



*A Most Undemocratic Practice:
Felony Disenfranchisement
and Its Effect on
Communities of Color*

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The Argument for Restoring Voting Rights to Felons

- Violation of Equal Protection
- Support for the Expansion of Suffrage
- Subject to Changing Political Climate

- Challenge as Cruel & Unusual

Historical Roots of Felony Disenfranchisement

- Civil War and Slavery
 - Black Codes
 - Enacting/Expanding Felony Disenfranchisement Laws
- Reconstruction Amendments
 - 13th (1865) abolishes slavery or involuntary servitude except as punishment for a crime
 - 14th (1868) defines all people born in the United States as citizens, requires due process of law, & requires equal protection to all people
 - 15th (1870) prevents the denial of a citizen's vote based on race, color, or previous condition of servitude
- Jim Crow Tactics

Modern Effect of Felony Disenfranchisement

- 2018 Midterm Election
 - Over 6 million ineligible to vote
 - Almost 4.7 million returned to their community
- Mass Incarceration
 - U.S. has 25% of the world's prison population
 - Disproportionately affects people of color
 - Racial disparities in the criminal justice system
- Spotlight on Kentucky
 - Highest disenfranchisement rate for blacks nationwide
 - African American population 8%
 - African American prison population 21%
 - African American felony disenfranchisement rate 26%

Rationale for Extending Voting Rights to Felons

- Voter Suppression
 - Progression of tactics
 - Effect on communities of color
- Laws Expanding Suffrage
 - *Acts of Congress*
 - Voting Rights Act
 - National Voter Registration Act
 - Help America Vote Act
 - *Constitutional amendments*
 - 15th grants African American men the right to vote
 - 19th grants women the right to vote
 - 24th prohibits the denial of the right to vote for failure to pay a poll tax or other tax
 - 26th grants the right to vote to citizens 18 & older

Equal Protection Challenges

- Unsuccessful challenges
 - *Richardson v. Ramirez* (1974)
 - SCOTUS held “that a state may strip ex-felons who have fully paid their debt to society of their fundamental right to vote without running afoul of the Fourteenth Amendment”
 - *Village of Arlington Heights v. Metropolitan Housing Development Corporation* (1977)
 - SCOTUS held that a resulting racially discriminatory effect is not enough and a racially discriminatory intent must also be shown
- Possible routes
 - Selective enforcement
 - Racial profiling

Cruel & Unusual Challenges

- Ambiguous and controversial
- International comparison
- Traditional challenges
 - Death penalty, excessive use of force, and torture
- Successful non-traditional challenges
 - *Weems v. United States* (1910)
 - *Trop v. Dulles* (1958)
 - *Robinson v. California* (1962)

Conclusion

- 77% of disenfranchised voters are living in their communities
- African Americans are 4 times more likely to lose voting rights when compared to all Americans
- Kentucky leads the nation in disenfranchising blacks
- Matter of social justice