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Legal Bibliography Pathfinder
Topic: Felon Disenfranchisement

Summary

The intended audience for this pathfinder would be those interested in or engaged in interested and/or engaged in civil rights activism and research, working toward changing current laws, state by state, so that more individuals who are incarcerated or are ex-felons have the right to vote. Another possible group interested in this topic would be those lobbying for and organizing state election efforts and reform, who recognize the impact that millions of non-voting Americans can have on the election process, as well as the statistics revealing how many felons *have* been voting when they should not have, among other elections flaws. Even non-profit agencies like the Pew Center on the States, part of the Pew Charitable Trusts, which will take an unbiased perspective, as opposed to the lobbyists and activists, on this topic.

Resources included in this pathfinder: state constitutional provisions and differences in felon disenfranchisement rules (such as the XIV Amendment); powerful federal statutes which provide the basis for the constitutionality of state laws and federal and state regulations affecting elections regulations; important recent cases related to felon disenfranchisement (such as that between the DNC and the RNC in 2009); law review articles, legal periodical articles, working papers, newspaper and interdisciplinary articles; *ALR* annotations, encyclopedia articles, books and looseleaf services; Internet

resources; and organizations or lobby groups with an interest.

Key resources here, specifically constitutional, statutory, and recent articles, are intended to provide a foundation for research into felon disenfranchisement as well as a picture of the historical and current perspectives. Keywords and concepts include “felon disenfranchisement” as well as “criminal disenfranchisement”, voting privileges/the right to vote, electoral rights and election fraud, equal protection and the restoration of rights.

Discussion

Early disenfranchisement laws in the United States were often based on “moral” crimes, such as drunkenness or fornication, and very few individuals suffered disenfranchisement due to criminal convictions. It was not until after the Civil War, and the passage of the XIV and XV amendments to the U. S. Constitution (those providing citizenship rights and declaring that race was not to be a preclusion to voting privileges, respectively), that states began including provisions for criminal disenfranchisement. All but 7 of the 36 states currently part of the United States created or allowed for the establishment of regulations prohibiting those convicted of felonies from voting. In this way, it was established that the right of felons to vote is *not* fundamental. This allowed for the punishment not only of criminal offenders of more common felonies, but also of military deserters.

The XIV Amendment includes, among several clauses, an Equal Protection Clause, which created a requirement that *states* provide equal protection of the laws for all the people under its jurisdiction. The establishment of Black Codes in ex-confederate states, which followed the end of the Civil War, often created harsher criminal penalties for blacks than for whites, as well as grossly limited the rights of blacks to own property.

The establishment of the XIV Amendment (1968) committed the United States to the protection of all its citizens, under the reaffirmed belief that all men are equal in the eyes of the law, and that states should adhere to this *national* belief. Two years later, in 1870, the XV Amendment prohibited all levels of the United States government, federal and state, from refusing the right to vote to an individual based on their race, color, or prior slave status.

The Equal Protection Clause of the XIV Amendment prevents states from making distinctions between individuals that (1) burden a fundamental right; (2) target a suspect class; or (3) intentionally treat one individual differently from others similarly situated with any rational basis. In more recent years, victim restitution and child support payments have become factors in felon disenfranchisement with relation to this clause., particularly the distinction between serving one's sentence and repaying one's debt to society. It is permissible to curtail felon *re*-enfranchisement based on outstanding financial obligations such as those noted above, but only when as state has provided such factors as *conditions* for the re-establishment of voting rights.

Additional state constitutional requirements for voting also work toward the effective disenfranchisement of felons and other individuals, and should be noted. These regulations include in-person voter registration requirements and conditional denial of absentee ballots. Such regulations may not disenfranchise a felon for life, but it will prohibit them from voting during the course of their incarceration, once convicted. Interesting state constitutional provisions for felon disenfranchisement and re-enfranchisement highlighted within this pathfinder are those of Mississippi, Alabama, and Vermont. The *United States Code Annotated* provides strong entries from the federal

government perspective on this issue and the pertinent amendments.

