



**THE HISTORY OF FELONY DISENFRANCHISEMENT &  
 RESTORATION OF CIVIL RIGHTS IN VIRGINIA: 1830-2024**

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## INTRODUCTION

Since the late 1800s, Virginia has remained home to some of the highest rates of felony disenfranchisement in the nation. Enshrined in Virginia’s constitution, Virginians convicted of a felony are permanently stripped of their civil rights, unless the Governor restores their rights.<sup>2</sup> Civil rights stripped upon felony conviction in Virginia include not just the right to vote, but also the right to run for public office, the right to serve on a jury, the right to become a notary public, and the right to carry a firearm.<sup>3</sup> Virginia’s high disenfranchisement rate has led to a persistent call from diverse voices across the ideological spectrum for Virginians’ civil rights to be restored. While much attention in recent years has been directed towards each governor’s restoration policies, whether Republican or Democrat, this report seeks to put Virginia’s felony disenfranchisement experience into historical context, exploring the racist intent that spurred its original inclusion in Virginia’s constitution and cataloguing its pervasive effect on the political community of Virginia. This report was prepared in anticipation of the Revive My Vote Rights Restoration Summit at William & Mary Law School on March 21, 2024.

## FELONY DISENFRANCHISEMENT STATISTICS: UNITED STATES & VIRGINIA

Felony disenfranchisement refers to the denial of voting rights on the basis of a felony conviction. An estimated 4.6 million Americans with a felony conviction history were disenfranchised in 2022.<sup>4</sup> These disenfranchised Americans are concentrated in twenty-six states that continue to deny voting rights

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<sup>2</sup> VA. CONST. art. II, § 1 (“No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”).

<sup>3</sup> See *Restoration of Rights Process*, <https://www.restore.virginia.gov/restoration-of-rights-process/> (last visited Mar. 13, 2024).

<sup>4</sup> Christopher Uggen et al., *Locked Out 2022: Estimates of People Denied Voting Rights*, SENT’G PROJECT (Oct. 25, 2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

to people post-incarceration, including on probation or parole.<sup>5</sup> In twenty-three states, citizens convicted of a felony lose their voting rights only while incarcerated, and receive automatic restoration upon release.<sup>6</sup> On the other hand, eleven states continue to deny voting rights, for varying periods of time, even after affected individuals have completed their prison, parole, or probation sentences.<sup>7</sup> Virginia is one of three states whose constitution permanently disenfranchises all citizens with past felony convictions.<sup>8</sup>

According to The Sentencing Project, disenfranchisement disproportionately affects Black Americans.<sup>9</sup> Approximately 5.3 percent of the Black population in America is disenfranchised compared to 1.5 percent of the adult non-Black population.<sup>10</sup> Under 2022 estimates, approximately 312,540 Virginians, 5.04 percent of the voting age population, remain disenfranchised.<sup>11</sup> Over 12 percent of Black Virginians are disenfranchised, one of the highest rates in the nation.<sup>12</sup> Virginia has the fifth-highest number of people disenfranchised for felony convictions in the United States.<sup>13</sup> The number of newly disenfranchised Virginians is rising under the current administration's restoration policies.<sup>14</sup>

Although public perception may mistake felony disenfranchisement as only preventing voting while individuals are incarcerated, in reality, only one-fourth of the national disenfranchised population is

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<sup>5</sup> Uggen et al., *supra* note 4.

<sup>6</sup> *Felon Voting Rights*, NAT'L CONF. OF STATE LEGIS. (Dec. 5, 2023), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>.

<sup>7</sup> *Id*; see also Cara Suvall, *Out Before the Starting Line: Youth Voting and Felony Disenfranchisement*, 74 RUTGERS UNIV. L. REV. 1933, 1944 (2022) ("These eleven states that disenfranchise people past the end of their sentence account for over 58% of the total number of people disenfranchised in the country.").

<sup>8</sup> See *Tennessee Now One of Three States with Permanent Felony Disenfranchisement After New Administrative Guidance Torpedoes Voting Rights Restoration*, CAMPAIGN LEGAL CTR. (July 21, 2023), <https://campaignlegal.org/press-releases/tennessee-now-one-three-states-permanent-felony-disenfranchisement-after-new> (identifying Tennessee, Mississippi, and Virginia as the only states imposing permanent felony disenfranchisement on its citizens); *Voting Rights Restoration Efforts in Virginia: A Summary of Current Felony Disenfranchisement Policies and Legislative Advocacy in Virginia*, BRENNAN CTR. FOR JUST. (Apr. 3, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-virginia>.

