

Should Felons be Allowed to Vote? Political Rights and Civic Responsibility

Jake Wheatley Jr. may be one of the brightest young state politicians in Pennsylvania—may be, that is, if he is legally allowed to hold public office.

Wheatley, a 30-year-old African American, is a former member of the Marine Corps and served in the Gulf War. He has a master's degree in public administration from the University of Pittsburgh, and worked for several years as an executive assistant to Pittsburgh City Councilman Sala Udin. He is a senior associate of training and education at the Coro Fellowship Program, a graduate-level program that works to develop community leaders arranging internships with nonprofit public affairs organizations.¹ And in May, he defeated incumbent Bill Robinson in the Democratic primary to become the party's nominee for the 19th state legislative district seat in the Pennsylvania House of Representatives.

Since there is no Republican challenger in the 19th district, Wheatley's primary victory should have guaranteed him a place in the state legislature this fall. However, there is some dispute over whether he should legally be allowed to hold public office in the state. Jake Wheatley, you see, is a convicted felon.

In November of 1992, Wheatley was charged with two counts of unarmed robbery and one count of conspiracy to commit unarmed robbery after an incident in the parking lot of a shopping center in Michigan. He pled guilty to lesser charges of felony larceny and misdemeanor assault and battery, and received a sentence of probation, never serving any jail time. Wheatley told the *Pittsburgh Tribune Review* that the entire incident stemmed over a youthful fistfight over who owned a misplaced coat that was later found at the scene. He believed he could have beat the unarmed robbery charges, but rather than taking the chance of serving jail time, he accepted the plea bargain and probation for the lesser charges.²

When Wheatley's conviction was revealed during the primary campaign, Robinson, the 14-year incumbent Democrat who Wheatley was challenging, threatened to file a suit in state court to have Wheatley declared ineligible to hold office. Under the Pennsylvania State constitution, anyone convicted of an "infamous crime" is barred from holding state office. Robinson planned to

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ask the court to declare that the felony conviction rose to the level of “infamy” and should disqualify Wheatley from the race. In this way, he hoped to spare the people “the expense” of printing the name of a candidate on the ballot who would not ultimately be seated by the legislature if he won.³

Robinson never filed that suit, perhaps in part because of a masterful damage control job done by Wheatley, who launched a massive mail campaign in the district after his criminal record was revealed. Wheatley called the conviction the result of a youthful indiscretion, and said the incident helped him turn his life around. This message apparently resonated with voters, who chose Wheatley over Robinson in the May 21 primary, 55% to 45%.⁴

However, Wheatley’s problems may not be over. According to legal experts in Pennsylvania, the constitution’s “infamous crimes” standard was ruled in a court decision last year to cover all felony convictions. It is likely, therefore, that Wheatley would be held by the courts to be ineligible to hold office if his election is challenged. Anyone from voters in the district, to members of either party, to the state Attorney General or members of the House could challenge Wheatley’s fitness to serve.⁵

If no suit is filed to settle Wheatley’s eligibility before he is scheduled to take office in January, the candidate could face a challenge by Republicans on the floor of the legislature, which has the right to determine the eligibility of its members. The state House of Representatives is expected to have a slim Republican majority, and Wheatley’s felony conviction could be used as grounds to deny him his seat. Democratic leaders have not, as of yet, heard of any specific plans by Republicans to challenge Wheatley in that manner, and would prefer that any questions of his eligibility be settled by the courts before the November election.⁶ In the meantime, Wheatley will have to wait to see if his decision to accept a plea bargain after a fistfight when he was 19 will undo all he has worked for over the past decade.

If this seems a bit unfair for someone who has amassed the qualifications that Wheatley has, the truth of the matter is that he is lucky to be in Pennsylvania, where the laws concerning ex-felons are relatively mild. Jake Wheatley’s story is just one example of how felony convictions, regardless of circumstance, may be grounds under state laws to strip offenders of their civil rights, even long after their sentence has been completed. In many states, he might not even be able to vote, let alone hold public office.

