Felony disfranchisement is the set of policies and practices that bars citizens with felony convictions from voting. While felony disfranchisement is the most common form of criminal disfranchisement, a handful of states also disfranchise people with misdemeanor convictions. In the United States, 5.3 million Americans, or one in 41 adults, cannot vote due to a felony conviction. Felony disfranchisement laws vary from state to state, but 48 states bar incarcerated individuals from casting a ballot; two states permanently disfranchise individuals with any felony convictions; eight states permanently disfranchise individuals with certain felony convictions.

The vast majority of disfranchised individuals are not incarcerated, but are living in our communities. Nearly four million disfranchised Americans have been released from prison, 2.1 million of whom have fully completed all terms of their sentences. Although these individuals work, pay taxes, and are involved with the issues that affect their communities, they are denied a political voice.

A strong and healthy democracy must include the voices of all its citizens. We vote to speak our minds, for our children, for our communities, and for ourselves. In a democracy, voting is a right, not a privilege. Yet in our democracy, well over five million Americans are unable to participate in this most basic, fundamental right of citizenship.

The benefits of voting are numerous. Individuals who vote generally help to make their communities safer and more vibrant. Studies have shown that individuals who vote are more likely to give to charity, volunteer, attend school board meetings, serve on juries and are more actively involved in their communities. Research has also shown that individuals who vote are less likely to be rearrested.

Felony disfranchisement disproportionately impacts people and communities of color. One in seven—or 1.4 million—African-American men are disfranchised due to felony convictions, seven times the national disfranchisement rate of one in 41 adults. If incarceration rates hold steady, three in ten of the next generation of black men can expect to be disfranchised at some point in their lives. In states with the most restrictive disfranchisement policies—such as Arizona, where one in four black men is permanently disfranchised—even more may lose their voices.

The development of felony disfranchisement law is tied to the history of racial discrimination in America. In 1870, during the post-Civil War Reconstruction era, the Fifteenth Amendment was passed banning race-based disfranchisement. In order to restrict the political participation of newly-enfranchised African-Americans, Southern states began to use criminal disfranchisement laws as a tool to suppress the African-American vote. While disfranchisement laws already existed, a number of Southern states tailored their laws to target African-Americans. For example, Mississippi revised its constitution to impose disfranchisement as a penalty specifically for crimes of which African-Americans were most frequently convicted. Over 100 years later, these laws remain in effect.

While felony disfranchisement laws legally bar well over five million Americans from voting, millions more are kept from the polls because they receive inaccurate information regarding their right to vote. Many state and local officials in charge of administering felony disfranchisement policies remain uninformed and thus dispense incorrect or incomplete guidance to individuals seeking information about their right to vote. In most states, individuals with felony convictions do regain the right to vote at some point, but confusion about state law and eligibility hinders them from registering to vote.
By the beginning of the 20th century, state and local laws mandating “separate but equal” status for African-Americans (Jim Crow laws) had proliferated. Nearly all African-Americans in the former Confederate states were functionally banned from voting through felony disfranchisement laws, poll taxes, grandfather clauses and other policies that, while purportedly race-neutral, were meant to keep African-Americans from voting. In certain states, felony disfranchisement laws kept ten times as many black citizens as white citizens from the ballot box.

As the civil rights movement gained momentum, its supporters successfully challenged Jim Crow policies in federal courts, and secured passage of the Voting Rights Act of 1965, which reinforced the Fifteenth Amendment’s prohibition against race-based disfranchisement. Neither the Fifteenth Amendment nor the Voting Rights Act of 1965, however, prohibited felony disfranchisement, despite its disproportionate impact on people of color. As a result, states continue to turn to felony disfranchisement laws to restrict the political participation of people of color in America. In fact, felony disfranchisement has become more popular: in 1850, only 35% of states had felony disfranchisement laws; today, 95% of states have felony disfranchisement laws.

Other democracies disfranchise far fewer people with criminal convictions, and virtually none disfranchise citizens after completion of sentence. In fact, many democratic nations permit people with felony convictions to vote in prison, and some even actively facilitate their political participation. For example, nearly half of all European countries—17 nations—allow prisoners to vote, and some prisoners may vote in 11 others. The remaining 12 European nations deny prisoners the vote, but generally do not bar people on parole or probation from the ballot box. In Europe, the debate around disfranchisement ends at the prison walls.

Additionally, the right to vote is laid out in several international human rights instruments, some of them binding obligations of the United States. These international accords unconditionally afford citizens the right to suffrage.

The policies of 48 U.S. states are out of step with those of most Western democracies and with universal human rights principles.

MOMENTUM FOR REFORM

Despite the prevalence of felony disfranchisement laws, the national trend over the last decade has been toward lowering barriers for the disfranchised. Since 1997, 17 states have made progressive changes to their felony disfranchisement laws, enfranchising over 700,000 formerly incarcerated individuals.

Many of these recent reforms have put an end to state policies of permanent disfranchisement. In 1997, there were ten states that disfranchised all people with felony convictions for life. Today there are only two.

The ACLU is working in partnership with a group of diverse and bipartisan allies from the election reform, criminal justice, faith and corrections communities to change felony disfranchisement policies in the United States. We hope you will join us in protecting the fundamental right to vote.

For more information, go to www.aclu.org/righttovote & www.democracysghosts.com

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