In recent years, there has been some activity on the topic of felon disenfranchisement, in terms of law-related articles, Internet presence, rules/regulations, and court cases. At the Federal level, 1994 saw a few proposed rules to the Federal Election Commission with regard to the Voter Registration Act; and 2007 the Commonwealth of Pennsylvania examining its regulations against national trends for allowing those convicted of felonies, but who have completed their sentence and paid any outstanding financial debts associated with their case, to participate in juries. Then, the *Farrakhan v. Gregoire* case, beginning in 2006 and culminating in 2010, found the state of Washington in violation of the Voting Rights Act due to racial discrimination.

Overall, it is estimated that, in the 2000 election year, over four million Americans were unable to vote due to felon disenfranchisement; the number is estimated at nearly five million for the 2004 presidential election. With so many states, and so many Americans, engaged in at least biennial debates about who may vote and how and when they may do so, this issue still undergoes changes and shifts in rules and regulations, and experiences judicial debates under constitutional laws and amendments. Law blogs, law review articles, and advocate groups active on this topic help readers stay current on trends, arguments, and efforts to engage eligible voters in the United States.

Annotated List of Resources

I. Constitutional Provisions, Federal or State:

For these resources, I chose to use FindLaw.com's resources for Cases & Codes, which brought me to its list of Popular Federal Resources and its annotated *United States Constitution*.

1. U.S. Const. Amend. XIV, § 1: This amendment establishes that states may not create or enforce laws that impugn the rights of the citizens of the United States and/or the state in which they reside. Also establishes the individual's right to due process and equal protection of the law *prior* to any removal of liberty or property, or punishment of death.

2. U.S. Const. Amend. XV, § 1: This amendment declares that all citizens of the United States shall have the right to vote, regardless of "race, color, or previous condition of servitude." FindLaw's annotations ("Grandfather Clauses") on this section state that this amendment was an effort to condemn, through legislation, state-level enactments of laws to disenfranchise African Americans post-Civil War.

II. Statutes, Federal or State:

For these resources, I chose to use WestLaw's file: U. S. State Materials >>

Statutes Annotated – All States (ST-ANN-ALL) and searched: felon /5

disenfranchis! /s vot!

1. Ariz. Rev. Stat. Ann. § 13-912: This statute is under Arizona's Criminal Code (Title 13), Probation and Restoration of Civil Rights (Chapter 13), and specifically the section titled Restoration of civil rights for first offenders; exception. I chose this statute as it chooses a somewhat popular route for felon disenfranchisement and felon re-enfranchisement, in that first time felony convictions, depending on the nature of the crime, often do not carry with it the *permanent* disenfranchisement of the individual.

2. Conn. Gen. Stat. Ann. § 9-46: This statute is current through February

2010 in Connecticut's General Statutes Annotated, under Elections (Title 9), Electors: Qualifications and Admission (Chapter 143), and the section is Forfeiture of electoral rights. One feature of interest in this statute is the change of terminology (looking at the current language and the historical language) from the relinquishment of elector rights upon conviction of a felony to the conviction of a felony and subsequent commitment to the enumerated types of custody (correctional facility, etc.). Also, this statute includes a popular state provision regarding felony convictions and disenfranchisement – not only does a felony conviction preclude an individual from voting but it also refuses them the right to run for office.

3. N. H. Rev. Stat. § 654:5

This statute is current through 2010 and is under their Elections > Voters and Checklists > Eligibilities > Disqualification for Felony section. A simple provision, stating that persons convicted of a felony sacrifices their right to vote in elections, yet features a reference to N.H. Rev. Stat. § 607-A:2, which discusses rights lost under the chapter for the Uniform Act of Status of Convicted Persons and defines the particulars of the felony disenfranchisement for elections in N. H. Rev. Stat. § 654:5.