There is considerable debate on both the state and national level over whether convicted felons should be allowed to participate in the political system. While Wheatley may or may not be barred from holding public office, millions of Americans are prevented from exercising their more basic right to vote because of a felony conviction. Some are hardened criminals, convicted of violent crimes and serving long sentences in state or federal prisons, but others, like Wheatley, were convicted of relatively minor offenses and may have served no jail time at all. The policy varies from state to state, with all but two states barring prison inmates from voting, and eight states disfranchising all convicted felons for life, even after their sentence has been completed. Many other states disfranchise felons for a set period of time after their sentence is complete, or while they are on parole or probation.⁷

Critics of felon disfranchisement argue that it is an outdated practice that is inconsistent with the American ideal of universal suffrage. Felons, they suggest, do not sacrifice all of their civil rights when they are convicted, and once their sentences have been served should be encouraged to resume all the rights and responsibilities of any citizen. Supporters of these laws cite fears that felons or ex-felons would seek to promote harmful public policies if given a political voice, and argue that in committing their crimes they proved themselves unworthy of public trust and lacking in the civic virtue necessary for participation in a democracy. In recent years this debate has become racially charged, as rising incarceration rates have resulted in 13% of all African American males losing their right to vote, compared to just 2% of the American population as a whole.⁸

The debate over felon disfranchisement raises serious questions about both the rights and responsibilities of citizens in a democracy. Criminal punishment generally entails the removal of some rights, most notably the right to liberty through incarceration, for a specific period of time. But felon disfranchisement involves a basic right of citizenship that is unrelated to most felonies, and it often remains in force long after all other rights have been restored. This begs the question: can a citizen permanently forfeit one of their most basic rights through the commission of a crime?

Throughout history, the answer has generally been yes, as felon disfranchisement laws are older than the Republic itself.⁹ However, over the past 200 years, the American concept of voting rights and political participation has undergone significant changes. Universal suffrage is a value that has only gradually been realized, and it is possible that felon disfranchisement laws have not kept up with the times.

The Evolution of Universal Suffrage in the United States

The idea that criminals should sacrifice their right to political participation dates back to ancient Greece and Rome. It was a custom of English law during the 17th and 18th centuries, and American colonists brought it with them to the New World.¹⁰ In colonial times, however, criminal disfranchisement was just one of numerous suffrage restrictions. At the founding of the American Republic, only a minority of the population had any right to vote at all.

At the time of the American Revolution, the right to vote was largely dependent on ownership of property. White males over the age of 21 who owned a certain amount of property (the amount varied from colony to colony or, later, state to state) were given the right to vote, but all others were excluded. The idea behind this qualification was that ownership of property was thought to give someone a stake in society. It was comparable to owning stock in a company, which entitles the stockholder to a voice in that company's affairs.¹¹

These property qualifications were generally high enough to ensure that only the wealthiest, and usually most educated, men could vote. Women, blacks, and the poor were all universally excluded in favor of the "best men" who were assumed to have society's best interests at heart. In some areas, such as New England, voting qualifications went beyond simple ownership of property to include moral or character requirements. Bad behavior (although specifics were rarely defined) could lead to a loss of voting rights.¹²

The Revolution itself, however, led to a gradual shift in this concept of voting rights. The ideals of the Declaration of Independence were not compatible with a highly restrictive system of suffrage, and over the first few decades of American independence, complaints against suffrage restrictions multiplied. These complaints reached their peak during the 1830s, during what historians refer to as the "Age of Jackson," after President Andrew Jackson.¹³ Jackson promoted the ideal of the people's right to rule, and his egalitarian ideals led to the weakening and ultimate elimination of property qualifications for voting.

Even so, Americans were still a long way from realizing universal suffrage. By the 1840s, most white men could vote, but women and African Americans could not. Organized efforts to promote women's suffrage began in the 1840s, but that fight would not be won until the 20th century. Slavery, meanwhile, kept most blacks from voting until the Civil War brought about emancipation in 1865.