<sup>9</sup> Uggen et al., *supra* note 4.

<sup>10</sup> Uggen et al., *supra* note 4.

<sup>11</sup> Uggen et al., *supra* note 4, at Table 2.

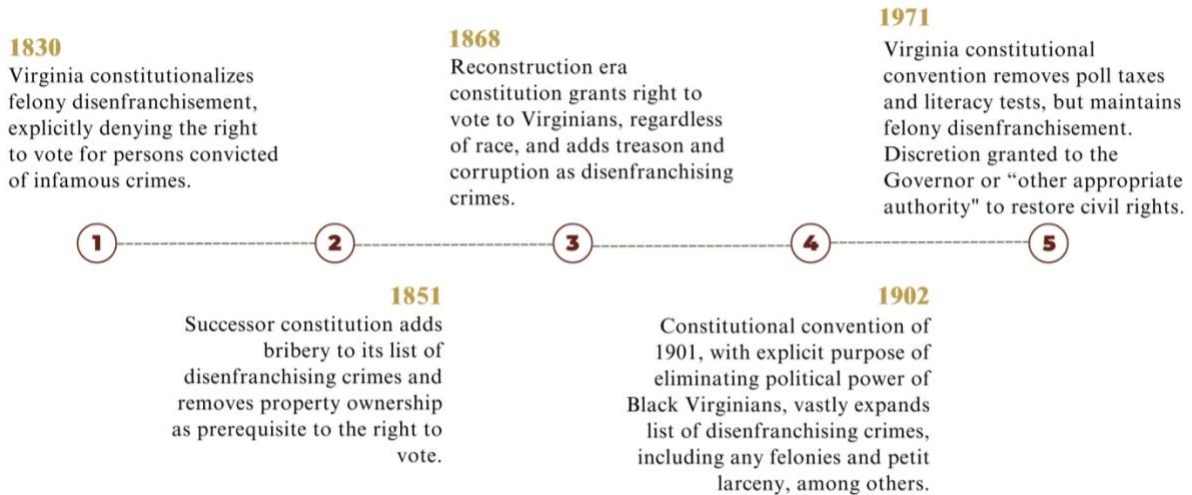
<sup>12</sup> Uggen et al., *supra* note 4, at Table 3.

<sup>13</sup> See Uggen et al., *supra* note 4, at Table 3; see also Denise Lavoie & Sarah Rankin, *Virginia NAACP Demands to See Governor's Criteria for Restoring Voting Rights to Felons*, ASSOCIATED PRESS (July 18, 2023, 3:33 PM), <https://apnews.com/article/virginia-youngkin-felon-voting-rights-restoration-naacp-dc64bc49fd7f9867e92601948d349d4d>.

<sup>14</sup> See Elizabeth Beyer, *Virginia Governor's Rollback of Rights Restoration has Disenfranchised Thousands of Voters*, USA TODAY (Feb. 11, 2024, 2:58 PM), <https://www.usatoday.com/story/news/politics/elections/2024/02/11/virginia-governor-voting-2024/72439772007/>.

currently incarcerated.<sup>15</sup> The vast majority, over 3.5 million adults, have served their sentences fully and live in their communities, yet remain banned from voting.<sup>16</sup> While reforms implemented in a number of states have helped to restore the rights of over 2 million since 1997,<sup>17</sup> many Americans will continue to be disenfranchised so long as the structures of disenfranchisement remain intact. In Virginia, administrative changes from gubernatorial administration to administration have resulted in frequent change in the restoration process. While Virginia’s high disenfranchisement rate and the disproportionate impact on Black Virginians can be altered by the governor’s pen, Virginia’s baseline structure of felony disenfranchisement, originally designed and implemented to disenfranchise Black Americans, will continue to produce thousands of newly disenfranchised Virginians.

## VIRGINIA CONSTITUTIONAL FELONY DISENFRANCHISEMENT & HISTORY



<sup>15</sup> Suvall, *supra* note 7, at 1937–45 (highlighting that those that are incarcerated are overwhelming young adults, leading to early disenfranchisement that may never be regained in states without automatic restoration and that the effects of early disenfranchisement on young adults are particularly damaging because it hinders the development of lifelong voting habits and civic engagement).

<sup>16</sup> See also Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. REV. 193, 196–97 (2004); Reuven Ziegler, *Legal Outlier, Again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives*, 29 B.U. INT’L L.J. 197, 217 (2011) (“Recent research suggests a negative correlation between voting and subsequent criminal activity among those with and without prior criminal history.”).