III. Administrative Regulations, Federal or State:

1. 59 FR 11211-01, 1994 WL 71720 (F.R.): This document was located through WestLaw's U.S. Federal Materials >> Administrative Rules & Regulations >> Federal Register 1981 – Current (FR) and searched: felon /2 disenfranchis! It's a proposed rule for the Federal Elections Commission National Voter

Registration Act of 1993. In terms of felon disenfranchisement, the section “*III. Proposed Items To Be Excluded From the Form*”, part “D. Specific Information Regarding Criminal Conviction or Mental Incapacity” is most important. As felony disenfranchisement provisions vary widely on a state-by-state basis and therefore should not be included on a national registration form.

2. 2007 PA REG TEXT 105914: A notice submitted for general public comment, this document was produced by the Interbranch Commission for Gender, Racial and Ethnic Fairness and was located in the U. S. State Materials file on WestLaw, under Administrative Materials >> Regulation Texts and Track – All States (ST-REG-NET. I searched "felon disenfranchisement" in that file. Mostly, the document discusses important trends regarding felon disenfranchisement throughout the United States, including the fact that many states have lifted their lifetime bans on felon jury privilege refusal. It seems the Pennsylvania laws, in 2007 at least, banned felons “for life in Pennsylvania but those convicted of misdemeanors of the first or second degree are banned, as well,” which the commissions feels is counter to national trends on the subject.

IV. Cases, Federal or State:

1. *Democratic Nat. Committee v. Republican Nat. Committee*, 671 F.Supp.2d 575, D.N.J. (2009): Decided on December 01, 2009, this case is important not only in the names of the plaintiff and defendant, the national committees of each primary political party in the United States, but also in its scope. The

discussion of election fraud, the prevalence of investigations into election fraud, and the grounds under which an investigation might be launched. These grounds range from multiple voting by an individual, voting attempts by non-citizens, and falsified information regarding one's status as a felon. Given the information in section III. Administrative Regulations, Federal or State above, regarding the refusal to make felon status part of the national voter registration form, it becomes clear that even states trying to manage felon status during elections is no easy task. [There is also one dissenting opinion included. In searching for this case, I was unable to remember or recreated the initial search I had done when I first noted the citation, and so searched "democratic nat. committee v. republican nat. committee" in U. S. Federal Materials >> All Federal Cases in WestLaw.]

2. *Farrakhan v. Gregoire*, 623 F.3d 990, C.A.9 (Wash., 2010): A case finally decided on October 07, 2010. On Jan. 5, 2010, a three judge panel of the 9th US Circuit Court of Appeals ruled 2-1 in *Farrakhan v. Gregoire* that Washington's felon disenfranchisement law violates Section 2 of the Voting Rights Act and that plaintiffs "demonstrated that the discriminatory impact of Washington's felon disenfranchisement is attributable to racial discrimination." Fascinating in that it is one of the only *recent* cases where a state's election provisions have been challenged and found discriminatory. To search for this case, I went into the U. S. Federal Materials file on WestLaw, chose All Federal Materials, and searched: "felon disenfranchisement" /s vot! & da(aft 12/31/2008), retrieving 8 results.

V. Law Review and Legal Periodical Articles:

For law review articles, I was able to use the law review article links presented in the 25 Am. Jur. 2d Elections § 173 entry (see the third annotation under IX. ALR Annotations and Legal Encyclopedia Articles, below). All these articles discuss currently relevant perspectives of felony disenfranchisement, though all are from 2004.

1. Bass, Are We Really over the Hill Yet? The Voting Rights Act at Forty Years: Actual and Constructive Disenfranchisement in the Wake of Election 2000 and *Bush v. Gore*, 54 DePaul L. Rev. 111 (2004):
This article is quite interesting when looked at alongside the case of the *DNC v. RNC* from Part IV of this pathfinder. Concerns regarding various kinds of disenfranchisement are noted here, including felon convictions, geographic locations with outdated equipment for voting, and economically depressed regions. Such factors are thought to have to do with racial disenfranchisement (underlining, again, the perceived relationship between disenfranchisement, criminal records, and race). Also, knowing the statistics on how many Americans are unable to participate in elections due to disenfranchisement, it is particularly interesting to investigate such a tumultuous election, and where Florida was such a contentious state in that election and also has very strict felon disenfranchisement laws.
2. Behrens, Voting—Not Quite a Fundamental Right? A Look at Legal and Legislative Challenges to Felon Disenfranchisement Laws, 89

