

## The Silenced Voices of People Who are Currently and Formerly Incarcerated

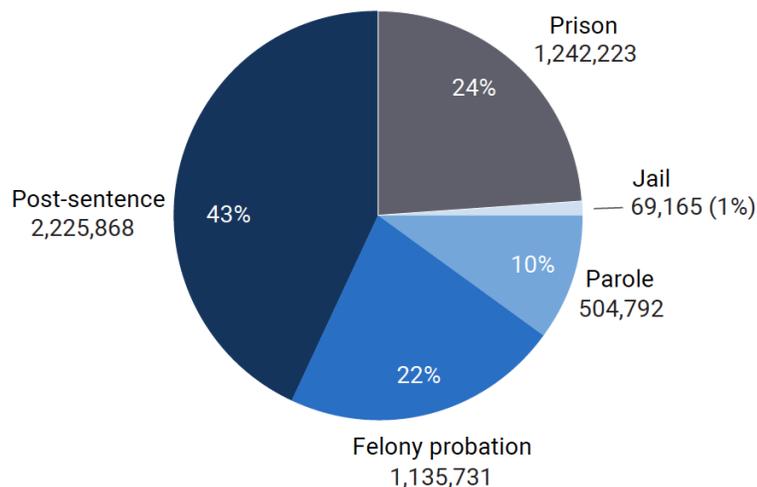
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### Abstract

A historic and record-breaking number of Americans voted in the 2020 election, reflecting the electorate's desire to have their voices heard and prioritize the issues most important to them and their communities. However, multiple states silenced 5.2 million voices due to their current or prior interactions with the criminal legal system. All but two states, Maine and Vermont, as well as Washington, DC and Puerto Rico, in some way restrict people with a felony conviction from voting while in prison, on parole or probation, or post-sentence. These voices being silenced are disproportionately Black and brown, as a result of the overcriminalization of these communities. The arguments supporting felony disenfranchisement are contrary to the ideals of a democratic society and are steeped in racism and discrimination. Restricting the right to vote is not only undemocratic but also counter to the research and benefits: Research has found that many opportunities come to communities and individuals when the right to vote is available. Some states are incrementally revising legislation to restore this right. Florida's recent policy changes provide insight into the impacts of felony disenfranchisement and the sustained activities to limit Black and brown communities' voices and power.

### Introduction

In 2020, a year in which debates over who could vote and how and where they could vote seemed omnipresent, America's long and grim history of denying this fundamental right continued to shape whose voices do and do not matter. Felony disenfranchisement began with the founding of the US, and states codified provisions after the Civil War, targeting Black male voters (Holloway, 2011; King, 2006; Mauer, 2011; Behrens et al., 2003; Alexander, 2010). Today, these policies continue to serve as an invisible punishment, "the diminution of the rights and privileges of citizenship and legal residency in the United States" (Travis, 2002, p. 15-16). Felony disenfranchisement laws particularly curtail and dilute the political power and voice of Black male voters, but their reliance on criminal legal proceedings, in turn, has expanded their reach across all communities of color. More than five million Americans, one in 44 adults, are barred from voting because of these laws, as depicted in Figure 1 (Uggen et al., 2020). Black Americans make up nearly 75% of people who are disenfranchised living in the community post-sentence or while supervised on probation or parole (Uggen et al., 2020).



**Figure 1:** Disenfranchisement Distribution Across Correctional Populations, 2020 (Uggen et al., 2020, p. 8).

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This number expands when counting people in jail who are legally able to vote because they are not incarcerated for a felony conviction. Administrators often do not provide the information or resources for these individuals to exercise their right (Porter, 2020). While the number of disenfranchised people as a result of a felony conviction has declined as states passed reforms, the unrelenting reach of the criminal legal system, combined with the research demonstrating the benefits of voting restoration, provides the urgency for full restoration of voting rights. Restricting the fundamental right to vote not only diminishes the voices of people in their communities, but it also perpetuates decades of harm in communities of color. Nearly one in 60 non-Black adults are disenfranchised, almost 2% of the non-Black population, but this number swells to one in 16 for the Black population, 6% of the Black population (Uggen et al., 2020). As the Latinx population increases in the US, so has their disenfranchisement rate, which now stands at over 560,000 individuals, roughly 2% of the voting population (Uggen et al., 2020).

