constitution not only contains the Commonwealth's felony disenfranchisement scheme it also gives the governor the sole power to restore voting rights. Article II, Section I of the constitution states: "*No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the governor or other appropriate authority.*"

The precursor to the language of Article II, Section I is the fact that Virginia has permitted disenfranchisement as a result of a criminal offense since at least the 1830s.ⁱⁱⁱ The existence of felony disenfranchisement in Virginia – though far narrower than the disenfranchisement scheme that subsequently emerged and which we see today – so far in advance of the Reconstruction



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Era enabled decision-makers to imbed permanent disenfranchisement into the constitution. Since felony disenfranchisement first emerged in the Virginia constitution, the document has undergone several substantive amendments including the amendments of 1851, 1870, 1902, and 1971.^{iv}

The ‘Black Codes’ emerged in Virginia in 1868 just as the nation was struggling with efforts to shed itself of slavery and the social constructs it produced. Virginia on the other hand, like many Southern states, wanted to preserve the status quo after slavery was abolished in 1865. In particular, once freedmen were granted citizenship in 1868 through the Fourteenth Amendment and later granted a clearer path to the ballot box in 1870 via the Fifteenth Amendment Virginia took bold steps to prevent the accrual of political power in the black community.

With ‘Black Codes’ in full effect and freedmen rapidly and effectively exercising their newly acquired right of suffrage throughout the south, Virginia held a Constitutional Convention in 1901-1902. During that convention, Virginia’s thought leaders adopted an elaborate, multi-faceted plan to thwart accrual of political power outside the white community and in particular, beyond white men.^v Among other approaches, the plan included broad-based felony disenfranchisement grounded in the expanded list of criminal offenses that had emerged alongside the Black Codes. Reflective of the open trepidation and resistance of the white community to shared suffrage with freedmen, a delegate to the convention famously described Virginia’s plan to thwart the black vote as follows:

“This plan... will eliminate the darkey as a political factor in this state in less than five years, so that in no single county... will there be the least concern felt for the supremacy of the white race in the affairs of government.”^{vi}

Within short order of implementing the changes that were developed during the 1901-1902 Constitutional Convention, Virginia’s plan to circumvent the combined promises of the Fourteenth and Fifteenth Amendments had worked. Within 90 days more than 125,000 of the 147,000 black voters in the Commonwealth had been removed from the rolls.^{vii}

While the Virginia constitution vests the governor with the sole authority to restore civil liberties, unlike other permanent disenfranchisement states – such as Florida and Iowa – no Virginia governor has issued an Executive Order granting automatic restoration of rights. Various scholars and leading law firms however, have conducted research into the governor’s authority to issue such an order and have concluded that issuing an Executive Order granting automatic restoration of voting rights is well within the governor’s authority.^{viii}

IMPACT

Voting rights cannot be regained in Virginia absent the governor restoring civil liberties, which requires an application. Submission of an application alone does not guarantee rights will be restored. Moreover, if an application requesting restoration of voting rights is rejected, the governor need not provide an explanation for the decision. As a result, despite efforts by various governors to streamline the application process, Virginia's population of disenfranchised citizens continues to grow.

- One hundred and ten years after taking on a new breadth and scope on the heels of citizenship and the right of suffrage for freedmen, Virginia's felony disenfranchisement scheme strips more than 450,000 citizens of their ability to vote.^{ix}
- Nearly 352,000 of these individuals are no longer incarcerated. Rather, they are living in the community having fully completed all the terms of their sentence.^x

True to the purpose of its race-based expansion in the early 1900's, today Virginia's felony disenfranchisement scheme wields its greatest impact against the Commonwealth's black voters.

- Included in Virginia's more than 450,000 disenfranchised are an estimated 242,958 African Americans.^{xi}
- As a result, while Virginia disenfranchises 7.34 percent of its entire voting-age population, it disenfranchises 20.37 percent of all voting-eligible black residents.^{xii}
- Additionally, nearly 189,000 of all disenfranchised black voters in Virginia have completed all the terms of their sentence.^{xiii} An additional 31,000 individuals are functioning in society as members of the Virginia community.^{xiv}