Minn. L. Rev. 231 (2004): This article underlines the fact that felon disenfranchisement laws create the largest population of non-electoral Americans. Also discussed is the author's perception that current felon disenfranchisement laws need reforming and that the state provisions for felony disenfranchisement are a "refusal" by the states to provide these rights, not a (most often temporary) punishment for substantial crimes – rape, arson, grand theft, murder, to name a few.

3. Chin, Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?, 92 Geo. L.J. 259 (2004): This article is more a retrospective look at the establishment of the Fourteenth and Fifteenth Amendments and the effects they have had on each other, and on the subsequent years in America. In particular, whether the 14th Amendment authorized felon disenfranchisement, the effect felon disenfranchisement has on the current political landscape and recent elections, and if felon disenfranchisement is used to suppress or prevent the political power of African Americans to this day.

VII. Legal and General Newspaper Articles:

I was happy to find that, in searching the *New York Times* newspaper website, there is a "Times Topic" devoted specifically to "felony disenfranchisement." In conducting that search, I retrieved about seven pages of search results, and chose to keep my selections fairly recent, and from intriguing perspectives on the topic.

1. Tom Goldman, "Her Justice is Blind" (June 15, 2009) *New York*

Times, <http://www.nytimes.com/2009/06/16/opinion/>

[16goldstein.html?_r=1&ref=felony_disenfranchisement](http://www.nytimes.com/2009/06/16/opinion/16goldstein.html?_r=1&ref=felony_disenfranchisement): This article helps to establish the pervasive nature of the issue of felony disenfranchisement with regard to Supreme Court nominations. In the article, the nomination for Sonia Sotomayor, her decisions in race-related cases, and rulings regarding felon disenfranchisement fall under the intense lens of the government and the general public. Her decisions in such cases as involved this topic could have made, or destroyed, her chances at becoming a Supreme Court Justice.

2. Damien Cave & Christine Jordan Sexton, “New Florida Rules Return More Than 115,000 Ex-Offenders to Voting Rolls” (June 18, 2008)

New York Times, <http://www.nytimes.com/2008/06/18/us/>

[18florida.html?ref=felony_disenfranchisement](http://www.nytimes.com/2008/06/18/us/18florida.html?ref=felony_disenfranchisement): When election voting provisions and privileges, rules and regulations, change for a state, those who have increased privileges may not be aware of the rights now extended to them. Felons experiencing re-enfranchisement make up a significant portion of those who are or are not voting when they should or should not be able to. Awareness of individual rights is clearly an issue within felony disenfranchisement. This article has a follow up a few months later, in “States Restore Voting Rights for Ex-Convicts, but Issue Remains Politically Sensitive” by Solomon Moore.

3. Shaila Dewan, “In Alabama, a Fight to Regain Voting Rights Some Felons Never Lost” (March 2, 2008) *New York Times*, <http://www.nytimes.com/2008/03/02/us/02alabama.html>

www.nytimes.com/2008/03/02/us/02felons.html?ref=felony_disenfran

[chisement](#): Alabama has one of the more strict sets of constitutional provisions for felony disenfranchisement, and the concern that felons who *have* become eligible for *re-enfranchisement* are not aware of it, and thus have not been voting. As in the Cave & Sexton article noted above, the notification of rights is an important, and unperfected, part of the re-enfranchisement of felons in the United States.