Disenfranchisement is a collateral consequence of incarceration and only serves as a barrier to stymie an individual's return to the community. Voting is not only a fundamental right in a democratic society but also a benefit for the community and individuals. Despite the fact that the courts have long upheld the practice of felony disenfranchisement, the legal merits have long been debated (King, 2006; Lewis, 2018). Through voting, currently and formerly incarcerated individuals have access to civic participation and the ability to provide input and advocate for the priorities and needs most crucial to them. By providing the opportunity for all voices to participate in the voting process, communities can also better serve the needs of those who reside in them while enhancing public safety. When returning from incarceration, people are expected to find work, housing, and reintegrate back into society, but disenfranchisement perpetuates the notion that these individuals are not part of society and their voice and opinions are not of importance (King, 2006; Uggen et al., 2004).

### **Individual Benefits**

Voting is one of, if not the most, democratic political processes in the United States today, providing individuals with the means to voice the preferences and policies most important to them and their families. It provides a channel for civic engagement and responsibility while also reinforcing the legitimacy of the government. Voting and political activism, in general, offer a host of benefits to individuals, including increases in happiness, life satisfaction, and well-being, and higher levels of self-reported health (Klar & Kasser, 2009; Blakely et al., 2001). For some groups, it even serves as a protective barrier against discrimination and the associated stress (Hope et al., 2018). Furthermore, as voting is a prosocial behavior, it encourages people to think about society's greater good and the impact on other individuals (Suttie, 2018). As individuals returning from incarceration face many hurdles and collateral consequences of their sentence, the opportunity to vote can relay the above benefits to support individuals as they work to rebuild their lives.

Restoring the right to vote for people with a felony conviction increases both their internal efficacy—an individual's confidence in their ability to participate in the political system—and external efficacy—an individual's "belief that the democratic system is accessible and responsive" (Shineman, 2020, p. 140). In one study, when individuals received information on their restored right or how to fix it, as well as information about the upcoming election and polling location, there were gains of between six and twenty percentage points in internal and external efficacy (Shineman, 2020). Furthermore, individuals who had their rights restored, as well as those who received election information, had higher probabilities, by about twenty percentage points, of participating in future elections (Shineman, 2020). Overall, restoring voting rights assists those with a felony conviction to participate in the voting process and feel empowered to voice their concerns and needs. Providing and restoring the right to vote also enhances prosocial behavior and encourages individuals to engage in the political process.

Voting can help individuals reintegrate back into their community and reduce recidivism—a key metric states use to calculate public safety. In states that permanently disenfranchise people, individuals are ten percent more likely to recidivate when compared to states that restore voting rights post-release (Hamilton-Smith & Vogel, 2012). This relationship provides evidence that restoring the right to vote facilitates an individual's return to their community following incarceration. By denying this fundamental

right, people who were formerly incarcerated are "othered," carrying a perpetual stigma that may isolate them and diminish the network of support necessary to overcome the collateral consequences of incarceration. This permanent stigma reflects the notion that individuals who have committed harm can never change and will continue their behavior, eroding successful reentry opportunities (Dhami, 2005; Uggen et al, 2004).

Voting also serves as a potential mechanism to reduce re-arrest and future crime: there is a negative correlation between voting and crime. Individuals who had previously been arrested and subsequently voted were roughly half as likely to be re-arrested when compared to individuals who did not vote but had once been arrested (Uggen & Manza, 2004). This correlation demonstrates that people who vote are less likely to be re-arrested when compared to non-voters, even those without criminal records (Uggen & Manza, 2004). Similarly, voters were statistically less likely to self-report engaging in property crimes or violent behavior than non-voters (Uggen & Manza, 2004). However, the relationship between voting and arrest or a crime is not solely attributed to prior criminal history (Uggen & Manza, 2004). Other studies have found that voting can be used as a proxy to reflect an individual's interest and willingness to participate politically and engage as a political citizen in the community. Contrary to Uggen and Manza's findings, individuals in another study who received a pre-election registration mailer saw increases in political participation, but there was no impact on criminality (Geber et al., 2017). While voting may not directly cause a decrease in criminal behavior, it serves as part of mutually reinforcing behaviors and activities that can positively support those returning from incarceration by providing a connection to the larger community and democratic governance.

Previously incarcerated people place varying levels of importance on the right to vote and how it may impact or connect to their ability to avoid criminal behavior. In interviews with formerly incarcerated individuals, many recognized a connection between the right to vote and the ability to stay clean or out of trouble (Miller & Spillane, 2012). While this right may not be the most crucial part of reintegration or have a direct causal link to a reduction in criminal behavior, many people noted an indirect connection and found the lack of voting rights to be limiting and psychologically harmful (Miller & Spillane, 2012). Finally, felony disenfranchisement doesn't deter individuals from committing a crime but instead acts as a barrier to integration. Many formerly incarcerated individuals see disenfranchisement as a form of punishment and often were not aware of this punishment until they were incarcerated or post-incarceration (Miller & Agnich, 2016). Therefore, disenfranchisement does not serve as a deterrent from committing a crime, since people did not know about this punishment beforehand and thus didn't consider it when engaging in a crime (Miller & Agnich, 2016).

