



★★ **DISENFRANCHISED BY** ★★

DEBT

Millions Impoverished By Prison, Blocked From Voting



MARCH 2016 | by Allyson Fredericksen and Linnea Lassiter



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EXECUTIVE SUMMARY

While most people over the age of 18 in the United States are guaranteed the right to vote, those with felony convictions who have served their sentence face a variety of barriers to voting, including, in many states, the requirement that they pay any outstanding fines and fees owed to the courts. This practice amounts to limiting the right to vote based on ability to pay—in essence, a poll tax.

These fines and fees, called legal financial obligations (LFOs) can include those attached to a conviction or citation, or they can be from expenses accrued during incarceration – like the cost of laundry service. LFOs can also include interest accrued from the original fines and fees during incarceration or during repayment.

There are 30 states that require all LFOs be paid in order for people with conviction records to regain the right to vote. While some of these states, like Connecticut, explicitly state that payment of LFOs is required to regain the right to vote, other states, like Kansas, require that probation be completed—which is contingent upon payment of all legal financial obligations. Additionally, some states include explicit language on LFOs in disenfranchisement laws and also have mechanisms that extend probation and/or parole if such fines and fees are left unpaid.

Such a system not only allows those with means to pay off their debts to regain the right to vote earlier than those who cannot afford such payment, but it also perpetuates income and race-based inequality. People of color are more likely to be arrested, charged,

and convicted, receive harsher sentences, and are more likely to be low-income than are their white counterparts, so are disproportionately impacted by a system that requires payment of LFOs to regain the right to vote after incarceration.

Ending criminal disenfranchisement would be the best way to avoid the abuses and bureaucracies that limit voting rights for those with court debt. Short of that, there are a number of reforms that states could immediately implement to remove ability to pay as a barrier to voting.

These reforms include eliminating both explicit and de facto LFO disenfranchisement for those who would otherwise be eligible to regain the right to vote; establishing clear criteria for determining ability to pay and adjusting total legal financial obligations or removing LFO repayment as a requirement for voting for those found unable to pay; and automatically registering anyone with a conviction record who becomes eligible to vote.



INTRODUCTION

Criminal disenfranchisement laws in states across the country bar people who have completed their time in prison from fully participating in society after their release. In states that include full payment of legal financial obligations (LFOs) as a requirement for re-enfranchisement, this added barrier means that those with the means to pay off their debts can reintegrate into society faster than those whose poverty prevents them from making the necessary payment.

Additionally, because people of color are disproportionately more likely to be imprisoned and receive harsher sentences, legal financial obligations disproportionately impact people of color who are already more likely to be poor.¹

Similarly, criminal disenfranchisement laws, and especially those requiring payment of LFOs, have a disparate impact on people of color.

LEGAL FINANCIAL OBLIGATIONS (LFOs)

In this report LFOs refer to any fines or fees that accompany a citation or conviction; cost accrued during imprisonment, such as for laundry services; and/or interest accrued during incarceration or during repayment of such fines, fees, or other costs.

DIRECT LFO DISENFRANCHISEMENT

When state disenfranchisement statutes explicitly list repayment of LFOs as a requirement for regaining the right to vote, we refer to it as direct LFO disenfranchisement.

DE FACTO LFO DISENFRANCHISEMENT

When state disenfranchisement statutes do not explicitly require repayment of LFOs to regain the right to vote, but require completion of parole and/or probation—which is contingent on repayment of all legal financial obligations—we refer to it as de facto LFO disenfranchisement, since nonpayment of legal financial obligations still prevents re-enfranchisement.

For more information, see the Technical Notes section of this report.



BACKGROUND

For most people who are citizens of the United States, all that should be needed to attain the right to vote is to be at least 18 years old. While the right to vote was originally extended only to property owners, “most of whom [were] white male Protestants over the age of 21,” the right to vote was extended to all white men in 1856, to former slaves in 1868, women in 1920, to Native Americans in 1947, and to 18 year olds in 1971.² However, one group that has been disenfranchised throughout history and continues to face significant barriers to voting is the population with felony conviction records.

While a felony conviction record alone can be enough to deny voting rights in some states, in many other states an inability to pay fines and fees owed to the courts can prevent those who would otherwise be re-enfranchised from regaining their right to vote. Poverty has not only become a crime, but a barrier to securing the right to fully participate in society.

These legal financial obligations (LFOs), often levied as a source of revenue, also have a disparate impact on communities of color,³ compound existing racial disparities in incarceration rates and, ultimately, contribute to disparate rates of disenfranchisement.

HISTORY AND RACIST LEGACY OF CRIMINAL DISENFRANCHISEMENT LAWS

While federal amendments have guaranteed a right to vote to African Americans and women, and legal precedent has removed barriers to voting for Native

Americans and other people of color, states are otherwise granted the authority to establish their own voter eligibility laws per Article I, Section Two of the United States Constitution.⁴ This has led to requirements such as literacy tests and Voter ID laws that require valid government-issued identification – and especially additional requirements for those with conviction records.