After the Civil War, so-called “Radical” Republicans in the North tried to ensure that freed slaves would be granted suffrage in the South during Reconstruction. The first major step toward accomplishing this came in the Fourteenth Amendment to the U.S. Constitution, which established that freed slaves were citizens and that Southern states could have their representation in Congress reduced if they blocked the freedmen from voting. Significantly, the Fourteenth Amendment explicitly mentions conviction of a crime as an acceptable reason for disfranchisement. This amendment was designed to coerce Southern states into granting former slaves the right to vote, but its language was somewhat uncertain.¹⁴ When it became apparent that a more direct grant of voting rights was required to protect the former slaves, the Fifteenth Amendment was ratified, forbidding any state from preventing a person from voting on the basis of race.

Even so, the wording of the Fifteenth Amendment was vague enough to allow Southern states to find ways to block blacks from voting. Several legal innovations were developed toward this end, most notably poll taxes and literacy tests. These were requirements for voter registration that were intended to exploit the fact that most blacks in the South were poor and illiterate. By the turn of the 20th century, all the former Confederate states had enacted some sort of legislation to restrict black suffrage, and many of these laws also had the effect of disfranchising poor, uneducated whites. In many Southern states, up to 90% of blacks were disfranchised by the early 1900s, and up to 50% of whites as well.¹⁵

Felon disfranchisement was not uncommon in the 19th century, and was one of the methods used in the South to further restrict the rights of blacks to vote. By the 1870s, 19 states had disfranchised some or all criminals.¹⁶ Between 1890 and 1910, most Southern states enacted new criminal disfranchisement laws, most of which specified crimes that blacks were believed to commit more frequently than whites.¹⁷

While blacks were being disfranchised at the turn of the 20th century, however, women were finally winning their fight for suffrage. Women’s suffrage advocates used two central arguments to justify their quest. The first was that the principles of the Declaration of Independence applied to women as well as men, and that the American ideal of equality would not be realized until women had the right to vote. The second was that women possessed greater “virtue” than men, and that granting them the right to vote would help purify American politics, which was widely viewed as hopelessly corrupt at the turn of the century.¹⁸ In 1920, the Nineteenth Amendment to the

Constitution was ratified, granting women the right to vote and moving American democracy a big step toward universal suffrage.

When the Civil Rights movement in the 1950s and 1960s began attacking Southern segregation and political oppression of African Americans, voting rights were central to the struggle. In some states, as few as 6% of the black population were registered to vote. Civil Rights advocates, like women's suffragists before them, used the language of the Declaration of Independence to demand that black disfranchisement be brought to an end. In August of 1965, President Lyndon Johnson signed the Voting Rights Act of 1965 into law, giving the federal government the power to end discriminatory processes like literacy tests and poll taxes in voter registration.¹⁹

With the passage of the Voting Rights Act, the march toward universal suffrage seemed complete. Every category of citizen that had initially been barred from voting was now enfranchised, except one. Since 1965, laws disfranchising convicted felons have multiplied, and some opponents of such legislation argue that these laws are nothing more than a way around the Voting Rights Act, extending the disfranchisement of African Americans.

Felony Disfranchisement Laws in America Today

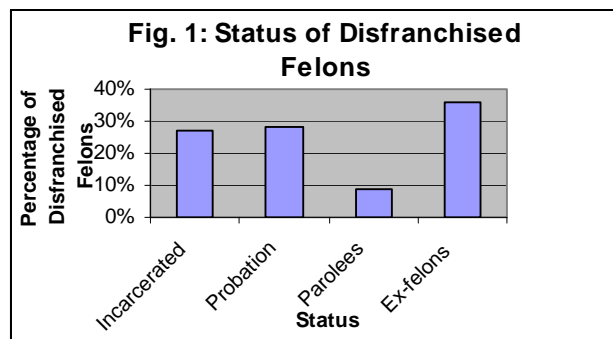
Ordinarily, state governments determine requirements for voter registration. In the case of federal elections, Congress can regulate those state requirements, as it did in the case of the Voting Rights Act. Because no federal legislation has been enacted governing felon disfranchisement, each state can impose its own requirements. The end result has been a wide variety of laws varying greatly from state to state, ranging from total disfranchisement of all felons for life to no disfranchisement of any category of felons, including those still in prison.