VIII. Interdisciplinary Periodical Articles:

1. Roger I. Roots, “When Laws Backfire: Unintended Consequences of Public Policy”, *American Behavioral Scientists*, vol. 47, no. 11, pp. 1376-1394 (July 2004). I am a fan of the CSA databases and decided to search “felon disenfranchisement” in the Social Sciences subject grouping within CSA for a few interdisciplinary periodical articles on this topic; this is the single result. An interesting take on the unsolved social ills and the impact they’ve had on our society via public policy and lawmaking – or lawbreaking, in the case of felons and their disenfranchisement. Helpful references direct the user to the next periodical article.
2. Christopher Uggen & Jeff Manza, “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States”, *American Sociological Review*, Vol. 67, No. 6, p. 777-803 (December 2002): This resource was included within the references of the CSA – *American Behavioral Scientists* article annotated above, and was available through UPenn’s JSTOR subscription to the electronic version of this journal. Overall

the article addresses the effects of criminal disenfranchisement laws upon elections – as well as how “democratic” they allow our elections to be, stating that “universal suffrage is a cornerstone of democratic governance.” It also states that it is likely that at least one presidential election would have had different felon disenfranchisement results, had state provisions been different.

IX. ALR Annotations and Legal Encyclopedia Articles:

For this section, I searched WestLaw’s file of Treatises, CLEs, and Other Practice Materials, specifically the *American Jurisprudence 2d* and the *Corpus Juris Secundum* for encyclopedic entries on this topic. Both sources were useful. Additionally, I searched the Treatises, CLEs, and Other Practice Materials ALR file for resources and found a powerful document there. Searching “felon disenfranchisement” in each of these files was sufficient.

1. 10 A.L.R.6th 31: This *American Law Reports* entry is titled “Validity, Construction, and Application of State Criminal Disenfranchisement Provisions” and was originally published in 2006. This is a very lengthy entry and proves very helpful in terms of providing many citations, both federal and state, and historical information about felon disenfranchisement. Researchers will undoubtedly find this a useful starting point for researching felon disenfranchisement and the article outline links provided by WestLaw will expedite reading, particularly the scope, summary, and the Construction and Application of Disenfranchisement Provisions.
2. 29 C.J.S. Elections § 39: This entry in the *Corpus Juris Secundum*

takes on the topic of “Conviction in federal court or other state” → II. Right to vote → D. Qualifications of voters → 2. Particular Qualifying of Disqualifying Factors → b. Conviction of Crime. The Topic Summary, References, and Correlation Table links will prove useful to the researcher. Supplementary information, citation links, and important cases within the entry.

3. 25 Am. Jur. 2d Elections § 173: This section of the *American Jurisprudence 2d* looks at Elections → IV. Voters → C. Voter Eligibility; Qualifications → 3. Disqualification Due to Conviction of a Crime. Useful here are the links to law review articles, links to information in the *American Law Reports (ALR)* – including the first entry in this section – as well as typical links to a topic summary, references, and a correlation table.

X. Books:

For this section, I chose the University of Pennsylvania’s Biddle Law School Library catalog (LOLA) for searching. I searched “felon disenfranchisement” for these results and was satisfied that both offer useful insights and information on the topic of felon disenfranchisement.

1. Katherine Irene Pettus, *Felony disenfranchisement in America: historical origins, institutional racism, and modern consequences* (2005). Similar to the work of the Prison Policy Initiative (or PPI; see XII. Organizations or Lobby Groups, below), this title discusses the worthy topic of what effect the large number of American citizens who

are precluded from voting in elections due to felon disenfranchisement laws has on our government, and our governing. The title also discusses the important, and impactful, reasoning behind the establishment and the continuation of these state felon disenfranchisement provisions.

2. Benjamin E. Griffith, ed., *America votes!: a guide to modern election law and voting rights* (2008). This title is published by the ABA Section of State and Local Government Law and co-sponsored by several sections of the American Bar Association. Discussion revolves around voting and electoral practices in America, as well as problems and current issues. Particular sections of interest will be: “Felon disenfranchisement”, “Voting technology and the law”, and information regarding the Voting Rights Act and the Help America Vote Act.

XI. Internet Sites and Sources:

For helpful Internet sites, I turned to the University of Pennsylvania’s Penn Libraries research guides pages, as well as the Library of Congress’s Guide to Law Online pages. The Penn Libraries page (www.library.upenn.edu) has a tab titled “Ask Us/Get Help” and a link there titled “Research Guides.”

