

Memorandum

To: Chairman Randy Robertson & Members of the Senate Study Committee on Revising Voting Rights for Nonviolent Felons

From: Marissa Dodson, Public Policy Director, Southern Center for Human Rights

RE: Felony Disenfranchisement in Georgia and Proposals for Recommendation to the Members of General Assembly

Date: 20 Sept 2019

Since 1976, The Southern Center for Human Rights has worked to promote equality, justice and dignity in the criminal legal systems in the Southern United States. Through community partnerships, litigation and public policy advocacy, we aim to end the criminalization of poverty, eliminate harsh sentencing, abolish the death penalty and address any other practices in the criminal legal system being used to disproportionately control the lives of marginalized communities. In our work, we are committed to bringing attention to the remnants of chattel slavery and racism that continue to exist in criminal legal systems in the South, and working with elected officials and other stakeholders to achieve meaningful and equitable reforms that fosters the health and safety of impacted communities.

The issue of criminal disenfranchisement in Georgia is of utmost importance to our work because of the systematic and disparate exclusion of Black people and those of little financial wealth from being able to vote. Today, an estimated 6.1 million Americans are denied the ability to cast a ballot because of a criminal conviction.¹ In Georgia, nearly a quarter million people are barred from voting in 2016 and approximately 58% of those disqualified were Black.² With about 3% of the voting population disqualified due to a felony conviction, Georgia has the 10th highest rate of felony disenfranchisement per capita in the country.³ Moreover, Georgia has removed more people from the voter list due to a felony conviction than any other state in the country during the past decade.⁴

Beyond those who are directly prohibited from voting by criminal disenfranchisement laws, studies show that overly complex, restrictive disenfranchisement laws such as exists in Georgia can result in eligible voters being turned away from the polls. Election officials often misinterpret and misrepresent disenfranchisement laws, leading people to believe that some voters who are in fact eligible are ineligible. This issue is especially prominent in Black communities in states with the most restrictive felony disenfranchisement laws.⁵

¹ The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Disenfranchisement, 2016* (2016), 15-16.

² The Sentencing Project, *6 Million Lost Voters*, 15.

³ *Id.*

⁴ Angela Caputo, "Southern States Remove the Highest Rates of Registered Voters for Felony Convictions," *APM Reports*, (November 2018): 1 Available at: <https://www.apmreports.org/story/2018/11/01/former-confederate-states-purge-felons-from-voting-lists>.

⁵ Erica Wood, *Restoring the Right to Vote* (The Brennan Center for Justice at New York University School of Law, 2009), 12.

Criminal Disenfranchisement in Georgia:

Punishing people convicted of certain crimes with voter disqualification has existed in the United States since early colonial law. At that time, however, the crimes that barred someone from voting were linked to the act of voting itself or to offenses considered serious violations of the moral code, such as bribery, perjury and forgery.⁶ Further, the disenfranchising laws articulated the purpose of the punishment and, in some cases, required a court order for implementation.⁷ The criminal disenfranchisement laws of old are in stark contrast to the laws today, which arose as part of a targeted effort to curb the expansion of suffrage to Black men in the Reconstruction-era South and apply broadly to all or most felony offenses.⁸

Slavery was formally abolished in 1865 with the ratification of the Thirteenth Amendment to the U.S. Constitution, followed by the Fourteenth Amendment in 1868 establishing protections to citizens and the Fifteenth Amendment in 1870 granting suffrage to Black men. In response to the significant political and economic changes during the Reconstruction Period, felony disenfranchisement, poll taxes and “Black Codes” were implemented, particularly in southern states, to cause the disproportionate rates of incarceration and disenfranchisement among Black Americans that is endemic in the United States today.⁹

Criminal Disenfranchisement in Georgia’s Constitution

- 1868 –Constitutional Convention established criminal disenfranchisement for the first time to deny the right to vote to people convicted of treason, embezzlement of public funds, malfeasance in office, bribery and crimes punishable by imprisonment in the penitentiary.¹⁰
- 1877 – Constitutional Convention expanded criminal disenfranchisement to include larceny and *any crime involving moral turpitude* punishable with imprisonment in penitentiary.¹¹ This was also the year the poll tax was established which allowed the collection of an annual fee in order to vote.¹²
- 1945 – Constitutional Convention revised criminal disenfranchisement to allow voting rights restoration upon the issuance of a pardon.¹³
- 1983 – Constitutional Convention modified criminal disenfranchisement to apply to people convicted of a felony involving moral turpitude until the sentence is complete.¹⁴

⁶ Ewald, Alec, 'Civil Death': The Ideological Paradox of Criminal Disenfranchisement Law in the United States (March 24, 2012). Wisconsin Law Review, pp. 2002:1045: 16-20. Available at SSRN: <https://ssrn.com/abstract=2028335>.