Currently, 48 states and the District of Columbia prevent felons from voting while incarcerated. Only two states, Maine and Vermont, allow prison inmates to vote. Thirty-two states prevent felons from voting while on parole, and 28 prevent felony probationers from voting. Eight states disfranchise all ex-offenders after their sentences are complete, and another four disfranchise some classes of ex-offenders. Two states, Delaware and Maryland, disfranchise felons for a set period of time after the completion of their sentences.²⁰ (See Appendix for state-by-state breakdown.)

Of the eight states that disfranchise all ex-felons, six are in the South. Most of these states have established procedures under which felons can apply for restoration of their rights after the completion of their sentences. Most of these processes are very complicated, however, and can often require a pardon from the governor or even the president. In Mississippi, restoration of voting rights for an ex-felon requires either an executive order from the governor or a bill passed by both houses of the state legislature. In Virginia, there were 200,000 ex-convicts who were eligible to have their voting rights restored between 1996 and 1997, but only 404 did.²¹

In recent years, some states have softened their disfranchising legislation to one degree or another. Connecticut, for example, extended the right to vote to felons on probation in 2001. Maryland and Delaware have in the last two years moved from permanently disfranchising ex-felons to disfranchising them for 3 and 5 years, respectively, after the completion of their sentences.²² Furthermore, in April of 2002, Florida simplified the process through which ex-felons can apply for restoration of their rights.²³

At the same time, some states have moved in the opposite direction. Massachusetts and Utah both allowed felons to vote while in prison until recently. Utah passed a law preventing inmates from voting in 1998, and Massachusetts followed suit in 2000 after concern arose over the formation of a Political Action Coalition (PAC) by the state's inmates.²⁴



Source: Institute for Policy Research

Under current law, 2% of the voting-age population of the United States is unable to vote because of a felony conviction, or 4.7 million Americans. Of those, 36% are ex-felons, 28% are on probation, 9% are parolees, and 27% are currently incarcerated.²⁵ In six states—Florida, Alabama, Mississippi, New Mexico, Virginia and Wyoming—the rate of disfranchisement is double the national rate, with 4% of the voting age population of those states unable to vote. The states of

Florida and Texas alone exclude 600,000 people from voting.²⁶ The most controversial side of the issue, however, involves the number of African Americans affected by this legislation.

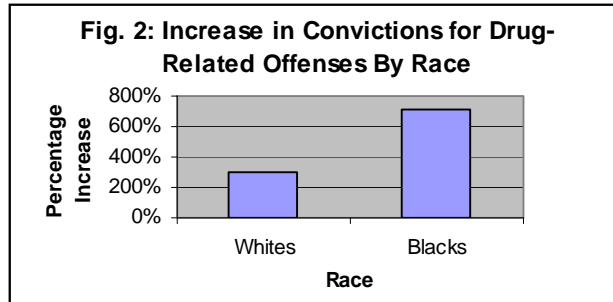
Race and Felony Disfranchisement

Of the 4.7 million Americans currently disfranchised by felony voting laws, approximately 1.8 million are African American men.²⁷ This translates to roughly 13% of all voting age African American males in the United States, which is seven times the national average for all groups.²⁸ In several states, the rate of disfranchisement among African American men is dramatically higher than that, and recent studies have suggested that at current rates of incarceration these numbers will significantly increase.