State discretion in passing disenfranchisement laws was affirmed by the 1959 U.S. Supreme Court case *Lassiter v. Northampton* in which a black citizen challenged North Carolina’s literacy tests.⁵ The Court rejected this challenge, however, stating that because literacy tests were applied to people of all races they were not racially discriminatory.⁶

This ruling also established that states have “broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns.”⁷

Because criminal convictions are not classified as unconstitutional discrimination, states can restrict the voting rights of those with conviction records. Since at least the 1800s, though, criminal disenfranchisement has been used as a tool for preventing people of color from voting.

Arguments against allowing blacks to vote in the 1800s were also tied to criminal disenfranchisement. In an 1821 New York legislative debate, Col. Samuel Young declared, “The minds of blacks are not competent to vote. They are too degraded to estimate the value, or exercise with fidelity and discretion this important right...Look to your jails and penitentiaries. By whom are they filled? By the very race it is now proposed to clothe with the power of deciding upon your political rights.”⁸

Section Two of the 14th Amendment to the U.S. Constitution – ratified in 1868⁹ – contains a clause that allowed states to limit voting rights based on “participation in rebellion or other crime.”¹⁰ Many states used the “crime and rebellion” clause contained in the 14th amendment to revoke voting rights based on crimes blacks were thought to be likely to commit.¹¹ Mississippi was the first state to implement this mechanism and in 1890, amended their constitution to disenfranchise based on petty crimes that blacks were perceived as more likely to commit.¹²

Disenfranchisement based on criminal convictions, as well as tactics like poll taxes and literacy tests, successfully lowered black voter registration.¹³ In 1867, 70 percent of eligible blacks in Mississippi were registered to vote; but, by 1892 fewer than 6 percent of eligible blacks were registered voters.¹⁴

These mechanisms, combined with the threat of state-sanctioned violence, so suppressed the black vote that most African Americans were effectively unable to vote until the Voting Rights Act was signed into federal law in 1965.¹⁵ The Act prohibits the use of “poll taxes, literacy tests, grandfather clauses and other mechanisms created in the 1860s and 1870s to prevent

African Americans from exercising their right to vote.”¹⁶ However, the Voting Right Act does not explicitly prohibit felony disenfranchisement.

RACIAL DISPROPORTIONALITY AND DISENFRANCHISEMENT TODAY

Criminal disenfranchisement laws are not only racist in origin, but also have a disparate impact on communities of color today. As noted by the Sentencing Project, an estimated 1 in 13 African Americans are disenfranchised, which is four times than that of other races.³¹

States with a high proportion of black residents are more likely than other states to have strict criminal disenfranchisement laws.³² For example, in Florida, Kentucky, and Virginia, more 1 in 5 black residents are disenfranchised.³³

This disparate impact is due, in part, to disproportionate rates of arrest and conviction for people of color. According to the Pew Research Center, black men are more than six times as likely as white men to be incarcerated.³⁴ If current trends continue, 1 in every 17 white males born today can expect to serve time in prison at some point in their life, as compared to 1 in every 6 Latino males and 1 in every 3 black males.³⁵

Native Americans are often left out of such statistics; however, Indigenous Americans (which includes American Indians and Alaskan Natives) have the second-highest rate of incarceration across racial/ethnic groups behind blacks.³⁶ The rate of imprisonment of Native Americans is 38 percent higher than for all races overall.³⁷ In South Dakota, for example, Native Americans represent less than 9 percent of the state’s total population,³⁸ yet comprise over 57 percent of the federal offender caseload within the state.³⁹ In Minnesota, Native Americans represent just 2 percent of the population, yet more than 6 percent of disenfranchised Minnesotans are Native American.⁴⁰



MISDEMEANOR DISENFRANCHISEMENT

Although the term ‘felony disenfranchisement’ is commonly used, this term is not entirely accurate, as some states extend disenfranchisement laws to individuals serving jail time for misdemeanor convictions or permanently revoke voting rights based on some non-felony crimes.¹⁷

At least eight states disenfranchise or allow disenfranchisement of people due to misdemeanor convictions: Illinois,¹⁸ Indiana,¹⁹ Iowa,²⁰ Kansas,²¹ Kentucky,²² Michigan,²³ Missouri,²⁴ and South Carolina.²⁵ Illinois, for example, revokes the voting rights of “a person convicted of a felony, or otherwise under sentence in a correctional institution or jail.”²⁶ According to the Illinois State Commission on Criminal Justice and Sentencing Reform, there were approximately 17,643 people sentenced to jail for misdemeanor convictions in 2013,²⁷ all of whom, according to state law, were ineligible to vote.

