

History of Florida's Felony Disenfranchisement Provision

The Florida Constitution imposes a lifetime ban on voting by every person with a felony conviction unless the governor and his cabinet choose to restore the individual's right to vote. This ban has long barred blacks from the polls at twice the rate of other Florida citizens. Even without counting those who are still serving criminal sentences, 13% of voting-age blacks in Florida have lost the right to cast a ballot.

The constitutional provision disenfranchising people with felony convictions was originally enacted in the aftermath of the Civil War, in 1868, as one of several tools to suppress the votes of newly freed slaves. One hundred years later, in 1968, the provision was re-enacted despite its history of discrimination and its continuing racially disparate effects. Felony disenfranchisement has long been used to diminish the voting power of Florida's African-American population, and the law continues to have that effect.

CRIMINAL DISENFRANCHISEMENT IN RECONSTRUCTION FLORIDA:

➤ *In 1868, Florida dramatically expanded criminal disenfranchisement.*

For the first time in 1868, the state barred from the polls all people with felony convictions, while at the same time creating a host of new felony crimes. The list of disqualifying "infamous" crimes was expanded as well.

➤ *Blacks were disproportionately disenfranchised under the new provision because state policies at the time were designed to control newly freed slaves through the criminal justice system.*

In 1865, the Florida Legislature enacted Black Codes as a way to control freedmen. A crucial component of the Codes was an expansion of the criminal justice system to deal with minor offenses that legislators believed blacks were likely to commit and that had been formerly punished by their masters. The Black Codes had their desired effect – by the 1870s-1880s, estimates show that more than 95% of the convicts in the Florida convict camps were black. A captain in one of the camps at that time noted, "It was possible to send a negro to prison on almost any pretext, but difficult to get a white man there."

➤ *Felony disenfranchisement in the 1868 constitution was part of a larger effort to prevent a "negro legislature."*

Post-emancipation, legislators in Florida feared that freedmen, who then constituted 48% of the state's population, would take over state and local government. The 1868 constitution contained several provisions to prevent this from happening. For example, it established a state legislative apportionment scheme that inflated the representation of predominantly white counties while deflating the representation of predominantly black ones. It also gave the governor the power to appoint local officials, thereby preventing local black majorities from electing their own leaders. One legislator wrote that this and other such provisions were designed to "prevent a negro legislature." Felony disenfranchisement was yet another mechanism intended to suppress the political power of newly freed slaves.

➤ *Florida's expansion of criminal disenfranchisement during Reconstruction reflected a regional and even nationwide trend.*

Studies show that many states, especially those of the former Confederacy, passed restrictive felony disenfranchisement laws in the period directly following the extension of voting rights to freedmen. Felony disenfranchisement was enacted in states with high black incarceration rates as a way to reduce the effect of black suffrage.

THE RE-ENACTMENT OF THE FELONY DISENFRANCHISEMENT PROVISION IN 1968:

- ***When the Florida constitution was revised in 1968, members of the revision committee articulated no independent, nondiscriminatory reason for keeping permanent felony disenfranchisement in the constitution.***

The public record contains no evidence that the members of the Constitutional Revision Commission (CRC) or the state legislature ever had any legitimate reason for maintaining the voting ban on people with felony convictions. Even through years of defending the provision in litigation, the State never established, or even articulated, an independent rationale for reenacting the provision in 1968.

- ***The 1968 revision of the constitution occurred during a period of intense racial contention and was led by legislators who had shown contempt for several civil rights causes.***

The 1960s was a period of racial unrest in Florida, and conflicts over the implementation of civil rights reforms often led to violence. For instance, in 1963-1964, a civil rights campaign led by Dr. Martin Luther King, Jr., in St. Augustine led to racial violence throughout the region, and four years later, race riots erupted in seven cities across the state. Attempts to stifle the voting power of blacks in Florida also continued throughout the decade. The Congress of Racial Equality (CORE), a prominent civil rights organization, encountered many difficulties while running its 1964 voter registration drives – several members of the organization were arrested while registering black voters, and one election registrar explicitly opposed the group's activities.

Eight of the thirty-seven members of the CRC were also members of the Johns Committee, a governmental commission charged with investigating potentially “subversive” activities. The Johns Committee spent much of the 1950s and 1960s investigating civil rights organizations including the NAACP and CORE. George Stallings, head of the Suffrage and Elections subcommittee that recommended retaining permanent disenfranchisement to the CRC, and Bill Young, a member of that same subcommittee, were members of the Johns Committee during the CORE investigations. Stallings, in particular, had a long record as a segregationist: he had openly declared that if desegregation could not be avoided, all public schools should be shut down.

Like literacy tests and poll taxes, felony disenfranchisement was used to bar newly freed slaves from the polls. The drafters of the 1868 constitution consciously conceived of various mechanisms to protect the longstanding white monopoly on political power in Florida. In 1968, the provision was re-enacted, but the constitutional revision committee articulated no legitimate, nondiscriminatory reason for retaining permanent felony disenfranchisement. Today, felony disenfranchisement continues to achieve its original purpose by disenfranchising blacks at disproportionate rates. We must act now to remove this vestige of Florida's long history of racial discrimination and vote suppression.

References:

- 1) Expert Report of Jerrell H. Shofner, Ph.D., *Johnson v. Bush*, 214 F. Supp. 2d 1333 (S.D. Fla. 2002), *aff'd en banc*, 405 F.3d 1214 (11th Cir. 2005), *cert. denied*, 126 S.Ct. 650 (2005).
- 2) Expert Report of Richard K. Scher, Ph.D., *id.*
- 3) Expert Report of Lance deHaven-Smith, Ph.D., *id.*
- 4) Angela Behrens, Christopher Uggen, and Jeff Manza, *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AMERICAN JOURNAL OF SOCIOLOGY 559 (2003).
- 5) GLENDA ALICE RABBY, *THE PAIN AND THE PROMISE: THE STRUGGLE FOR CIVIL RIGHTS IN TALLAHASSEE, FLORIDA* 73 (2000).
- 6) Pete Osborne, *Politicians' Hot Words Mark Rally; Stallings Draws Fire During Meet at Prudential*, FLA. TIMES-UNION, April 17, 1962, at 19.
- 7) *Registration of Negro Voters Called Success*, ST. PETERSBURG TIMES, May 2, 1964.
- 8) *Constitutional Revise Study Wins Approval*, TALLAHASSEE DEMOCRAT, May 29, 1965.

For more information, contact the Brennan Center for Justice at NYU School of Law, www.brennancenter.org, or the Florida Rights Restoration Coalition, http://www.aclufl.org/issues/voting_rights/florida_voting_ban.cfm.

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