<sup>17</sup> Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, SENT’G PROJECT (Oct. 18, 2023) (“Since 1997, 26 states and the District of Columbia have expanded voting rights to people living with felony convictions or amended policies to guarantee ballot access. These reforms were achieved through various mechanisms, including legislative reform, executive action, and ballot measures.”), <https://www.sentencingproject.org/reports/expanding-the-vote-state-felony-disenfranchisement-reform-1997-2023/>.

## PRE-CIVIL WAR TO RECONSTRUCTION

Although the concept of felony disenfranchisement dates back to ancient Greece and Rome,<sup>18</sup> Virginia's felony disenfranchisement provisions date back to the 19<sup>th</sup> and early 20<sup>th</sup> century. In 1830, Virginia turned its existing statutory provisions on felony disenfranchisement into constitutional provisions.<sup>19</sup> Governor Giles, Virginia's governor from 1827-1830, in speaking to the Virginia constitutional convention's executive committee about universal suffrage, expressed his concern that the free Black population, lacking "the highly honorable . . . present moral condition of the white population of Virginia," could be granted the franchise.<sup>20</sup> Disenfranchisement was reserved for a limited set of crimes reflecting "moral turpitude" known as "infamous crimes,"<sup>21</sup> and voting was reserved for "propertied whites."<sup>22</sup> The 1851 successor constitution added bribery to the list of disenfranchising crimes and removed property ownership as prerequisite, thus granting the franchise to thousands of white men.<sup>23</sup>

Following the defeat of the Confederacy, John Curtiss Underwood, known as "a domineering federal judge and enthusiastic abolitionist," chaired the Reconstruction era constitutional convention of 1867 in the heart of the Confederacy's former capital, Richmond. The 1868 constitution guaranteed the vote to every 21-year-old male citizen, regardless of race.<sup>24</sup> This sudden progress on expanding the right to vote was made possible because "many of Virginia's conservative whites refused to participate in the voting for [convention] delegates," in protest of black suffrage.<sup>25</sup> The Reconstruction era "Underwood Constitution" added treason and corruption as disenfranchising crimes.<sup>26</sup> The provision stopped short of

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<sup>18</sup> Martha Guarnieri, *Civil Rebirth: Making the Case for Automatic Ex-Felon Voter Restoration*, 89 TEMP L. REV. 451, 456 (2017).

<sup>19</sup> A.E. Dick Howard, *Who Belongs: The Constitution of Virginia and the Political Community*, 37 J.L. & POL. 99, 114 (2022).

<sup>20</sup> Helen A. Gibson, *Felons and the Right to Vote in Virginia: A Historical Overview*, 91 VA. NEWS LETTER 1, 2 (2015).

<sup>21</sup> Christian A. Johnson, *Disenfranchisement, Voter Disqualifications, and Felony Convictions: Searching for State Law Uniformity*, 32 WIDENER COMMW. L. REV. 35, 39 (2023) ("The classification of a crime as an 'infamous crime' has existed since the founding of the United States. Infamous crimes are generally defined as 'a crime judged infamous because it constitutes treason or a felony, because it involves moral turpitude of a nature that creates a strong presumption that the one guilty is unworthy of belief in a court of law, or because it subjects the one guilty to infamy.'").

<sup>22</sup> Gibson, *supra* note 20.

<sup>23</sup> Howard, *supra* note 19, at 114–16.

<sup>24</sup> Matt Ford, *The Racist Roots of Virginia's Felon Disenfranchisement*, ATLANTIC (Apr. 27, 2016), <https://www.theatlantic.com/politics/archive/2016/04/virginia-felon-disenfranchisement/480072/>; see also Brent Tarter, *Disenfranchisement*, ENCYC. VA. (Dec. 7, 2020), <https://encyclopediavirginia.org/entries/disfranchisement/>.

<sup>25</sup> Tarter, *supra* note 24.

