

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 PROCESS

Under Virginia's permanent disenfranchisement scheme, every individual convicted of any level or grade of felony is permanently disenfranchised unless the individual requests to have their rights restored. The Governor of Virginia, however, has the sole discretion to grant or deny any such restoration and is not required to provide an explanation to anyone regarding how he reached his

⁵ Sinead Keegan & Amy L. Solomon, *Prisoner Reentry in Virginia*, Urban Institute Justice Policy Center, (October, 2004) at 32.

⁶ U.S. Census Bureau, Census 2000 Summary File 1 (City of Richmond by block group and percent of persons who are Black or African American).

⁷ *Supra*, Note 5.

⁸ *Id.* at 42.

⁹ *Id.* at 34.

¹⁰ *Id.*

¹¹ *Recidivism in Virginia: Tracking the 1999 Release Cohort*, Virginia Department of Corrections (May 2005).

¹² *Id.* at 1 & 17.

¹³ 6,388 of the 8,997 individuals tracked remained in the community three years post release.

decision. In addition, if the Governor denies the application, his decision cannot be appealed and the applicant must wait two years before they will be eligible to participate in the application process again.

And while everyone that commits a felony loses their right to vote with equal expediency, the restoration process varies. For example, individuals convicted of a non-violent felony offense are required to submit a one-page short form application, while individuals convicted of a violent offense are required to submit a six page application. This application includes a demand for three letters of reference from individuals who are “not a relative by birth or by marriage” of the applicant, and must be supplemented by: certified copies of all felony court orders; certified proof of payment of all fines, restitution and/or court costs; a current letter from the applicant’s most recent probation officer outlining the period of supervision; a copy of the applicant’s pre-sentence and/or post-sentence report; and a personal letter to the Governor outlining the details of the offense and why restoration would be appropriate.¹⁴

An ongoing Advancement Project initiative to encourage eligible individuals to request restoration of their civil rights has uncovered several barriers inherent in the current process. The most common barriers are: court clerks who are unfamiliar with their critical role in providing timely access to court documents; court records pertaining to antiquated offenses which either no longer exist or are not readily accessible; cost(s) associated with obtaining certified documents and securing notarized signature on final application; difficulties determining how to classify an offense in order to select appropriate application; difficulty understanding the cumbersome requirements as they relate to document production for the long form application, i.e., determining whether an individual who is subject to *unsupervised* probation is required to obtain a letter from probation department outlining probationary period; transportation and time barriers for low-income residents and individuals with disabilities who have to travel to courts to retrieve records; and reading and writing disabilities.

In addition, the Office of the Secretary of the Commonwealth must ensure updated applications are regularly available to the public; local police and courts must provide necessary information to ensure the Central Criminal Records Exchange (CCRE) records are updated on a timely basis. The CCRE must provide records to the Office of the Secretary of the Commonwealth who must review each application individually and also verify the record/criminal history of each applicant; local probation offices must not only maintain records of former clients (though a three year purging practice is not uncommon), but probation officers must also have time to search these records and write the necessary letters; clerks of court must be able to locate records, which are not always computer-accessible, and if they are unable to find them they must write a letter documenting their difficulty in finding the records despite due diligence; circuit

¹⁴ See Restoration of Rights application for Violent Offenders/Drug Offenders/Election Law Offenders (revised 9.22.05) at: www.commonwealth.virginia.gov/index.cfm.

court judges must be prepared to hear restoration petitions to determine the applicant's fitness, should an individual choose this avenue; and no matter which avenue is chosen – application or court petition – the Governor must then review each individual request. He alone makes the decision but he receives input and recommendations from a team of high level government appointees, who also, individually, review each application.

THE PEOPLE

The majority of people convicted of felonies, of course, are not murderers and muggers. Three out of every five felony convictions does not lead to jail time, and there's no clear line you have to cross to earn one. These individuals have paid their debts to society, as mandated by the courts and their peers, and they are citizens who have re-entered society—they have families, they work, they pay taxes. What they do not have is a voice in our democracy.

- In 1994, an African American woman was sentenced to 24.5 years in federal prison. She was a first-time offender convicted in a drug distribution conspiracy case. At the time of Kemba Smith's sentencing it became evident that she was also the victim of a turbulent four year relationship which involved physical, mental, and emotional abuse. Her abuser forced her to participate in his drug ring. In 2000, Ms. Smith was granted a conditional pardon by President Clinton. Subsequent to her release she received corporate sponsorships to speak at a number of schools and colleges regarding the social, economic and political consequences of drug policies. In 2002 she graduated from Virginia Union University and is now a student at the Howard University School of Law – yet the Commonwealth of Virginia will not allow her to vote.
- _ In 1982, Perlle White, a nurse, confronted a reputed neighborhood drug addict in her own home after the intruder pushed her way into the home, according to White's account. The intruder was no stranger to White, as she had threatened to kill her on several occasions. Home alone at the time, White retrieved her husband's gun. A scuffle ensued; the gun went off; the intruder was hit in the stomach and subsequently died. White was convicted of second degree murder and was released after eleven months due to good behavior. And while she has maintained a clean record ever since, twenty-four years post conviction and release, the Commonwealth will still not permit her to vote – and so this seventy-seven year old tax-paying grandmother must now wait until the year 2006 before she can initiate the application process for a second time. Time will not change the facts of her case. She can only hope that her fate will change with a new review because Ms. White would like to vote before she dies.
- _ Anthony Suggs was destined to be a boxing star. By the age of twenty-one he was ranked number one in the country and fourth in the world and soon

found himself at an Olympic training center preparing for the Pan American Games. The year was 1987 and one day after arriving at the training center, Suggs received a phone call – his infant daughter had died a crib death. Immersed in grief he spiraled downward, quickly becoming a drug addict; five years later he was convicted of a felony drug offense. Since his release in 1992, Suggs has been a model citizen, volunteering at community based programs to put youth on the path to success. He won the Virginia Welter Weight state title and became a sparring partner for Sugar Ray Leonard. Suggs maintained full-time employment while volunteering as a boxing coach; and has been invited to share his life experiences with youth at local high schools. And while the court had difficulties finding all of the records Suggs needed to complete his application, he persisted by returning to the court more than once. Suggs does not yet know the outcome of his application, but would like to participate our democracy

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.