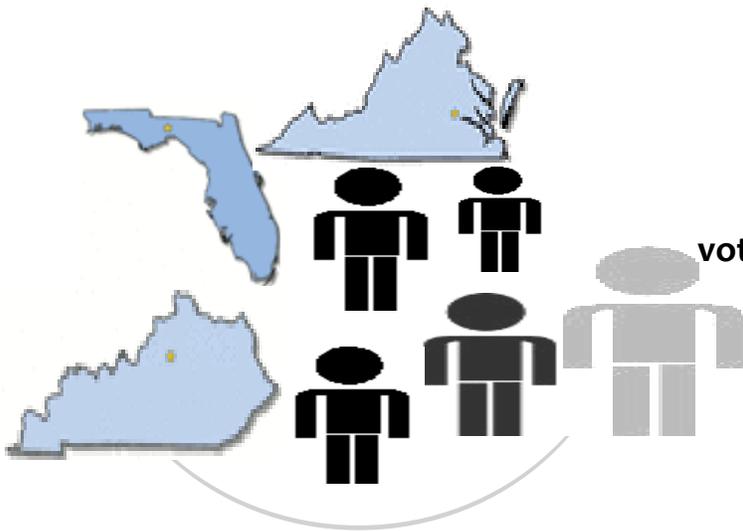
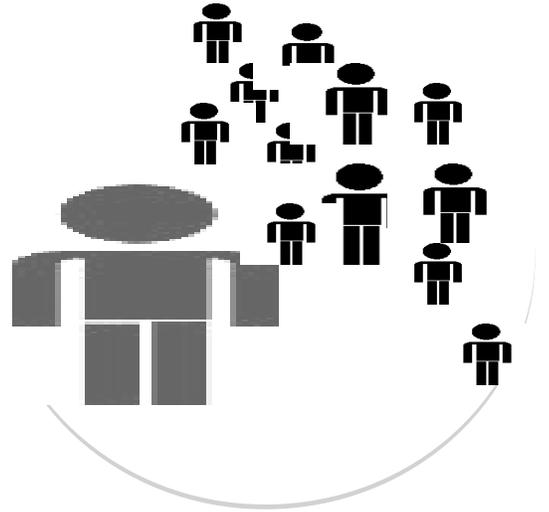
The existing governor has been recognized for his commitment to reviewing voting rights restoration applications in a timely fashion. While good news for those submitting applications – as applications can languish – his commitment to reviewing applications in a timely fashion will do little to resolve the race-based disparities inherent in Virginia's felony disenfranchisement scheme as calculation suggests that he would have to review one application every hour, for 24 hours every day of the year, for a period of 51 years to restore rights to every disenfranchised Virginian.

While Virginia strips more than 450,000 citizens of their voting rights, nearly 352,000 of these citizens are not incarcerated but instead, are members of the community.

Nearly 78% of all black voters who have been stripped of their voting rights have completed all the terms of their sentence.

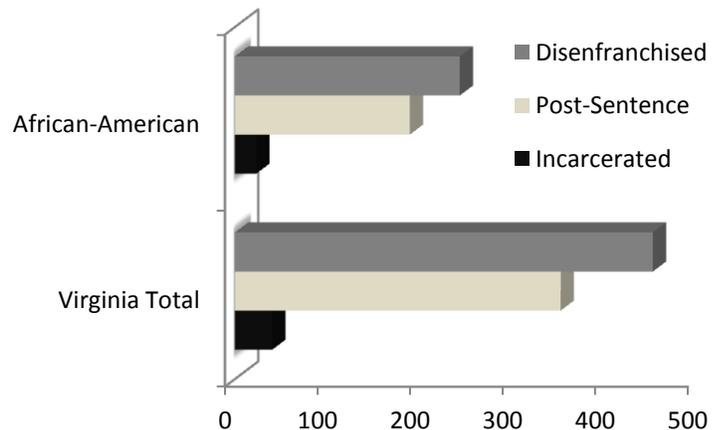
Felony Disenfranchisement: At-A-Glance

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.

Virginia deprives more than 451 thousand citizens of their right to vote. Nearly 352,000 have returned to the community, including nearly 189,000 black would-be voters. While Virginia strips 7.34 percent of all citizens of their voting rights, the impact on black voters is far greater: 20.37 percent.



SOLUTIONS

- **Immediate First Steps.** Promote messaging which realigns Virginia 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 with the American values of redemption, rehabilitation 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 the Virginia 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*
- Sentencing Project (2012), *Felony Disenfranchisement: An Annotated Bibliography*
- Office of the Secretary of the Commonwealth, *Restoration of Rights* (available at: <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/restoration.cfm>).

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 Behrens, A., Uggen, C., & Manza J., *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, *American Journal of Sociology*, 109(3), 559-605 at 565 (2003).

^{iv} See e.g. report of Jamerson, B., *Virginia Constitution, Effective July 1, 1971 with Amendments January 1, 2011*, Clerks Office, House of Delegates (January 2011) (available at: <http://legis.state.va.us/Laws/search/constofva.pdf>).

^v As in many other southern states, this plan included literacy tests and poll taxes. For more information see: Virginia Historical Society, *The Civil Rights Movement in Virginia* (available at: <http://www.vahistorical.org/civilrights/vote.htm>).

^{vi} Delegate Carter Glass, Virginia Constitutional Convention (1901-1902).

^{vii} *Id.*

^{viii} See e.g., Hogan and Hartson LLP memorandum re Virginia Restoration of Voting Rights (2005) (available at: <http://www.advancementproject.org/digital-library/publications/hogan-hartson-memo-on-virginia-restoration-of-voting-rights>).

^{ix} Uggen, C., Shannon, S., & Manza J. at 16.

^x *Id.*

^{xi} *Id.* at 17.

^{xii} *Id.* at 17.

^{xiii} *Id.* at 17.

^{xiv} *Id.* at 17.