In the state of Florida, an estimated 31% of African American males are unable to vote because of a felony conviction. One third of all disfranchised felons in the United States reside in Florida, which has some of the strictest felony disfranchisement legislation. In Alabama, 31.5% of African American men cannot vote, and in eight other states the rate of disfranchisement for this group ranges between 20-30%. Beyond that, eight more states at least temporarily disfranchise between 10-20% of African American men due to felony convictions.²⁹ (See Appendix)

The rising rate of incarceration for black men suggests that this situation will only worsen in the coming years. The Sentencing Project, a non-profit organization that promotes sentencing reform, estimates that if current rates of incarceration remain constant, in those states that permanently disfranchise felons 40% of black men will soon be unable to vote. In addition, nearly one third of the next generation of black men will at some point lose their right to vote.³⁰

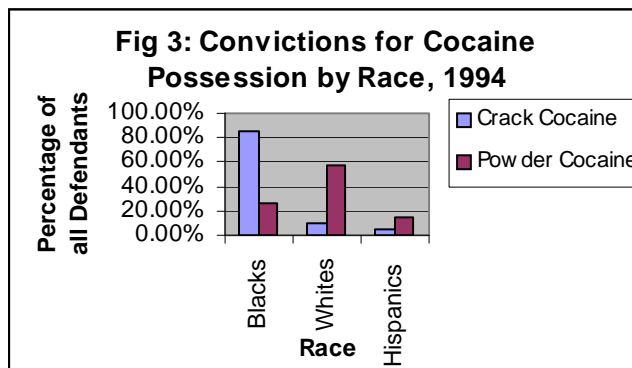
One of the main reasons African American males have been so affected by this legislation is the war on drugs. Over the last few decades, the rate of conviction and sentencing for drug-related offenses has skyrocketed, contributing to a 600% increase in the prison population in the last 30 years.³¹ Drug-related convictions have disproportionately affected African Americans, even though surveys show no correlation between drug use and race.



Source: The Sentencing Project

Between 1985 and 1995, the number of African Americans incarcerated for drug-related offenses increased by 707%. During the same period, the number of whites incarcerated increased by only 306%.³² A large part of this disparity is due to the imbalance in convictions for offenses relating to crack cocaine.

While two thirds of users of crack cocaine are white or Hispanic, blacks are convicted for possession and trafficking at dramatically higher rates than other racial groups. Since the 1980s, federal law has enforced extremely strict sentencing standards for crack-related offenses. While possession of 5 grams of powder cocaine generally leads to a sentence of probation, the same amount of crack cocaine carries a minimum sentence of five years in prison. In 1994, 84.5% of defendants convicted of crack possession were black, while 10.3% were white and 5.2% Hispanic. Defendants convicted of trafficking in crack cocaine were 88.3% black, 4.1% white and 7.1% Hispanic.³³



Source: The Sentencing Project

This is in sharp contrast to conviction rates for powder cocaine, which carries far lighter sentences. Defendants convicted of possession of powder cocaine were 58% white, 26.7% black and 15% Hispanic. Similarly, those convicted for trafficking in powder cocaine were 32% white, 27.4% black and 39.3% Hispanic.³⁴ These differences are significant because convictions for crack cocaine nearly always carry prison sentences, which in 48 states leads to disfranchisement at least while in prison. The racial imbalance in sentencing for crack cocaine is in part responsible for the dramatic increase in the African American prison population, and this in turn is responsible for the disproportionate share of blacks affected by felony disfranchisement.

Political Consequences of Felony Disfranchisement

Recent studies have suggested that the disfranchising of felons and ex-felons around the country has had a significant impact on the outcome of elections over the last few decades. A majority of convicted felons come from racial and economic groups that traditionally support the Democratic Party. As a result, these studies indicate that Republicans have reaped political benefits from felon disfranchisement laws.

According to a study by the Institute for Policy Research, an interdisciplinary public policy research group at Northwestern University, since 1978 it is likely that seven Senate elections would have been overturned if disfranchised felons were allowed to vote. While this is a small number of the 400 individual Senate elections that have taken place in that time period, it would have significantly altered the balance of political power in Congress. In 1978, for example, the study projects that the Democrats would have had a 60-seat majority in the Senate, instead of the 58-seat majority they actually held. Furthermore, it projects that the Democrats would have maintained control of the Senate throughout the 1990s, and would have kept a slim majority in that body after the election of 2000.³⁵

In addition, the authors of the study project that if today's rates of felon disfranchisement had existed during the presidential election of 1960, John F. Kennedy would have lost to Richard Nixon. Furthermore, in 1976, Jimmy Carter might still have won his election, but his margin of victory would have been reduced.³⁶ The most controversial projections, however, involve the hotly contested election of 2000 in the state of Florida.