Incarcerated eligible voters must vote using absentee ballots; however, some states require certain forms of ID to be submitted with the absentee voter application. For example, while neither Pennsylvania nor South Dakota have laws explicitly barring people incarcerated for misdemeanors from voting, both states require forms of ID to complete absentee ballots that are unavailable to incarcerated people.²⁸

Additionally, some states have reduced early voting periods for absentee voters, creating another obstacle for incarcerated eligible voters, due to the long processing times for incoming and outgoing mail from prisons. Florida, Georgia, Ohio, Tennessee and West Virginia reduced early voting for absentee voters in 2012,²⁹ decreasing the window of time during which many vulnerable groups, including eligible prisoners, may vote.³⁰

At every step of the criminal justice process, people of color face disadvantages relative to whites. Racial minorities are more likely to be arrested than whites, and once arrested, are more likely to be convicted of a crime.⁴¹ Once convicted, people of color are also more likely to be sentenced to prison than white people with comparable criminal histories, among other relevant factors.⁴² Prison sentences for non-white people are also, on average, longer than those of whites for the same criminal convictions.⁴³

LEGAL FINANCIAL OBLIGATIONS AND DISENFRANCHISEMENT

In 30 states, legal financial obligations, or fines and fees owed to the courts, are another obstacle to regaining the right to vote after exiting prison. This

results in the indefinite, and sometimes permanent, loss of voting rights for an estimated 1.5 million African Americans,⁵⁸ although it is difficult to determine the accuracy of this estimate or how many total ex-offenders are barred due to outstanding LFO debt.

LFOs can include court fines and fees; restitution ordered by the court upon sentencing; debt incurred for the cost of incarceration; monthly probation fees for the cost of supervision and any various other financial penalties.⁵⁹ While some of these fines and fees are directly related to the initial charge, some are additional fees used as revenue for unrelated court budget items.⁶⁰ This debt is then compounded by “poverty penalties” such as late fees, exorbitant interest rates and other financial penalties that are only applied to those unable to pay in a timely manner.⁶¹

Racial disparities in conviction and sentencing across race are directly relevant to disenfranchisement on the basis of legal financial obligations; longer prison sentences typically result in a greater accumulation of LFO debt owed upon release, due to supervision fees paid by inmates to cover the cost of incarceration.⁶² Additionally, because people of color are more likely to be arrested and charged with both high- and low-level crimes, they are also more likely to accrue LFO debt in the form of fines and fees associated with a crime. High poverty rates in communities of color also make it more likely that there will be additional interest, late-

payment charges, and other poverty penalties assessed on these LFOs that further increase their financial burden.

Unfortunately, barriers to employment for people with conviction records can make it difficult to obtain employment of any kind, let alone that which pays a living wage that would allow someone to also pay off their legal financial obligations.⁶³ When re-enfranchisement is contingent upon payment of LFOs, employment barriers become yet another obstacle to regaining the right to vote.



VOTER ID LAWS

Official state identification is typically needed to obtain employment, housing, and public benefits. Unfortunately, many people are released from prison without official state identification, making it nearly impossible to reintegrate into society.⁴⁴ In

addition, though, in 36 states⁴⁵ Voter ID laws restrict many former prisoners from voting, even if their voting rights were automatically restored upon release.

While prisoners are typically released with Department of Corrections (DOC) documentation or identification,⁴⁶ few states require DMV offices to exchange DOC-issued identification for official state ID.⁴⁷ And, while some states offer free forms of identification,⁴⁸ these programs don't address the costs to obtain necessary documents.⁴⁹

This can become a barrier for formerly incarcerated people, who are less likely to have necessary supporting documents, like a birth certificate.⁵⁰ A report by Harvard Law School estimates expenses associated with obtaining a “free” photo ID—including obtaining documentation, travel, and waiting time—as ranging from \$75 to \$175.⁵¹

Geographically isolated ID locations and limited hours of operation can also make it impossible to obtain official identification. In the ten states with the most restrictive voter ID laws, nearly 500,000 eligible voters face significant barriers reaching the nearest state ID-issuing office open more than two days a week.⁵² For example, in Alabama, some offices are open only once a month, with significant commutes to the next closest office⁵³ And, in Wisconsin, only one-third of offices issuing IDs are open full-time, and only one office in the state is open on Saturdays,⁵⁴ make obtaining identification a significant barrier.

However, some states have recognized the importance of obtaining official identification upon release from prison, and have instituted programs to ensure access to proper forms of ID. In 2015, Florida passed a law requiring that all Florida-born prisoners receive a copy of their birth certificate and valid driver's license or official state ID upon release.⁵⁵ Similarly, California now has the CAL-ID program, which provides eligible inmates with a state-issued ID card upon release.⁵⁶ However, to be eligible one must have been issued a driver's license or state ID within the last ten years and provide a physical address⁵⁷—significant barriers for many who have been incarcerated.



