

2. Voting Rights for Felons

In ten states, felons are barred from voting even after they've served their prison time. This adds up to approximately six million people who would otherwise be eligible to vote—2.5% of the potential voters in the country. Even in states where felons' right to vote can be restored, suppressive voting rules can make it difficult. In 48 states incarcerated people cannot vote, and in 33 states that extends to those on parole or probation.⁸ Recently, however, the movement to restore former felons voting rights has been picking up steam.⁹

Marc Mauer of the Sentencing Project—an organization that has been working on this issue for decades—explains: "The trend on felony disenfranchisement policy nationally has been solidly in the direction of reform over the past 20 years. Two dozen states have enacted reforms designed to scale back the categories of disenfranchisement, enhance voter registration, and ease rights restoration."¹⁰ For example, in Florida the Second Chance Voting Restoration Amendment will be on the ballot in the November 2018 election. The amendment provides that a person's voting rights will be automatically restored upon completion of a felony sentence, including parole, probation, and restitution. People convicted of murder or sexual offenses are excluded from the measure. In Alabama, the legislature passed a law that allowed many people convicted of lesser felonies to be eligible to vote again.

Also worrisome is the racist history of many of these laws, especially the ones in the South, which were enacted with the specific intent to disenfranchise African Americans and were based on the noxious belief that black people are innately prone to criminality. The Mississippi Supreme Court stated in an 1896 decision upholding such a law, "[r]estrained by the federal constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone." These laws continue to disproportionately affect African Americans as well as other minorities. Indeed, on a national level, African Americans are disenfranchised at three times the rate of the population as a whole.¹¹ This is just one symptom of a criminal justice system that is biased against black people, as evidenced by the fact that they are significantly more likely than white Americans to be arrested, convicted once they are arrested, and sentenced to long prison terms once they have been convicted.¹²

Against this backdrop, advocates argue that restoring voting rights to former felons would help remedy this imbalance. Moreover, voting is a key element of citizenship in a democratic government. Former felons, as citizens, should not be deprived a voice in their government.

⁸ ProCon.org, "State Felony Voting Laws" (last updated 4/23/18), <https://felonvoting.procon.org/view.resource.php?resourceID=000286>; ProCon.org, "Number of People by State Who Cannot Vote Due to A Felony Conviction" (last updated 10/4/17), <https://felonvoting.procon.org/view.resource.php?resourceID=000287>

⁹ Amy Sherman, "Understanding felon voting rights restoration," Politifact, April 25, 2018, <http://www.politifact.com/truth-o-meter/article/2018/apr/25/understanding-felon-voting-rights-restoration/>

¹⁰ Miles Rapoport, "Movement in the Fight for Voting Rights Restoration," The American Prospect, February 5, 2018, <http://prospect.org/article/movement-fight-voting-rights-restoration>

¹¹ Daniel Nichanian, "The Case for Allowing Felons to Vote," The New York Times, February 22, 2018, <https://www.nytimes.com/2018/02/22/opinion/new-jersey-voting-rights-felons.html>

¹² The Sentencing Project, "Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," April 19, 2018, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Allowing former felons to vote would also help them re-enter society and become contributing members of their community. And finally, it is unfair to continue to punish ex-felons by stripping them of their right to vote even after they've served their time and thereby paid their debt to society.¹³

However, others maintain that it is perfectly reasonable to limit felons' right to vote. People who have committed serious crimes have demonstrated that they lack good judgment and are not trustworthy. Laws preventing children and mentally incompetent people from voting serve a similar purpose and are generally not controversial. Ex-felons have committed crimes, violating not only the rights of the individual victims but the social contract as a whole. People who are not willing to follow the law should not be involved in deciding what the law should be. Accordingly, it makes sense to bar ex-felons from voting.

Views also vary widely on not only if ex-felons' right to vote should be restored in the first place but also, if so, when.¹⁴ While some believe that ex-felons' right to vote should be automatically restored, others argue that voting rights should only be restored on a case-by-case basis. Considering high rates of recidivism, some argue there should be a period of time after release during which the ex-felon can show that he or she has turned over a new leaf. One author suggests that the right to vote could be restored in a courthouse ceremony before friends and family, which would celebrate the ex-felons' full re-entry into society.¹⁵ At the other end of the spectrum, a couple of states permit felon voting during incarceration.¹⁶

¹³ Jerry Shaw, "Voting Rights: Six Reasons Ex-Felons Should Vote," Newsmax, April 15, 2015, <https://www.newsmax.com/fastfeatures/felons-voting-rights/2015/04/15/id/638738/>

¹⁴ Jerry Shaw, "Voting Rights: Six Reasons Ex-Felons Shouldn't Vote," Newsmax, April 15, 2015, <https://www.newsmax.com/fastfeatures/felons-voting-rights/2015/04/15/id/638743/>

¹⁵ Roger Clegg & Hans A. Von Spakovsky, "There are Good Reasons for Felons to Lose the Right to Vote," National Review, April 8, 2018, <https://www.nationalreview.com/corner/there-are-good-reasons-for-felons-to-lose-the-right-to-vote/>; Roger Clegg, "Our Amicus Brief in a Felon Voting Case," Center for Equal Opportunity (last accessed 6/15/18), <http://www.ceousa.org/voting/voting-news/felon-voting>

¹⁶ ACLU, Felony Disenfranchisement Laws (Map) (last accessed 8/12/18), <https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map>