### **Impacts on and Benefits to Communities**

Voting and voter turn-out also positively impact communities by unlocking resources and policies to address systemic challenges, especially for communities characterized by lower incomes. Benefits of voting to society at large include reduced income inequality, increased spending on childhood healthcare, higher minimum wages, less restrictive welfare policies, and increased allocations of federal resources (Avery, 2015; Franko, 2013; Hill et al., 1995; Martin, 2003). In addition to the benefits, voting contributes to a sense of community, and removing the right to vote hurts communities. Felony disenfranchisement policies negatively impact communities as a whole, diluting their collective voice. States with the most restrictive criminal disenfranchisement policies have lower voter turnout rates when compared to states with less stringent policies (McLeod et al., 2003). This burden falls disproportionately on communities with larger proportions of Black residents. Non-disenfranchised Black residents have lower probabilities of voting when compared to non-disenfranchised whites in states with moderate to very restrictive criminal disenfranchisement laws, indicating their negative impact on social networks (McLeod et al., 2003). Restrictive policies also diminish the non-disenfranchised's interest and ability to exercise their right, suppressing Black voices in the political process (McLeod et al., 2003). As a whole, communities of color have lower voting rates because of a lack of access to education, income, and employment, and these same socioeconomic factors contribute to involvement in the criminal legal system. This overlap can help explain findings that demonstrate no negative impact on Black voter

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participation due to felony disenfranchisement policies (Miles, 2004). As a whole, felony disenfranchisement diminishes a communities' voice and capacity to participate in the political process, continuing to disadvantage the communities that have already lacked equitable investment.

The voices of Black and brown communities are further damaged and silenced through a criminal legal system that often keeps incarcerated individuals hundreds of miles from their homes. Prison gerrymandering provides an outsized political voice to communities where correctional facilities are located at the expense of the Black and brown communities where those who are incarcerated often come from (Alexander, 2010). While politicians seek to limit the voices of incarcerated populations through felony disenfranchisement policies, they count those same individuals when it is advantageous during the redistricting process. This process distorts representation, which impacts resource allocation and planning (Prison Policy Initiative, n. d.). This process ultimately seeks to harm communities of color, weakening their political power and perpetuating racial inequities (Kramer, 2018).

Felony disenfranchisement dilutes voting at the community level through de facto disenfranchisement, since many in the community infer they cannot vote due to their criminal record (King, 2006; Drucker & Barreras, 2005; Alexander, 2010). While there are nearly six million people who cannot vote while incarcerated or under community supervision, the complicated and arcane state requirements to restore voting rights leave millions more in limbo with regards to their eligibility status. Requiring individuals with felony convictions to apply for restoration in states with lifetime disenfranchisement policies hinders many people from voting (Meredith & Morse, 2015). In states with complicated and changing requirements, people with a felony conviction are often confused about their voting rights status, and this misinformation and uncertainty deter people who can legally vote (Meredith & Morse, 2015). The confusion keeps eligible voters locked out of the voting process, preventing their needs from being heard.

### **Arguments in Support of Felony Disenfranchisement**

While there is much evidence in support of eliminating felony disenfranchisement rules, and to a larger extent, disenfranchisement of anyone involved in the criminal legal system, arguments against removing this collateral consequence often focus on paternalistic notions of "deservedness" and "character tests" (King, 2006). Through the social construction of target population theory, policymakers and those in power created normative and evaluative social narratives about individuals who are incarcerated to distinguish this group (Schneider & Ingram, 1993). With these social constructions, policymakers placed value judgments on this group and created felony disenfranchisement policies to punish and place burdens on them, many of which last a lifetime (Schneider & Ingram, 1993). Arguments that support disenfranchisement to sustain the "purity of the ballot box" perpetuate the preconceived notion of some that a certain virtue and judgment are necessary to vote (Fellner et al., 1998).

People worry that allowing those with a criminal record to vote will vote for "soft on crime" politicians or platforms, therefore creating a "felon voting bloc" that would threaten society (King, 2006). Americans value their free speech and ability to present their viewpoints, regardless of their content, through voting. This value should be no different for people currently and formerly incarcerated. The two states that allow those presently incarcerated to vote, Maine and Vermont, do not appear to be "pro-criminal," negating the "soft on crime" argument (Mauer, 2011). To deny the right to vote based on how an individual will vote is undemocratic, and "conditioning the right to vote on the content of the vote contradicts the very principle of universal suffrage" (Fellner et al., 1998, p. 15; Dhami, 2005).