FINDINGS

Forty-eight states and the District of Columbia place varying levels of voting restrictions on people with criminal convictions, resulting in a patchwork of disenfranchisement laws that prevent an estimated 5.85 million otherwise eligible citizens from exercising their vote.⁶⁴ Only two states – Maine and Vermont – do not restrict the voting rights among people with felony convictions, even while serving prison time.⁶⁵

Thirteen states and the District of Columbia automatically restore voting rights following release from prison,⁶⁶ others require completion of probation and/or parole, and three states—Florida, Iowa and Kentucky^{67 68}—permanently disenfranchise all people with felony convictions. In these three states, only people granted a governor’s pardon or executive clemency by the President of the United States may regain their vote.⁶⁹ The remaining ten states permanently bar at least some people due to criminal convictions.

Despite most states having laws on paper that restore a person’s voting rights following conviction, most disenfranchised people never regain their right to vote.⁷⁰ According to a 2005 report by the Sentencing Project, across the 11 states with available data, less than 3 percent of people ever regained their right to vote.⁷¹ This is largely due to the myriad of restrictions, complex application processes and other barriers experienced by people seeking to regain voting rights.

CRIMINAL DISENFRANCHISEMENT AND LEGAL FINANCIAL OBLIGATIONS

This report identifies two primary forms of criminal disenfranchisement on the basis of unpaid fines, fees and restitution, identified within this report as direct and de facto. Direct disenfranchisement occurs in states with explicit financial and debt stipulations written into voter eligibility laws. De facto disenfranchisement on the basis of unpaid legal financial obligations occurs when state law does not explicitly require LFO repayment as a criterion for vote restoration, yet in practice, unpaid legal debt serves as a barrier to regaining the right to vote. This occurs through a variety of means, most often probation and/or parole extensions and revocations on the basis of unpaid LFOs.

Thirty states restrict voting rights on the basis of outstanding legal financial obligations through either explicit or de facto means. Nine of these states explicitly require payment of all fines, fees, restitution, and other court debt to be paid prior to regaining

the right to vote, while in 21 states unpaid LFOs are a de facto barrier to voting. Additionally, four of the states with direct LFO disenfranchisement also have mechanisms that allow unpaid LFOs to extend probation or revoke parole.

All of these laws mean that those who have the means to pay off their court debts can vote and help shape the rules of their community and the country, while those who cannot afford to pay not only build up additional debt through interest and additional fees, but are barred from the voting process.

DIRECT LFO DISENFRANCHISEMENT

Of the 30 total states that restrict voting rights to people with unpaid criminal debts, there are nine states that explicitly list fines, fees, court debt, or

other LFOs in their criminal disenfranchisement laws. Voting rights restoration is contingent upon full payment of outstanding legal financial obligations in the following states: Alabama;¹⁰² Arizona;¹⁰³ Arkansas;¹⁰⁴ Connecticut;¹⁰⁵ Delaware;¹⁰⁶ Florida;¹⁰⁷ Georgia;¹⁰⁸ Iowa;¹⁰⁹ and Tennessee.¹¹⁰

Alabama

Alabama represents a particularly egregious example of explicit LFO disenfranchisement for two reasons: 1) many offenses result in permanent disenfranchisement; rights can only be restored through a governor's pardon¹¹¹ and 2) those eligible for civil rights restoration must complete a cumbersome application process.¹¹² In Alabama, rights may only be restored if a Certificate of Eligibility to Register to Vote (CERV) is granted.¹¹³ This application represents an

STATES WITH LFO DISENFRANCHISEMENT

STATE	DIRECT	DE FACTO	STATE	DIRECT	DE FACTO
Alabama ⁷²	X	X	Nebraska ⁸⁷		X
Alaska ⁷³		X	Nevada ⁸⁸		X
Arizona ⁷⁴	X	X	New Jersey ⁸⁹		X
Arkansas ⁷⁵	X		New Mexico ⁹⁰		X
Colorado ⁷⁶		X	North Carolina ⁹¹		X
Connecticut ⁷⁷	X		Oklahoma ⁹²		X
Delaware ⁷⁸	X		South Carolina ⁹³		X
Florida ⁷⁹	X		South Dakota ⁹⁴		X
Georgia ⁸⁰	X		Tennessee ⁹⁵	X	X
Idaho ⁸¹		X	Texas ⁹⁶		X
Iowa ⁸²	X	X	Virginia ⁹⁷		X
Kansas ⁸³		X	Washington ⁹⁸		X
Louisiana ⁸⁴		X	West Virginia ⁹⁹		X
Minnesota ⁸⁵		X	Wisconsin ¹⁰⁰		X
Missouri ⁸⁶		X	Wyoming ¹⁰¹		X

additional barrier to regaining voting rights, and is only available to those who have completed the terms of their sentence, including probation.

