



## MEMORANDUM

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

From: Christopher Bruce, Esq., Political Director, ACLU of Georgia

Date: October 22, 2019

Re: Felony Disenfranchisement in Georgia and “Moral Turpitude”

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### ***Summary***

The ACLU of Georgia is dedicated to protecting the civil rights and liberties enshrined in the U.S. Constitution, the Bill of Rights, and the Georgia Constitution. It is the ACLU of Georgia’s position that no one should lose their sacred right to vote. Currently, a large number of Georgians have lost their right to vote due to the moral turpitude provision in the Georgia Constitution and the lack of clarity regarding the application of the provision. The Georgia Constitution states that “no person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.”<sup>1</sup> What’s currently lacking is a clear definition of moral turpitude and which crimes are violations of moral turpitude. Further lacking is a clear definition of “completion of the sentence.” This memo looks at the term “moral turpitude” and how it is applied to the voting rights of convicted felons in Georgia, and the way in which other Southern states have grappled with and addressed felony disenfranchisement. Lastly, this memo makes recommendations for how Georgia can fix this issue.

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<sup>1</sup> Georgia Const. art. II, § I.

## **I. Moral Turpitude in Georgia Voting Rights**

The moral turpitude provision to the Georgia Constitution was implemented during the Constitutional Convention of 1877, at the end of Reconstruction. It is a widely held belief amongst political and southern historians, and legal scholars that following Reconstruction, many white Southerners, who lost power at the end of the Civil War, were attempting to undo many of the changes implemented during Reconstruction. One of the biggest changes made during Reconstruction was the enfranchisement of Black men via the 15th Amendment. Illustrating the mindset and likely motivation of the writers of the 1877 Constitution, Robert Toombs, one of the document's lead drafters stated that the preceding constitution was "...the work of negroes, and thieves and was not designed for honest men."<sup>2</sup> Along with establishing the "moral turpitude" provision to the right to vote, this was the same year the poll tax and literacy test were implemented.<sup>3</sup>

## **II. Legality of Moral Turpitude in Voting Rights**

In 1974, The United States Supreme Court, in *Richardson v. Ramirez*, reversed a decision handed down by the California Supreme Court that disenfranchisement of former felons was unconstitutional. In its ruling, the Supreme Court found that disenfranchisement of former felons did not violate the guarantees granted by the Equal Protection Clause of the United States Constitution.<sup>4</sup> Despite this ruling, the Supreme Court has established that there are limits to the application of disenfranchising former felons and particularly the use of "moral turpitude" provisions to do it.

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<sup>2</sup> Brandon, W. (1933). CALLING THE GEORGIA CONSTITUTIONAL CONVENTION OF 1877. *The Georgia Historical Quarterly*, 17(3), 189-203. Retrieved from <http://www.jstor.org/stable/40576266>

<sup>3</sup> Gigantino, Jim. "Constitutional Convention of 1877." *New Georgia Encyclopedia*. 13 July 2018. Web. 16 October 2019.

<sup>4</sup> *Richardson v Ramirez*, 418 U.S. 24 (1974)

In 1985, the U.S. Supreme Court, in a unanimous decision, placed a limit on the disenfranchisement of former felons, based on the “moral turpitude” provision. In a case over Alabama’s use of “moral turpitude” to disenfranchise ex-offenders, the Court ruled that the Equal Protection Clause applies in specific instances. In writing the opinion of the Court, Justice Rehnquist stated that the implementation of the “moral turpitude” provision to the right to vote, “... was part of a movement that swept the post-Reconstruction South to disenfranchise blacks.” The Court’s opinion further stated that disenfranchisement provisions that result in “purposeful racial discrimination” are unconstitutional.<sup>5</sup>

The Supreme Court has never ruled on the validity of Georgia’s use of “moral turpitude” to disenfranchise voters, but the impact and intent behind Georgia’s use of the term is very similar to that of the State of Alabama.