<sup>26</sup> Ford, *supra* note 24.

permanently disenfranchising former Confederate soldiers or requiring “ironclad oaths,” both hugely controversial provisions that delayed the ratification vote and were never adopted.<sup>27</sup>

The period of Radical Reconstruction and multi-racial democracy was short lived across the South.<sup>28</sup> The Thirteenth, Fourteenth, and Fifteenth Amendments to the federal Constitution, known as the Reconstruction Amendments, posed a challenge to white supremacy, threatening the southern political status quo. Almost forty percent of residents of the former Confederate states were Black.<sup>29</sup> In some states Black Americans constituted an actual or near majority.<sup>30</sup> The Fifteenth Amendment to the U.S. Constitution specifically prohibited states from depriving any person of the right to vote because of race. The Fourteenth Amendment retained an exception for those convicted of crimes, a consequential provision for modern felony disenfranchisement.<sup>31</sup>

The Virginia Readmission Act prohibited Virginia from depriving any citizens of the right to vote, except for people who were convicted of a narrow set of crimes that were “felonies at common law.”<sup>32</sup> Nonetheless, the Virginia legislature soon passed laws depriving citizens who had committed all types of crimes of the right to vote. Through violence,<sup>33</sup> political participation and corruption of the administration of free and fair elections during 1870s and 1880s,<sup>34</sup> Redeemer Democrats supplanted

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<sup>27</sup> Charlie Grymes, *1870 Constitution of Virginia*, VA. PLACES, <http://www.virginiaplaces.org/government/constitution1870.html#six> (last visited Mar. 12, 2024).

<sup>28</sup> Eric Foner, *The Reconstruction Amendments: Official Documents as Social History*, 2 HIST. NOW, Winter 2004, <https://www.gilderlehrman.org/history-resources/essays/reconstruction-amendments-official-documents-social-history>.

<sup>29</sup> GREGORY P. DOWNS & KATE MASUR, THE ERA OF RECONSTRUCTION, 1861–1900: A NATIONAL HISTORICAL LANDMARKS THEME STUDY 40 (2017), <http://www.npshistory.com/publications/nhl/theme-studies/reconstruction-era.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, BRENNAN CTR. FOR JUST. 1 (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>.

<sup>32</sup> *Virginia Readmission Act Litigation*, PROTECT DEMOCRACY (June 26, 2023), <https://protectdemocracy.org/work/virginia-readmission-act-litigation/>.

<sup>33</sup> *See e.g.*, GREGORY P. DOWNS, AFTER APPOMATTOX: MILITARY OCCUPATION AND THE ENDS OF THE WAR 196 (2015).

<sup>34</sup> Tarter, *supra* note 24 (“Those boards in turn appointed all local voter registrars, who kept separate lists of white and black men who were registered to vote . . . The law led to an increase in bribery, fraud, intimidation, violence, and corruption . . . A popular trick was for Democratic voters to bring ballots, or tickets, printed on tissue paper and deposit several ballots in the box at once. When the box was opened the judges would find more ballots than there were voters. Under the law, a blind-folded judge would then remove from the box enough ballots to make the numbers of voters and ballots equal; but because parties supplied their voters with tickets printed on various kinds of paper or in different sizes, a dexterous judge could easily remove mostly Republican ballots and allow Democratic candidates to win.”).

Republican officeholders,<sup>35</sup> passing a swath of election laws that gave Democrats control of elections and restricted Black Virginians' access to the ballot.

In 1876, as federal troops prepared to withdraw from the South,<sup>36</sup> the General Assembly broadened its felony disenfranchisement law to encompass petty theft, or “petit larceny,” a crime of which white politicians believed black citizens could be easily convicted. The next year, the legislature passed a law requiring that lists of voters convicted of any of the new, broader array of disenfranchising crimes be delivered to county registrars. Applied “almost exclusively to the detriment of African American voters,” the law facilitated racist politicians’ attempts to selectively enforce disenfranchisement.<sup>37</sup> “We publish elsewhere a list of negroes convicted of petit larceny,” a Richmond-based newspaper advertised several years later, advising that “Democratic challengers should examine it carefully.”<sup>38</sup>

Virginia was not alone in further entrenching its disenfranchisement laws to deny Black Americans political voice. Nearly every Southern state amended their disenfranchisement laws to expand the qualifying crimes with the intention of preventing Black citizens from voting.<sup>39</sup> Between 1865 and 1880, “at least 13 states — more than a third of the country’s 38 states — enacted broad felony disenfranchisement laws.”<sup>40</sup> Further motivating the expansion of qualifying crimes was the practice of convict leasing, which enabled White elites to retain a portion of the slavery-based antebellum economy while stripping former slaves of their newly enshrined constitutional rights.<sup>41</sup> In combination with poll taxes,<sup>42</sup> and “literacy” tests, many states, including Virginia, began the systematic disenfranchisement of newly registered Black Americans.<sup>43</sup>

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<sup>35</sup> See Ford, *supra* note 24.

<sup>36</sup> See Grymes, *supra* note 27.