Furthermore, one of the eligibility requirements outlined by the Alabama Criminal Code is that, “the person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court.”¹¹⁴ In 2008, the ACLU challenged Alabama’s felony disenfranchisement laws, arguing that the LFO stipulation discriminates on the basis of wealth,¹¹⁵ however the LFO requirement remains in place.¹¹⁶

Tennessee

Some states, like Tennessee, have changed felony disenfranchisement laws throughout the years. In Tennessee, the result is what the Brennan Center for Justice has called “perhaps the most irrational and confusing felony disenfranchisement laws in the nation.”¹¹⁷ Examples of the confusing patchwork of laws in that state include some of the following:

- » People convicted of a felony prior to July 1, 1986, are potentially eligible to regain voting rights, but must successfully petition a court, to which prosecutors may object.¹¹⁸
- » People convicted after June 30, 1996 may also petition a court, however those convicted of rape, murder, treason or voter fraud are permanently disenfranchised.¹¹⁹
- » For people convicted between these periods, some are subject to the same court petition, while others may seek an alternative administrative rights restoration process and do not have to do so through court hearings.¹²⁰

Tennessee not only practices explicit disenfranchisement on the basis of inability to pay legal financial obligations,¹²¹ but is also the only state that requires individuals to be current with child support payments in order to be eligible for restoration of voting rights, which adds yet another barrier to voting for parents with conviction records.¹²²

Connecticut

While the majority of southern states practice either direct or indirect LFO disenfranchisement, direct LFO disenfranchisement is not limited to southern states.

In Connecticut, the electoral privileges of people convicted of a felony offense are “restored upon the payment of all fines in conjunction with the conviction and once such person has been discharged from confinement, and, if applicable, parole.”¹²³

Although Connecticut began allowing people on felony probation to vote in 2001, compared to many other northern states Connecticut’s felony disenfranchisement laws are very restrictive. Once a person has completed the terms of their sentence and seeks to have their voting rights restored, they must then contact the local Registrar of Voters and present documentation of their final discharge from the sentencing court or Commissioner of Corrections, as well as proof of payment in full.¹²⁴ This can present an additional barrier for people seeking civil rights restoration.

DE FACTO LFO DISENFRANCHISEMENT

Twenty-one states disenfranchise those with felony conviction records on the basis of unpaid legal financial obligations, despite having no explicit financial stipulations written into state law. De facto LFO disenfranchisement primarily occurs in states that require probation and/or parole be completed prior to vote restoration. In many of these states, probation can be extended or even revoked on the basis of unpaid legal financial obligations. In addition to these 21 states, four states that practice explicit LFO disenfranchisement also extend probation or revoke parole on the basis on unpaid LFOs.

South Carolina

South Carolina represents a particularly egregious example of LFO disenfranchisement, because inability

to pay debts and monthly probation fees can literally result in lifelong loss of voting rights. This is despite South Carolina having no explicit laws mandating LFO repayment prior to vote restoration.

People in South Carolina must complete probation in order to regain voting rights, per state law,¹²⁵ which can be extended by up to five years on the basis of outstanding court fines, fees and restitution.¹²⁶ However, offenders who have already reached the five-year maximum probation extension, but still have outstanding LFOs, are then placed on “administrative monitoring.”¹²⁷ Administrative monitoring is exclusively applied to probationers who have satisfied all but the financial terms of probation.¹²⁸ Although this involves a lower level of supervision than traditional probation, a person is placed on this status indefinitely until outstanding debts are paid. This also means an indefinite, or even permanent, loss of voting rights for those too poor to satisfy their outstanding legal debt.

Kansas

People with felony convictions in Kansas cannot register to vote until completion of incarceration, parole and/or probation. Felony disenfranchisement laws have actually become increasingly harsh in this state. People on probation were once eligible to vote; however, in 2002 the Kansas legislature excluded felony probationers from voting as well.¹²⁹

Although Kansas does not explicitly require that fines, fees, and restitution be paid prior to civil rights restoration, completion of probation and/or parole is required. Kansas state law provides that LFO payments are a condition of probation and parole, and left unpaid can result in an extension of probation or revocation of parole.¹³⁰ In addition to its felony disenfranchisement laws, Kansas also has strict voter ID laws¹³¹ and state law allows anyone who is incarcerated—not excluding those with misdemeanor convictions—to be prevented from voting,¹³² both of which have a disparate impact on low-income people of color.