If the right to vote were restored to only ex-felons who had completed their sentences in Florida, Al Gore might have received an additional 18,000 votes. Florida's strict, permanent disfranchising laws, its difficult application process for the restoration of voting rights, and its large, mostly black population of disfranchised ex-felons may have played a decisive role in this election.³⁷ But beyond these factors, allegations have surfaced since the election that thousands of felons who had previously had their rights restored were wrongfully prevented from voting in Florida.

According to an investigation by *The Nation*, Florida secretary of state Katherine Harris ordered a massive search prior to the 2000 election to locate and purge any ex-felons who had made it onto the voter rolls in Florida. The state hired an outside consulting firm to develop a computerized database of people convicted of felonies in other states who had moved to Florida, in order to prevent them from voting. A great number of the people who ultimately were purged from the voter rolls had already had their voting rights restored in the state where they were convicted, and the Florida state courts have repeatedly ruled that such voters cannot be deprived of their voting rights in Florida.³⁸

According to *The Nation* an estimated 50,000-100,000 people currently living in Florida moved there after completing a felony sentence in another state. Of those, approximately 80% had their voting rights restored before moving to Florida, and therefore should have been allowed to vote under Florida law. Nevertheless, at the cost of \$4 million the state of Florida tracked down and disfranchised thousands of these legal voters, roughly 46% of whom were African American. Critics have alleged that the purpose of the voter purge was to prevent a significant number of voters from participating in the election, many of whom almost certainly would have voted for Al Gore. In 1996, 93% of all ex-felons entitled to vote cast their ballots for Bill Clinton.³⁹

The company that conducted the voter purge for the state claims that most of the problems were the result of honest mistakes. But according to the *Washington Post*, one list sent to state officials by the company wrongfully listed 8,000 people convicted of misdemeanors in Texas as ex-felons. The company claims it gave the state exactly the information it wanted, and that they were told the county election boards would be responsible for verifying the information. The *Post* estimated that at least 2,000 people convicted in states that do not disfranchise ex-felons were turned away from the Florida polls illegally, a significant number considering the 537-vote majority that gave George W. Bush the state of Florida and the Presidency.⁴⁰

Arguments In Favor of Disfranchising Felons

Supporters of felony disfranchisement laws argue that keeping felons and ex-felons from voting protects the integrity of the electoral system. They argue that felony disfranchisement protects against voter fraud and faulty election practices which felons, who have proven themselves to be dishonest and untrustworthy, are likely to commit. In addition, they argue that the “purity” of the election process itself is dependent on the virtue of the voters. Convicted felons lack the civic virtue necessary to provide positive contributions to the political processes of a democratic republic.⁴¹

The idea that a certain amount of virtue is essential to a republican form of government dates back to ancient times, and was endorsed by many of the Founding Fathers during the creation of the Constitution. It was believed that in order for a republic to function, voters would have to be able to set aside their own petty interests and think of the collective good of society. Possession of this civic virtue was dependent on individual virtue, on a person’s ability to determine right from wrong and act accordingly.⁴² As has already been noted, in colonial New England it was not uncommon for voters to lose their rights because of “moral” flaws, and felon disfranchisement laws have been common throughout American history. Felons, it has been argued, have proven themselves unworthy of the public trust associated with political participation. They lack the moral judgement, the virtue, necessary for the correct use of the right to vote.

Many conservative activists and victims’ rights groups argue that felon disfranchisement is simply a fair punishment for the commission of a serious crime. Murderers and rapists should not be allowed to vote, and their lack of concern for the rights of their own victims justifies the loss of any rights society sees fit to legally remove. Another concern voiced by supporters of disfranchisement is that felons and ex-felons could influence elections for local officials like district attorneys or sheriffs to get revenge for their own convictions, or that they could vote for candidates that are “soft on crime.”⁴³ It was partly because of such concerns that the state of Massachusetts stripped inmates of the right to vote when it became apparent they were trying to politically organize.