Another argument in support of felony disenfranchisement is that punitive punishment is an appropriate response to those who have committed a crime. However, these policies do not serve any of the goals many policymakers set for the carceral system: deterrence, incapacitation, rehabilitation, and retribution (Karlan, 2004). This is especially true considering that research demonstrates that people who commit crimes do not know about their loss of their voting rights (Miller & Agnich, 2016). People who are incarcerated already face an insurmountable amount of punishment and deprivation of liberty, and exacting more penalty through denying the right to vote only serves to "other" and castigate those who have caused harm (Fellner et al., 1998).

Regardless of the fact that evidence conclusively finds that allowing people who are currently or formerly incarcerated to vote reduces recidivism and criminal behavior, these arguments against it are steeped in racial discrimination and hark back to the policies barring Blacks Americans from voting to exclude them from the political process (Alexander, 2010). Banning people currently or formerly incarcerated from voting, often for life, perpetuates the social exclusion and stigma of those who have committed a crime rather than acknowledging the time served and lost. In a country so prideful of its democratic ideals, it is contrary to block the right to vote for individuals solely based on actions and harm they may have committed in the past.

### **Case Study: Florida**

Nowhere is this contradiction more apparent than in Florida, a state with some of the most restrictive felony disenfranchisement policies in the United States, where one in seven Black Americans is disenfranchised (Uggen et al., 2020). The state's past policy decisions indicate that restoring voting rights helps reduce the recidivism rate: Those who were formerly incarcerated who had their rights restored had lower recidivism rates than people who did not have their rights restored. In general, 26% of the individuals who were released in 2011 returned to prison within three years as a result of a new conviction or violation of post-prison supervision (Florida Department of Corrections, 2018). In calendar years 2009 – 2011, 11% of the individuals who were granted restoration of their rights subsequently returned to prison as a result of a new conviction (Florida Parole Commission, 2013). More than 30,000 people had their voting rights restored in 2009-2010. Still, this number has dropped below 1,000 annually after the 2011 policy decision that ended automatic restoration of voting rights for people with felony convictions and instead required individuals to wait five years before applying for restoration (Florida Commission on Offender Review, 2020). While certainly not the only reason for a lower recidivism rate, these numbers point to a promising trend that restoring voting rights can lead to positive public safety outcomes.

In 2018, 65% of voters in Florida supported Amendment 4 to automatically restore the voting rights of 1.4 million individuals with felony convictions, excluding murder and sex offenses, after completing their sentence (Pelletier, 2020). However, when the legislature passed legislation to reflect the ballot initiative, it ignored the voters' intent. Instead, it required all fines, fees, and restitution to be paid for the sentence to be "complete." This move perpetuated disenfranchisement and voter suppression, impacting nearly 80% of those, or 900,000 people, who could have had their voting rights restored (Mower, 2020; Uggen et al., 2020). The imposition of financial obligations harks back to the Jim Crow era of the poll tax. Even more concerning is the number of people who do not know if or how much they owe in fines or fees. Voting while knowing you are ineligible is a felony charge in Florida, and those who are unaware they owe fines or fees from a conviction but vote could be prosecuted (Mower, 2020). This has the potential to continue the carceral cycle in Black and brown communities.

Florida's restrictive policies serve to silence Black and brown voices in favor of a legislative agenda that these communities do not benefit from or support. Without the ability to engage in the political process, the voice of incarcerated and formerly incarcerated individuals is not being considered by Florida's lawmakers. This means that communities of color have experienced changes in policies—safety net programs have become more restrictive, and education has become less accessible in Florida—where the opposite would have been beneficial (Phillips & Deckard, 2016).

### **Next Steps**

The most critical next step is to eliminate felony disenfranchisement statutes for *all* offenses, both at the state and federal level, and instead support continuous voting rights during pretrial incarceration, jail, prison, probation, parole, and post-sentence. Maine, Vermont, Puerto Rico, and the policies that Washington, DC implemented during the summer of 2020 should serve as models for change—particularly their mechanisms to ensure those currently incarcerated can vote via absentee ballot. Requirements to pay all fines, fees, and restitution and waiting periods should also be removed. In recent decades, states have revised statutes to restore rights for certain offenses, often prioritizing non-violent

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ones while excluding others. This practice only serves to perpetuate the stigma that some people are "better" or "worth more" than others and continues social exclusion and should not be pursued by other states.

It is imperative for states to also engage in information campaigns and send notifications to people to make them aware of their rights. Notifying formerly incarcerated individuals of their eligibility to vote increases their likelihood of registering to vote and voting (Gerber et al., 2015; Meredith & Morse, 2015). Notifications should be complemented by, and part of, strategic education movements targeting communities, since formerly incarcerated people have lower voting rates in general (Gerber et al., 2015).

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