Colorado

Colorado also disenfranchises people who are on probation and can revoke probation for failure to pay monthly supervision and any other court-imposed costs. State law provides that, “the court may lower the costs of supervision of probation to an amount the defendant will be able to pay.”¹³³ However, the statutory \$50 monthly supervision fee in Colorado may not be waived.¹³⁴ In 2014, the Colorado Judicial Branch collected over \$14,600,000 just from this fee alone.¹³⁵

In addition, private probation companies also generate revenue from these monthly fees. Over 16 percent of Colorado probationers are under the supervision of private probation companies contracted by the Colorado Judiciary.¹³⁶ Per state law, these probationers must pay the \$50 fee directly to the private agency for the entire probation term, as opposed to the sentencing court.¹³⁷ Failure to pay this fee or “any fines or fees imposed by the court” may result in a probation violation or revocation,¹³⁸ which can result in a longer probation sentence, jail or prison,¹³⁹ and ultimately prevent otherwise eligible people with felony convictions from regaining the right to vote. According to estimates by The Institute for Southern Studies, if Colorado—as well as Florida, Georgia and Kansas—repealed their felony disenfranchisement laws, voting rights would be restored to enough people to sway tight gubernatorial elections.¹⁴⁰

CHALLENGING LFO DISENFRANCHISEMENT

LFO disenfranchisement laws not only fail to recognize the role of voting in helping former prisoners reintegrate into society and become participating community members, but give those with the means to pay off their debts a faster path to the ballot box than those who cannot afford to pay. Many have argued that state laws that condition voting rights restoration on the payment of legal financial obligations are a form of wealth-based discrimination in violation of the 14th Amendment’s Equal Protection Clause, as well as

the 24th Amendment to the U.S. Constitution, which prohibits Congress and states from denying voting rights based on one's "failure to pay any poll tax or other tax."¹⁴¹ Additionally, LFO disenfranchisement laws have also been challenged as being racially biased.¹⁴² However, these challenges¹⁴³ have been largely unsuccessful.

In the 2003 *Johnson v. Governor of the State of Florida* ruling, the court rejected the claim that LFO stipulations violated the constitution and declined to address whether conditioning a clemency application on the payment of LFOs constitutes an invalid poll tax.¹⁴⁴ In *Johnson v. Bredeisen*, the ACLU challenged Tennessee's statutory provision that requires full payment of outstanding legal debt and child support obligations prior to vote restoration,¹⁴⁵ arguing that is equivalent to a "poll tax or other tax" and in violation of the 24th Amendment. However, the claim was dismissed and later confirmed by the Sixth Circuit Court of Appeals, which concluded that it was rational for Tennessee to require completion of a person's full sentence, which includes any financial obligations, before restoring voting rights.¹⁴⁶

In the past few years, though, some states have repealed elements of their voter disenfranchisement laws, including requirements that all court debts be paid prior to re-enfranchisement.

Virginia

Virginia, which has historically had some of the strictest felony disenfranchisement laws in the United States, removed legal financial stipulations in 2015 after campaigns by Virginia Organizing and other organizing groups,¹⁴⁷ stating that "outstanding court costs and fees will no longer prohibit an individual from having his or her rights restored."¹⁴⁸ However, because completing probation is still required—and completion is contingent on paying for the cost of that probation¹⁴⁹—and Virginia's Constitution still bars all felons from voting unless their rights are restored by the governor, those with felony convictions still have

significant barriers to regaining the right to vote.¹⁵⁰

Gov. Terry McAuliffe currently automatically restores voting rights to all people with non-violent felony convictions; however, those with violent felonies¹⁵¹ must apply on an individual basis and are only eligible following a three-year waiting period.¹⁵² So, while the state has removed the barrier of paying legal financial obligations, there exist other significant barriers to regaining the right to vote.

Washington

In Washington state, the 2007 suit *Madison v. Washington* argued that the financial stipulations of the state's disenfranchisement laws were unconstitutional and effectively result in permanent disenfranchisement of those otherwise unable to pay.¹⁵³ In 2009, campaigns by Washington Community Action Network¹⁵⁴ and other organizing groups led the state legislature to restore the voting rights of former felons with outstanding legal financial obligations.¹⁵⁵

However, Washington state law also provides that individuals who miss three or more LFO payments in a twelve-month period may have voting rights re-revoked.¹⁵⁶ So, while LFO repayment is no longer an explicit requirement of restoring voting rights or of completing probation or parole, non-payment can still serve as a barrier to retaining the right to vote.