Conservatives argue that while there is clearly a disproportionate number of African Americans affected by felony disfranchisement, this is not cause for changing the law. The problem is not with the concept of felon disfranchisement, which they suggest is colorblind, but

rather is a result of the vastly disproportionate amount of crime committed by African Americans. It is this social problem that needs to be addressed, they say, not the legal issue of disfranchising laws.⁴⁴

Arguments Against Felony Disfranchisement

Critics of felony disfranchisement are quick to point out the holes in the arguments supporting it. Since most felons are not convicted of crimes relating to elections, to suggest that they would somehow be prone to committing voter fraud makes little logical sense. It may be reasonable to restrict anyone convicted of election offenses from future participation in the electoral process, but there is no evidence that disfranchising all felons has any impact on election-related crimes.⁴⁵

Furthermore, the civic virtue argument in favor of felon disfranchisement is outdated and cannot be applied to the modern American electoral system. To disfranchise felons because they are morally incapable of exercising the right to vote responsibly would set a dangerous precedent in American politics. For the government to attempt to determine who is morally acceptable as a voter would be to risk opening a very unpleasant can of worms.⁴⁶

In addition, even if there were evidence that felons or ex-felons tended to favor candidates who were soft on crime, and even if it could be proven that they could contribute to the ouster of public officials who convicted them, these are not grounds for legal disfranchisement. The U.S. Supreme Court has ruled that states cannot bar individuals from voting based on a fear of how they may vote. Even so, there is no evidence that felons tend to vote in this way.⁴⁷

Opponents of felony disfranchisement also point out that denying voting rights to felons interferes with rehabilitation. If ex-offenders are expected to resume their place in society upon completion of their sentences, they should be encouraged to take up all the rights and responsibilities of a citizen. Restoring voting rights would give ex-offenders a stake in civil society, which may be a key element of resuming a normal and productive life.⁴⁸

Even if loss of voting rights can be considered a reasonable punishment for a serious crime, it should be applied like all other criminal punishments. The American concept of criminal justice is based on the belief that the punishment should be proportional to the crime, and that a judge should be involved in all aspects of sentencing. If criminals are to lose their right to vote, say

opponents of disfranchisement, this punishment should be clearly imposed by a judge at the time of sentencing. Making a judge part of the disfranchising process might help restore some level of proportionality to disfranchisement law, which currently treats all felonies the same in most states. It is not uncommon for a first-time offender on a relatively minor charge to accept a plea bargain and probation rather than risk jail time through a trial, as Jake Wheatley did. Requiring that disfranchisement be imposed by a judge might offer some protection to such individuals, who could otherwise unknowingly plea-bargain away their right to vote for life.⁴⁹

In addition, those who point to the racial consequences of felony disfranchisement are quick to note that many of the strictest states, with the largest populations of disfranchised blacks, are in the Old South. Felony disfranchisement in these states, they say, is just another form of voter discrimination that was supposed to be defeated by the 1965 Voting Rights Act. States like Florida, Texas, Virginia, Alabama and Mississippi are clinging to a “thinly disguised relic of the South’s Jim Crow.”⁵⁰

Finally, opponents of felony disfranchisement point out that the United States is the only democracy in the world which disfranchises criminals who have completed their sentences. Most other Western nations have far milder disfranchising legislation, if they have any at all, and generally only restrict voting rights of inmates or parolees. The United States considers itself the foremost democracy in the world, and yet its criminal disfranchisement legislation is among the strictest anywhere.⁵¹

Alternatives and Opportunities for Reform

One of the problems with the current state of felony disfranchisement is that the laws vary so greatly from state to state. This disorganized picture has led many ex-felons who crossed state lines to be uncertain of their rights, and contributed to the situation in Florida in 2000. Perhaps the best way of dealing with this problem is through federal legislation.