⁷ *Id.*

⁸ Kelley, *Racism and Felony Disenfranchisement*, 1.

⁹ *Id.*

¹⁰ Ga. Const. art. II, § 6 (1868).

¹¹ Ga. Const. art. II, § 2, para. I (1877).

¹² Ga. Const. art. VII para III (1877).

¹³ Ga. Const. art. II, § 2, para. I (amended 1945 and 1976).

¹⁴ Ga. Const. art. II, § 1, para. III (amended 1983).

The Problems With “Moral Turpitude”:

Beginning in 1877, and in what many believe was a response to the Fifteenth Amendment’s grant of suffrage to Black men, southern states like Georgia rewrote their constitutions to intentionally exclude Blacks voters.¹⁵ By 1906, every state in the South had implemented criminal disenfranchisement in some form.¹⁶ Georgia and Alabama did this by expanding criminal disenfranchisement to include people convicted of “crimes of moral turpitude.”

The phrase “moral turpitude” was first introduced into the United States’ legal system in the early nineteenth century and for men was characterized as oath-breaking and disloyalty (but not violence) and for women it meant sexual impurity.¹⁷ Moral turpitude was considered a standard of honor and was used by judges to identify conduct so harmful to one’s reputation that no evidence of proof of damages is required.¹⁸ The use of the phrase was designed to sort acceptable people from those who should be disqualified in order to maintain the social structure.¹⁹

While there is no direct evidence of racially discriminatory intent in the adoption of the term “moral turpitude” in Georgia’s Constitution, the same phrase is enshrined in Alabama’s Constitution and there is a historical record of racist motives in that neighboring state. In fact, in 1985 the United States Supreme Court struck down the provisions of Alabama’s criminal disenfranchisement laws based on “moral turpitude” because of the disproportionate impact on Black people and the evidence of racially discriminatory intent.²⁰ In 2017, in a long overdue response to the U.S. Supreme Court decision, Alabama lawmakers finally defined the term “moral turpitude” to apply to 46 felony offenses such as serious violent offenses and crimes against children.²¹

Given the historical context, it is likely that similar racist motives were behind the expansion of disenfranchisement in Georgia to crimes of moral turpitude shortly after the ratification of the Fifteenth Amendment. Georgia, however, has yet to define the offenses deemed to involve moral turpitude and thus disqualify people from voter eligibility. “Moral turpitude” has been defined in Georgia courts as “the idea of inherent baseness or vileness, shameful wickedness, depravity. . .done contrary to justice, honesty, modesty, or good morals.”²² The Georgia Attorney General in 1983, in response to a question about the restoration of civil rights for people convicted

¹⁵ Andrew L. Shapiro, Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy, 538 Yale L.J. (1993). Available at: <https://digitalcommons.law.yale.edu/yli/vol103/iss2/8>.

¹⁶ Caputo, “Southern States Remove the Highest Rates of Registered Voters for Felony Convictions,” (2018) *APM Reports*, 2.

¹⁷ Julia Simon-Kerr, “Moral Turpitude,” *Faculty Articles and Papers*, (2012): 1012-1013. Available at: https://opencommons.uconn.edu/law_papers/104.

¹⁸ *Id.*

¹⁹ Ewald, Alec, ‘Civil Death’: The Ideological Paradox of Criminal Disenfranchisement Law in the United States (March 24, 2012). Wisconsin Law Review, pp. 1045-1132, 1040. Available at SSRN: <https://ssrn.com/abstract=2028335>

²⁰ Hunter v. Underwood, 105 S.Ct. 1916. (1985). Evidence of the president of the Alabama Constitutional Convention that established criminal disenfranchisement based on crimes of moral turpitude, said that the purpose of the convention was to establish white supremacy within the limits imposed by the changes to Federal Constitution referring to the Thirteenth, Fourteenth and Fifteenth Amendments.

²¹ Ala. Code Section 17-3-30.1 (2017).

²² Holloway v. Holloway, 126 Ga. 459, 460 (1906).

of crimes, issued an opinion letter declaring that, due to the lack of definitional clarity, all felony offenses should be considered to involve moral turpitude.²³

Thus, even though the state's constitution explicitly limits criminal disenfranchisement to felonies involving moral turpitude, in practice people convicted of **all** felony offenses are disqualified from voting.

Debt Should Not Be A Barrier to Voting

As the criminal legal system has grown, it has become increasingly difficult to finance. One source of revenue that has become more popular is fees and fines, imposed on people charged with crimes. Today, the state of Georgia heavily relies on legal financial obligations when imposing criminal punishment.²⁴ These fees and fines are most often imposed on those who can least afford them. The litany of debts that attach to a felony sentence in Georgia is overwhelming and includes payments to: the Peace Officers' Annuity and Benefit Fund, the Superior Court Clerks' Retirement Fund; the Sheriffs' Retirement Fund; the County Jail Fund; the Drug Abuse Treatment and Education Fund, the Crime Victims Emergency Fund, the Brain and Spinal Injury Trust Fund, and the Driver Education and Training Fund. These fees are in addition to restitution and other debts.