Maryland

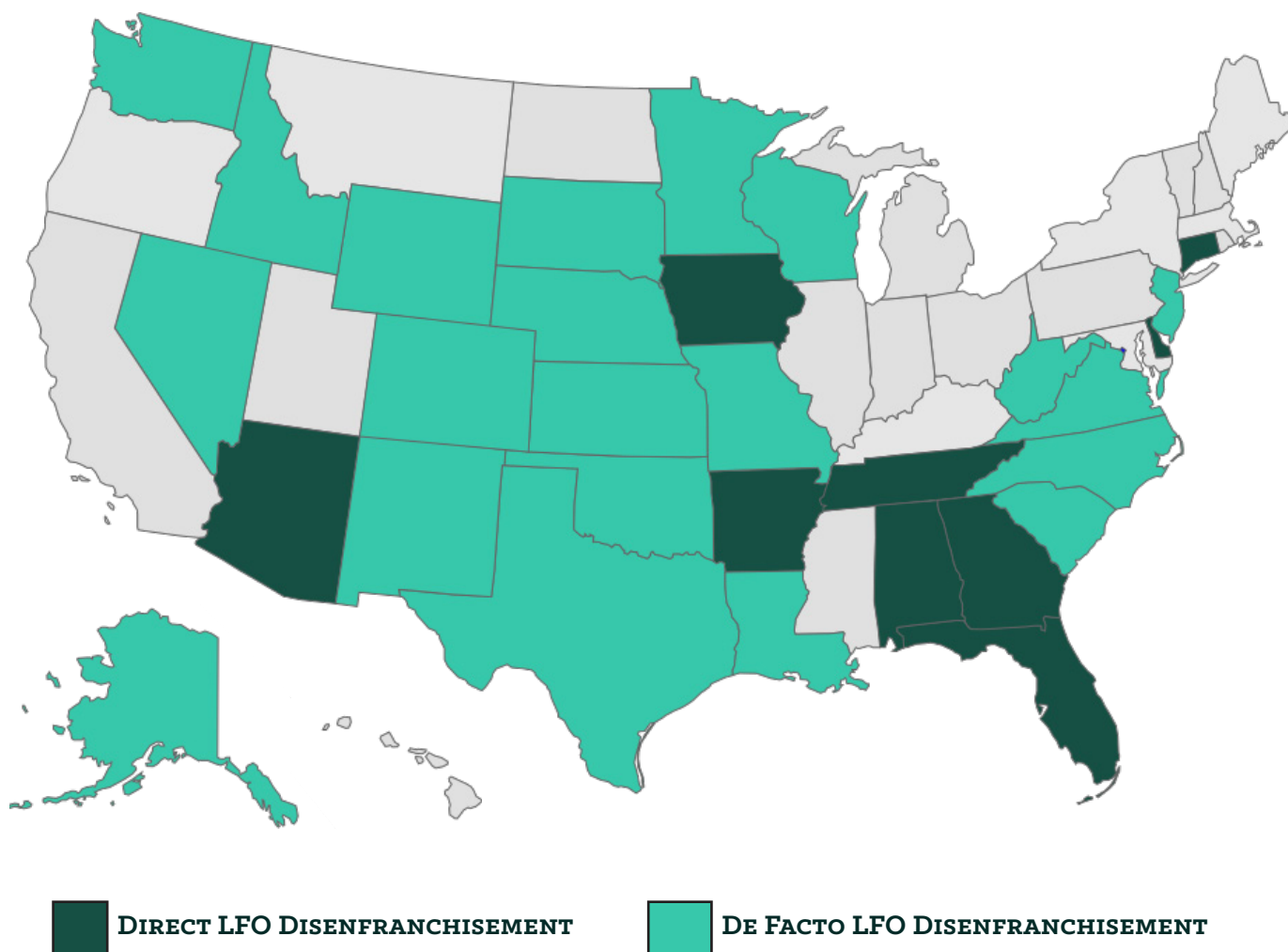
Until 2007, Maryland permanently disenfranchised all people with felony convictions; in that year, community campaigns led then-governor Martin O'Malley to sign historic legislation ending lifetime disenfranchisement.¹⁵⁷ However, to restoration of voting rights was still contingent upon completing all terms of a sentence, including probation and parole—which required payment of all legal financial obligations.

In 2015, The Unlock the Vote coalition, including state and national organizations, worked to once again

change the state's disenfranchisement laws so that voting rights restoration would become automatic upon release from prison and not contingent on additional requirements such as completion of parole. In April 2015, "the General Assembly overwhelmingly passed SB 340/HB 980, which received some bipartisan support, to restore voting rights" to those with conviction records.¹⁵⁸ However, in May 2015 Gov. Larry Hogan vetoed the bill.

In February 2016, though, the state's legislature overrode the governor's veto, "restoring voting rights to 40,000 Marylanders living, working and raising families in their communities who are in the process of completing their terms of probation or parole."¹⁵⁹ Effective March 10, 2016, voting rights for an estimated 40,000 Marylanders will be restored, and moving forward voting rights will be automatically restored immediately upon release from prison.

STATES WITH LFO DISENFRANCHISEMENT



RECOMMENDATIONS



Ending criminal disenfranchisement completely would be the best way to avoid the abuses and bureaucracies that limit voting rights for those with court debt. Allowing those with felony and/or misdemeanor convictions to vote during and after imprisonment, as is already the case in Maine and Vermont, would ensure that this barrier does not provide a greater burden on some people than on others, and that all have an equal ability to participate in their communities.

Until such repeal of all disenfranchisement laws is possible, repeal of requirements that LFOs be paid to regain or retain the right to vote (either directly or de facto) can help eliminate the two-tiered system where those with the means to pay are given back their right to vote before those whose poverty puts payment out of reach, as was recently done in Maryland.