1. UPenn Libraries Human Rights Research Guide, under the Political Science discipline (<http://gethelp.library.upenn.edu/guides/polisci/humrts.html>): Useful in looking for helpful dictionaries and encyclopedias as well as statistical sources. Links to GPO Access for

government documents. Helpful if the researcher is also interested in looking for international comparisons to the felon voting rights of the United States.

2. Library of Congress, Guide to Law Online (<http://www.loc.gov/law/help/guide.php>): Resources here are provided at a number of different levels, but those that will be of most immediate to legal researchers in the United States are likely the U. S. Federal and U.S. States and Territories links. Under the U. S. Federal link, areas of interest would be the guide to the U. S. Constitution and the legal guides for elections and to the criminal justice system. Helpful links from the U. S. States and Territories page include routes to FindLaw.com, LexisOne's State Resource Center, and links to Library of Congress pages for each state and territory, complete with their constitutions, branches of government, and legal guides.

XII. Organizations or Lobby Groups:

I did a Google search to locate these organizations and groups: felon disenfranchisement lobbying groups. A number of results presented, but not all were applicable or as engaged with this specific topic as I desired.

1. ProCon.org's page on Felon Voting (<http://felonvoting.procon.org/>):

The Felon Voting site defines itself as "a nonpartisan, nonprofit website that presents facts, studies, and pro and con statements on questions related to whether or not felons should be allowed to vote."

Some useful resources on this page include Historical Highlights, State

Felon Voting Laws, and Disenfranchised Totals by State.

2. The Sentencing Project (<http://www.sentencingproject.org/template/page.cfm?id=133>): The section of the page titled “Voting Rights News” is interesting for the fact that current awareness is so important for understanding the state of affairs nationally and on a state by state basis. An RSS feed is also available to make staying current more convenient for the researcher.
3. Prison Policy Initiative (PPI) → Resources → Research Index → Felon Disenfranchisement (http://www.prisonpolicy.org/research/felon_disenfranchisement/): This organization is non-partisan and endeavors to document “the impact of mass incarceration on individuals, communities, and the national welfare.” Under the page routing described above, the researcher can find a lengthy list of resources, including reports, petitions, and overviews of felon disenfranchisement.

XIII. Blogs:

I located the resources here through a Google search: felon disenfranchisement law blog. Some resources, clearly, were more helpful than others, and so I rooted through a few of them to find the best resources on the topic.

1. Election Law Blog (<http://electionlawblog.org/>): The Google site search available at the right of the page enables the site visitor to search “felon disenfranchisement”. Over 300 results present for such a search, several from 2010. Jurisdictions engaged in this topic vary, as

do the states mentioned and the organizations working on this topic, such as the ACLU.

2. FairVote.org: The Constitutional Right to Vote Blog

(<http://www.fairvote.org/the-constitutional-right-to-vote-blog>): This site also has a Google search feature and when one searches “felon disenfranchisement” over 700 results are retrieved. Within those results, I noticed the fourth link down was for the FairVote blog and involved “entries categorized with ‘felon disenfranchisement’”, and used that, though the site also has a search result page *specifically* dedicated to felon disenfranchisement. The “Right to Vote Amendment” category may also be of interest to the researcher. The four blog entry results include two for the Constitutional Right to Vote Blog. Another result is “Felon Disenfranchisement: A Relic of the Past”. FairVote is a national organization working to reform “our elections to respect every vote and every voice through bold approaches to increase voter turnout, meaningful ballot choices and fair representation.

I certify that:

- This paper/project/exam is entirely my own work.
- I have not quoted the words of any other person from a printed source or a website without indicating what has been quoted and providing an appropriate citation.
- I have not submitted this paper / project to satisfy the requirements of any other course.

Signed: Laureen Patricia Cantwell
Drexel Student ID#: 11933221
Date: December 8, 2010, 5pm.