<sup>37</sup> Gibson, *supra* note 20, at 3.

<sup>38</sup> Kelley, *supra* note 31, at 2.

<sup>39</sup> See Carol Gonzalez, Note, *Is the Rising Trend of Voter Restoration Leading to Permanent Disenfranchisement of Felons? Florida Joins the Voter Restoration Trend*, 44 NOVA L. REV. 195, 201 (2020); Guarnieri, *supra* note 18, at 458 (“[A] white South Carolina businessman who temporarily chaired the 1868 South Carolina constitutional convention at its opening session, explained that. . . ‘[t]he intent of those laws was to deprive every colored man of their right of citizenship . . . [by making] the most trivial offense a felony.’”).

<sup>40</sup> Kelley, *supra* note 31, at 2.

<sup>41</sup> Kelley, *supra* note 31, at 2 (“This system was reserved nearly entirely for black prisoners — at least 90 percent of those forced into convict leasing arrangements were black.”); see also Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 361 (2012).

<sup>42</sup> Dori E. Martin, *Lifting the Fog: Ending Felony Disenfranchisement in Virginia*, 47 U. RICH. L. REV. 471, 477 (2012).

<sup>43</sup> Guarnieri, *supra* note 18, at 458; see also Howard, *supra* note 19, at 107. One Virginia delegate described the purpose of the literacy test as:



## POST-RECONSTRUCTION & THE 1901 CONSTITUTIONAL CONVENTION

In the midst of the Lost Cause and Jim Crow eras, Virginia's newly re-established White political leadership campaigned for a new constitution.<sup>44</sup> The campaign was part of a larger Democratic party movement that produced "new constitutional conventions or suffrage-restricting constitutional amendments through referenda, in every former Confederate state."<sup>45</sup> Open racial animus and race discrimination motivated these reforms.<sup>46</sup>

The president of Virginia's 1901 constitutional convention, former colonel in the Confederate Army John Goode, pledged to "eliminate the ignorant and worthless negro as a factor from the politics of this state."<sup>47</sup> Goode declared "[t]he safety and perpetuity of our free institutions depend upon the purity and inviolability of the ballot."<sup>48</sup> Threatening that "purity" were Black voters.<sup>49</sup> Goode denounced the Fifteenth Amendment as "a crime against civilization and Christianity" that had forced Virginia, "under the rule of bayonet, to submit to universal negro suffrage."<sup>50</sup>

Another delegate to Virginia's constitutional convention, R.L. Gordon, told his fellow delegates during the convention's suffrage debates, "I told the people of my county before they sent me here that I intended, as far as in me lay, to disenfranchise every negro that I could disenfranchise under the Constitution of the United States, and as few white people as possible."<sup>51</sup> State Democratic party chairman J. Taylor Ellyson gave his "personal and official assurance" that the convention had "the fixed and inalterable intention of enacting a clause which will . . . forever remove the negro as a factor in our political affairs and give to the white people of this Commonwealth the conduct and control of the destinies which they have the right to shape and determine."<sup>52</sup> Carter Glass, the future U.S. Senator,

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[It] serves to strengthen th[e] plan at a point where we have always believed it to be weak, and, that is, if the administration of the understanding clause should get into the hands of a party, who would undertake to admit negroes to the suffrage by wholesale and contrary to the term of the requirements, then there should be something substantial and efficient still left between the negro and the ballot-box.

Daniel R. Ortiz, *Voting Rights and the 1971 Virginia Constitution*, 37 J.L. & POL. 155, 160–62 (2022).

<sup>44</sup> Gregory S. Schneider, *He Helped Rewrite Virginia's Constitution to Guarantee Black Voting Rights – 'a Blessing' 50 Years Ago*, WASH. POST (July 1, 2021, 7:00 AM), <https://www.washingtonpost.com/history/2021/07/01/virginia-constitution-black-voting-rights/>.

<sup>45</sup> Richard H. Pildes, *Democracy, Anti-Democracy, and the Canon*, 17 CONST. COMMENT. 295, 301 (2000).

<sup>46</sup> See Howard, *supra* note 19, at 108–109.

<sup>47</sup> Schneider, *supra* note 44.

<sup>48</sup> Ford, *supra* note 24.

<sup>49</sup> Ford, *supra* note 24.

<sup>50</sup> A.E. Dick Howard, *Virginia's Constitution*, VA. MUSEUM OF HIST. AND CULTURE, <https://virginiahistory.org/learn/virginias-constitution>.

<sup>51</sup> Ford, *supra* note 24.