In the absence of such repeal of criminal disenfranchisement laws or those requiring LFO repayment to regain the right to vote, the following tools can help prevent poverty from becoming a barrier to voting and can help alleviate the related disparate impact such laws have on communities of color.

Limit interest rates and fees attached to unpaid LFOs.

Additional fees and high interest rates on unpaid LFOs—and those often required for setting up payment plans—can stretch payment out years longer than might otherwise be required,¹⁶⁰ putting the right to vote even further out of reach.

Establish clear criteria for determining ability to pay LFOs, and include ability to pay when determining voting eligibility.

Such clear criteria can eliminate the personal bias that is rampant in determining the eligibility to pay LFOs in contexts outside of criteria for voting,¹⁶¹ and its use in voting eligibility determinations would ensure that an inability to pay does not equate to a lifetime ban from voting.

Restrict courts' abilities to send unpaid LFOs to outside collection agencies.

In many states, unpaid debt is sent to private collection agencies that charge high fees and use abusive tactics to collect debt. Not only can this be emotionally trying for those who have recently been released from prison, but it can perpetuate a cycle of poverty and crime when those with conviction records and LFOs either see their debt balloon from sky-high interest rates or turn to other crimes in an attempt to pay off the debts to stop the collection agencies' bullying tactics.

Ensure that those with misdemeanor convictions have the right and ability to vote while imprisoned.

While most states do allow those with misdemeanor convictions to vote, states like Illinois disenfranchise anyone who is imprisoned. Additionally, even in some states where those with misdemeanors can vote while in prison, systems are not in place to facilitate voting while incarcerated. Both ensuring the vote and facilitating in-prison voting for those with misdemeanors will give a voice to those who have committed more minor crimes.

Ensure that voter ID laws include the ability to use a prison-issued ID to vote or that systems are in place to provide suitable ID upon release.

While Voter ID laws have been appealed for reasons beyond the scope of this report, those that prohibit use of identification easily obtained from a prison during or immediately upon release create an additional barrier to voting for those with conviction records. Eliminating such ID requirements or providing adequate identification upon release would remove this barrier.

Automatically register people with conviction records who become eligible to vote.

The patchwork of laws across the country as well as the complexity of laws and processes within many states can make it unclear when or whether a person with a conviction record is eligible to vote. Automatic voter registration could encourage voting as well as remove the burden of determining eligibility from the person seeking the right to vote and leave it with the agencies and courts charged with determining that eligibility.

In addition to these tools, the U.S. Department of Justice should conduct a thorough investigation of state disenfranchisement laws.

This will ensure that they do not violate existing federal voting rights law, providing additional oversight to the complicated patchwork of laws across the country. In particular, the Justice Department should review the practice of barring people from regaining voting rights based on ability to pay.

CONCLUSION



In the United States, while money can influence elections, a person's poverty should not explicitly bar them from voting. However, for those with conviction records, poverty and inability to pay legal financial obligations is a barrier to regaining the right to vote in states across the country. This modern-day poll tax not only has a disparate impact on those who are low-income, but on people of color who are more likely to end up in prison and more likely to be poor.

To truly ensure that all of those with conviction records have a voice in the political process, the patchwork of criminal disenfranchisement laws across the country would need to be repealed. Barring that, eliminating the requirement that legal financial obligations be paid and/or including determinations of ability to pay; automatically registering those with conviction records who become eligible to vote; and pursuing a federal investigation of state disenfranchisement laws to ensure that they do not violate existing voting laws would help prevent poverty from being a barrier to the right to vote.

TECHNICAL NOTES

DIRECT LFO DISENFRANCHISEMENT

Analysis of all 50 states and the District of Columbia was based on legislative statutes and/or the constitution of each individual state. States listed in this report as having explicit LFO disenfranchisement laws are categorized as such only if the state's legislative statutes, constitution, or other documents from state government agencies expressly condition civil rights restoration upon financial stipulations, namely full payment of fines, fees and restitution.

DE FACTO LFO DISENFRANCHISEMENT

States classified as having de facto LFO disenfranchisement laws do not have explicit laws that condition civil rights restoration on the payment of fines, fees, restoration, or other financial penalties, but require other processes like parole or probation to be

completed, which are in turn contingent upon payment of fines, fees, restoration, or other financial penalties.

The authors examined state legislative statutes mandating probation and parole. States that listed financial payments as a sentencing condition, for which probation and/or parole could be revoked for failure to comply, were then classified as “de facto” LFO states.

MISDEMEANOR DISENFRANCHISEMENT

While no states were found that explicitly disenfranchise all of those with misdemeanor convictions, eight states do not explicitly distinguish felony from misdemeanor convictions as cause for disenfranchisement.

Additionally, two of those states listed—Iowa and Kentucky—specifically bar people with certain misdemeanor convictions from voting for life. These

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