When excessive fines and fees are imposed as part of a prison sentence, people are released, in many cases, with thousands of dollars in debt making it nearly impossible to successfully reintegrate into society. Further, most people involved in the criminal legal system live with extremely scarce financial resources, so obtaining stable employment is critical to the ability to pay fines and fees. Yet, having any type of criminal record reduces the chance for a job call back by 50%.²⁵ Worse, Georgia is considered one of the hardest places to find employment and housing with a criminal history.²⁶ In light of the difficulty with successful reentry in Georgia and the constitutional concerns with imposing financial barriers to the ability to vote, people who have otherwise completed the terms of their sentence should not be barred from voting because of outstanding criminal justice debt.

Certain fines related to a felony sentence in Georgia prohibit the restoration of voting rights until the debt is paid in full. In a 1984 opinion, the Georgia Attorney General explained that sentence completion for purposes of rights restoration requires the payment of fines that are specifically authorized by the law, but not those imposed because of a sentence that has been probated.²⁷ Of significant concern on this issue, however, is that there is a lack of clarity about which fines bar automatic restoration and which do not. People who have been convicted of a felony offense, service providers and even many poll workers lack clarity about which fines must be paid to restore voting rights and which do not.

²³ Ga. Op. Atty. Gen. No. 83-33 (1983).

²⁴ Sarah Shannon & Brittany Martin, Monetary Sanctions in Georgia, in *Monetary Sanctions in the Criminal Justice System*, (2017): 48-75.

²⁵ Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press (2007).

²⁶ H.J. Lane Dennard and Pat DiCarlo, *Collateral Consequences of Arrests and Convictions: Policy and Law in Georgia* (September 2008) Macon, GA: Mercer University School of Law.

²⁷ *Id.*

Many have compared this financial voting obstacle to the poll tax that was implemented in Georgia in 1877, which allowed the assessment of an annual financial obligation in order to vote. In what is regarded as yet another southern effort to suppress the Black vote after the Civil War, Georgia along with Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia, imposed a form of poll tax at the turn of the 19th century.²⁸ Georgia's poll tax was abolished in 1945, and later the United States Supreme Court held that poll taxes are unconstitutional as a violation of the Fourteenth Amendment.²⁹

Expanding Voting Rights Reduces Recidivism and Saves Taxpayer Dollars

Recent reforms to Georgia's criminal legal system were largely driven by the need to reduce recidivism and avoid unnecessary correctional costs. Research shows that when people released from correctional control are given inclusive opportunities to invest in their community, they are more likely to avoid further contact with the criminal legal system. Moreover, when people participate in the democratic process and exercise their right to vote, there are positive impacts on recidivism.³⁰ In fact, one study found that voting reduces the likelihood of re-arrest by half.³¹ Participating in civic engagement also increases political trust which has been proven to effect voter choices, political preferences and government efficiency.³²

Fiscal efficiency in the criminal legal system requires identifying ways to promote health and safety by providing opportunities for people to successfully reintegrate and contribute to community. These opportunities cannot be conditioned on financial resources but must instead focus on inclusion and finding ways to restore people, families and communities impacted by the criminal legal system.

Proposals to Clarify Criminal Disenfranchisement in Georgia:

- 1) ***Limit criminal disenfranchisement to a list of specific offenses*** –Georgia law should be clarified to define a list of disqualifying felony offenses to be considered felonies of moral turpitude.
- 2) ***Allow people convicted of a disqualifying offense to be able to vote upon sentence completion regardless of outstanding criminal justice debt*** – Clarify the law to ensure that voting rights restoration is not conditioned on a person's ability to pay any fines, fees or other criminal justice debt.

²⁸ Kelly Phillips Erb, "For Election Day, A History Of The Poll Tax In America," *Forbes* (Nov. 2018), 1. Available at: <https://www.forbes.com/sites/kellyphillipserb/2018/11/05/just-before-the-elections-a-history-of-the-poll-tax-in-america/#35ee41fe4e44>

²⁹ Harper v. Virginia Board of Elections, 383 U.S. 663 (1966)

³⁰ Guy Padraic Hamilton-Smith and Matt Vogel, "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism," *Berkeley La Raza Law Journal*. 22 La. Raza L.J. 2, 414 (2015).

³¹ Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence from a Community Sample, 36 Colum. Hum. Rts. L. Rev. 193, 205 (2004).

³² Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (2018) Available at: <https://rubenson.org/wp-content/uploads/2018/09/shineman-tpbw18.pdf>.