The federal government can regulate all federal elections, and could force the states either to allow all felons or ex-felons to vote, or at the very least impose uniform standards for disfranchisement and the restoration of a felon’s rights. While such legislation would not directly influence state election laws, it may have the ultimate effect of forcing the states to adopt a uniform system for all elections for the sake of simplicity. Representative John Conyers (D-Mich.)

proposed a bill in 1999 called the Civic Participation and Rehabilitation Act, which would have granted all ex-felons the right to vote in federal elections.⁵² The bill was defeated, but has been resubmitted in various forms several times.

In February of 2002, the Senate rejected an amendment to a proposed \$3.4 billion election overhaul bill that would have permitted ex-felons the right to vote in federal elections. The amendment was proposed by Senator Arlen Specter (R-Pa.) and Senator Harry Reid (D-Nev.), but was defeated by a vote of 63-31.⁵³ Still, the bipartisan proposal suggests that federal legislation regarding felony disfranchisement is likely to remain an issue before Congress.

Even the most conservative supporters of felony disfranchisement generally agree that a distinction should be made between “victimless” crimes like drug possession and violent felonies like murder or rape.⁵⁴ Similarly, some states already restrict post-sentence disfranchisement to repeat offenders. Altering felony disfranchisement legislation, either at the federal or state level, to reflect these ideas may go a long way toward limiting the impact of these laws and reducing the racial imbalance in their application.

Granting judges the discretion to impose disfranchisement at sentencing may be another way of protecting first-time offenders of relatively mild crimes. There is little support at present for allowing inmates to vote, but whether parolees, probationers or ex-convicts are permitted to vote could be determined on a case-by-case basis by a judge. This would also clarify for an individual felon under what circumstances they may or may not be permitted to vote, which is information rarely provided today in states with post-sentence disfranchising laws.

Allowing this kind of discretion in felony disfranchisement might satisfy supporters of the legislation by keeping the truly dangerous criminals from political participation while making allowances for lesser offenders. Most arguments in favor of felony disfranchisement do not seem to apply to someone like Jake Wheatley, who has led an exemplary life since accepting a plea bargain over a youthful mistake. Nevertheless, Wheatley’s situation in Pennsylvania clearly illustrates that a felony conviction, regardless of circumstances, can be a difficult legal stigma to overcome.

Appendix
Categories of Felons Disfranchised Under State Law

State	Prison	Probation	Parole	Ex-Felons
Alabama	X	X	X	X
Alaska	X	X	X	
Arizona	X	X	X	X (2nd Felony)
Arkansas	X	X	X	
California	X		X	
Colorado	X		X	
Connecticut	X		X	
Delaware	X	X	X	X (5 years)
District of Columbia	X			
Florida	X	X	X	X
Georgia	X	X	X	
Hawaii	X			
Idaho	X			
Illinois	X			
Indiana	X			
Iowa	X	X	X	X
Kansas	X			
Kentucky	X	X	X	X
Louisiana	X			
Maine				
Maryland	X	X	X	X (2nd Felony, 3 years)
Massachusetts	X			
Michigan	X			
Minnesota	X	X	X	
Mississippi	X	X	X	X
Missouri	X	X	X	
Montana	X			

Nebraska	X	X	X	
Nevada	X	X	X	
New Hampshire	X			
New Jersey	X	X	X	
New Mexico	X	X	X	
New York	X		X	
North Carolina	X	X	X	
North Dakota	X			
Ohio	X			
Oklahoma	X	X	X	
Oregon	X			
Pennsylvania	X			
Rhode Island	X	X	X	
South Carolina	X	X	X	
South Dakota	X			
Tennessee	X	X	X	X (Pre-1986)
Texas	X	X	X	
Utah	X			
Vermont				
Virginia	X	X	X	X
Washington	X	X	X	X (Pre-1984)
West Virginia	X	X	X	
Wisconsin	X	X	X	
Wyoming	X	X	X	X
U.S. Total	49	28	32	13

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