

Racial Bias in Florida's Electoral System

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, one in ten voting-age blacks in Florida has lost the right to cast a ballot.

This high rate of disenfranchisement among blacks does not result simply from a higher crime rate. Because of institutional bias in the criminal justice system, blacks are more likely to be arrested, charged, and convicted, and they are sentenced more harshly than others. Florida's ban on voting by people with felony convictions imports this bias from the criminal justice system into the electoral system.

RACIAL BIAS IN ARRESTS LEADING TO DISENFRANCHISEMENT:

➤ *Florida has invested heavily in policing programs that target minority communities.*

In 1996, Florida's funding for discretionary policing programs totaled \$796,734, a 384% increase over the previous year. The funded programs included four projects that specifically targeted low-income areas populated by black residents and one project aimed at "Mexican males" and street gangs with specific racial and ethnic origins. Not one of the nine discretionary programs targeted white-collar crime or illegal prescription drug use, both of which tend to occur at higher rates among whites.

➤ *While police assigned to routine duties arrested blacks in Florida at a rate 2.9 times higher than their representation in the state's general population, police assigned to targeted programs arrested blacks at a rate 9 to 13 times higher than their representation in their respective county populations.*

Discretionary policing programs result in dramatically higher arrest rates among blacks than routine policing programs. Between 1995 and 1998, in five counties funded by the state to focus on drug and street crime (Gadsen, Sumter, Taylor, Madison, and Jefferson), 100% of adults arrested through targeted policing programs were black.

➤ *The disproportionate impact of targeted policing on minorities is particularly pronounced for drug arrests and highway patrols.*

In 1992, in Jacksonville, blacks comprised 12% of the city's population but 87% of total drug arrests. These data are particularly striking given that a nationwide survey on illicit drug use conducted by the U.S. Department of Health & Human Services shows that blacks and whites use illicit drugs at similar rates.

Highway patrols have also become an increasingly common way for police to target minorities for drug-related arrest. For instance, in 1992, while only 5% of drivers on a given interstate were black or Latino, almost 70% of those stopped and 80% of those searched were black or Latino. When stopped, minority drivers were detained longer than their white counterparts, and the stops were often baseless – only nine of the more than 1000 stops made in 1992 resulted in a ticket or criminal charges.

RACIAL BIAS IN CONVICTIONS LEADING TO DISENFRANCHISEMENT:

- ***Blacks in Florida are more likely to be convicted of a felony than similarly situated whites, even after taking into account racially disparate arrest rates.***

After controlling for different arrest rates between whites and blacks, blacks are still 35% more likely to be convicted of a felony or misdemeanor than whites who have similar socioeconomic status, live in areas with similar crime rates, and have similar criminal records. Blacks are 11% more likely to be convicted of a felony than whites with these similar characteristics.

RACIAL BIAS IN SENTENCING LEADING TO DISENFRANCHISEMENT:

- ***Among those convicted of felonies, blacks are at least 20% less likely than whites to receive sentences that leave their voting rights intact.***

Under Florida law, trial courts have the authority to “withhold adjudication” from individuals who have been convicted of a felony. If adjudication is withheld, people convicted of felonies can retain their civil rights, including the right to vote, while serving their sentences. Decisions to withhold adjudication are commonly associated with probation sentences. According to Florida’s Department of Corrections, 42.7% of all felony offenders between July 2004 and June 2005 were sentenced to probation, and in recent years, more than 50% of felony probationers have had their adjudications withheld.

Blacks are less likely than whites to have their adjudications withheld. A 2004 *Miami Herald* exposé revealed that whites sentenced to prison or probation in Florida were almost twice as likely as blacks to receive a withhold. More recent research has shown that even after controlling for the seriousness of their crimes, their prior records, and the crime rates and socioeconomic and racial characteristics of their counties of residence, black felony probationers are still 20% less likely than whites to have their adjudications withheld.

Because blacks are more likely than whites to be arrested, convicted, and harshly sentenced, blacks end up with felony records at disproportionately high rates. Their felony records, in turn, disqualify them from voting in Florida. The racial bias in Florida’s criminal justice system thus also taints its electoral process. It is time to repeal permanent felony disenfranchisement in Florida.

References:

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- 2) Supplement to Expert Report of Theodore Chiricos, Ph.D., *id.*
- 3) Expert Report of James D. Ginger, Ph.D., *id.*
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- 5) Substance Abuse and Mental Health Servs. Admin., U.S. Dept. of Health & Human Servs., *Results from the 2004 National Survey on Drug Use and Health: National Findings*, 238 (2004), available at <http://www.drugabusestatistics.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf>.
- 6) Florida Dept. of Corrs., *Sentencing Scoresheet Compliance Report* (Sept. 2005), available at <http://www.dc.state.fl.us/pub/scoresheet/0405/index.html>.
- 7) Leadership Conference Educ. Fund, Leadership Conference on Civil Rights, *Justice on Trial: Racial Disparities in the American Criminal Justice System* (2000), available at <http://www.civilrights.org/publications/reports/cj/justice.pdf>.
- 8) Stephanie Bontrager, William Bales, & Ted Chiricos, *Race, Ethnicity, Threat and the Labeling of Convicted Felons*, 43 CRIMINOLOGY 589 (2005).
- 9) Jason Grotto, *Herald analyzed millions of prison, probation records*, MIAMI HERALD, Jan. 25, 2004, at 23A.

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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