### **III. Felony Disenfranchisement in Georgia**

Due, in large part, to the lack of clarity and the catchall application of “moral turpitude” in Georgia voting rights, an estimated 248,751 Georgians were prevented from voting in 2016.<sup>6</sup> Of that number, 58 percent of those disenfranchised were Black, despite only making up 32 percent of the state population.<sup>7</sup> Looking at 2018, the number of disenfranchised Georgians increased to an estimated 264,000.<sup>8</sup> Further looking at disenfranchisement over a longer period of time, the increasing trend, especially amongst Black Georgians, continues. In 1980, 2.1 percent of Black people in Georgia were

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<sup>5</sup> *Hunter v. Underwood*, 471 U.S. 222 (1985)

<sup>6</sup> The Sentencing project. *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, 2016. October 2016. Retrieved from: <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

<sup>7</sup> The Sentencing project. *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, 2016. October 2016. Retrieved from: <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

<sup>8</sup> Reform Georgia, Fact Sheet on Felony Disenfranchisement in Georgia.

disenfranchised, less than forty years later, that number jumped to 6.3 percent in 2016.<sup>9</sup> Georgia also has the largest correctional supervision population in the country at over 404,000 people.<sup>10</sup>

#### **IV. Restoration of Voting Rights in Other Southern States: Alabama, Louisiana, and Florida**

##### **A. Alabama**

Georgia is not the only Southern state to grapple with large disenfranchisement rates or the disproportionate disenfranchisement of Black Americans. Alabama has a very similar issue as they use the term “moral turpitude” to disenfranchise ex-offenders . Alabama has recently taken steps to rectify this rampant problem. In 2017, the Alabama State Legislature passed the “Felony Voter Disqualification Act.”<sup>11</sup> The Republican led State Senate voted 29-0 in favor of the measure.<sup>12</sup> The Republican led State House voted 102-0 in favor of the bill.<sup>13</sup> The bill codifies a list of 46 felonies, ranging from murder to forgery, that involve “moral turpitude” and result in the loss of the right to vote.<sup>14</sup>

##### **B. Louisiana**

Louisiana also passed legislation to restore voting rights to previously disenfranchised ex-offenders. In 2018, Louisiana passed House Bill 265 to restore voting

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<sup>9</sup> The Sentencing project. 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016. October 2016. Retrieved from: <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

<sup>10</sup> Prison Policy Institute, Georgia Profile, 2018. Retrieved from: <https://www.prisonpolicy.org/profiles/GA.html>

<sup>11</sup> HB 282, Act 2017-378, 5/18/17

<sup>12</sup> HB 282, [Vote #1254](#), 5/17/19

<sup>13</sup> HB 282, [Vote #191](#), 3/09/17

<sup>14</sup> HB 282, Act 2017-378, 5/18/17

rights to some who had been convicted of felonies. Louisiana restored rights to “... a person who is under an order of imprisonment for conviction of a felony and who has not been incarcerated pursuant to the order within the last five years shall not be ineligible to register or vote based on the order if the person submits documentation to the registrar of voters from the appropriate correction official showing that the person has not been incarcerated pursuant to the order within the last five years.”<sup>15</sup> The measure passed the Republican led Louisiana State Senate 24-13.<sup>16</sup> It passed the Republican led State House 55-42.<sup>17</sup>

### **C. Florida**

Lastly, our neighbor to the South, Florida, passed a Constitutional Amendment that “restores the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole or probation. The amendment would not apply to those convicted of murder or sexual offenses, who would continue to be permanently barred from voting unless the Governor and Cabinet vote to restore their voting rights on a case by case basis.”<sup>18</sup> The Constitutional Amendment passed with 64.5 percent of the vote.<sup>19</sup>

## **V. Recommendations To Provide Clarity For Felony Disenfranchisement in Georgia**

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<sup>15</sup> HB 265, Act 636, 5/31/18

<sup>16</sup> HB 265, [Vote #1226](#), 5/16/18

<sup>17</sup> HB 268, [Vote #1319](#), 5/17/18

<sup>18</sup> Florida Association of Counties, “Amendment 4: Voting Rights Restoration For Felons Initiative”, October 17 2019. Retrieved from: <https://www.fl-counties.com/amendment-4>

<sup>19</sup> Florida Secretary of State, 2018 General Election Results, retrieved from: <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=>

Georgia is an outlier amongst some of our Southern neighbors when it comes to felony disenfranchisement. Unlike Alabama, Louisiana, and Florida, Georgia has yet to remedy the rampant disenfranchisement of Georgians nor has the State worked to address the obvious racial disparities in felony disenfranchisement. Georgia can be a regional and a national leader on this issue if the State works diligently and in good faith with the community and stakeholders to rectify this issue. Although it is the ACLU of Georgia's position that no one should lose their right to vote, our recommendations to the Study Committee are as follows:

- 1) Create and make publicly available a list of specific felony offenses that involve "moral turpitude" and therefore will result in the loss of the right to vote until completion of the criminal sentence.
- 2) Automatically restore the right to vote for citizens convicted of the listed felonies, once they have been freed from incarceration, regardless of any outstanding term of probation or parole.