<sup>52</sup> J. TAYLOR ELLYSON ET AL., NO WHITE MAN TO LOSE HIS VOTE IN VIRGINIA (Oct. 17, 1901), available at <https://encyclopediavirginia.org/no-white-man/>.



Treasury Secretary, and delegate most responsible for the constitution's electoral provisions,<sup>53</sup> proclaimed that the new constitution "does not necessarily deprive a single white man of the ballot, but will inevitably cut from the existing electorate four-fifths of the negro voters . . . . That was the purpose of this convention; that will be its achievement."<sup>54</sup> In response to another delegate's questioning that such a result would be reached "by fraud and discrimination," Glass responded, "[b]y fraud, no; by discrimination, yes," further emphasizing that "it will be discrimination within the letter of the law, and not in violation of the law."<sup>55</sup>

Glass directly cited *Williams v. Mississippi* as providing a roadmap for the provisions Virginia was soon to adopt.<sup>56</sup> That U.S. Supreme Court decision rejected a challenge to Mississippi's 1890 constitution and held that neutral language, even if applied disproportionately to Black citizens (like disenfranchisement provisions), did not violate the U.S. Constitution. Mississippi successfully reduced Black registration in the state from seventy percent in 1867 to six percent in 1892.<sup>57</sup>

Similar to other former Confederate state constitutions adopted during this movement, Virginia enacted a broad prohibition on voting for anyone with any felony conviction and anyone who was previously disqualified.<sup>58</sup> The convention approved a clause that disenfranchised Virginians convicted of numerous crimes, including "treason or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery, or perjury."<sup>59</sup> The new restrictive provisions aimed at eliminating the power of Black voters had an immediate effect.<sup>60</sup> Although there were approximately 147,000 Black males of voting age when the 1902 Constitution was adopted, only 21,000 remained on the registration lists by October of that year. The Black voter population had gone from consisting of nearly half of registered voters at the height of the Underwood Constitution to only 4.7% of registered voters.<sup>61</sup> In the cities, Black registrations dropped dramatically. Richmond had 6,427 registered Black in 1900 but

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<sup>53</sup> Ortiz, *supra* note 43, at 156.

<sup>54</sup> Ford, *supra* note 24.

<sup>55</sup> Ford, *supra* note 24.

<sup>56</sup> 170 U.S. 213 (1898); *see also* Howard, *supra* note 19, at 111.

<sup>57</sup> Carl N. Frazier, Note, *Removing the Vestiges of Discrimination: Criminal Disenfranchisement Laws and Strategies for Challenging Them*, 95 KY. L.J. 481, 484 (2006-07).

<sup>58</sup> Rachel Homer & Alicia Menendez, *Why Virginia's Felony Disenfranchisement Violates the Readmission Act*, PROTECT DEMOCRACY (June 26, 2023), <https://protectdemocracy.org/work/virginia-readmission-act/>.

<sup>59</sup> Ford, *supra* note 24; *see also* *The Virginia Constitution: A Documentary Analysis*, 10 WM. & MARY L. REV. 511, 532 (1968).

<sup>60</sup> Ford, *supra* note 24.

<sup>61</sup> Howard, *supra* note 50; *see also* Pildes, *supra* note 45, at 303–04 (highlighting similarly dramatic declines in Black voter registration after disenfranchising constitutional provisions were enacted in Louisiana, Alabama, and South Carolina).

only 760 in 1902. Norfolk's number dropped in that same period from 1,826 to 504.29. Smaller towns experienced similar declines. Culpeper's Black registrants dropped from 1,075 to 153.<sup>62</sup>

The new constitution halved the overall voting electorate, consequently disenfranchising many poor Whites.<sup>63</sup> Political participation was subdued through much of the first half of the 20<sup>th</sup> century with Democratic gubernatorial candidates being regularly elected with the support of less than 10% of the adult population, to the benefit of one party, the southern Democrats. Of the range of tools imposed to remove Black Americans at the ballot box in 1902,<sup>64</sup> Virginia's disenfranchisement provision is the only one that remains standing today.<sup>65</sup>

## THE 1971 CONSTITUTION & MASS INCARCERATION

Following "Massive Resistance," a term coined by Virginia Senator Harry Byrd,<sup>66</sup> and the desegregation movements,<sup>67</sup> Virginia re-ratified its constitution, removing "overtly racist" and discriminatory language.<sup>68</sup> The new language allowed the Governor or "other appropriate authorit[ies]" to restore former felons' voting rights.<sup>69</sup> The ratification of the new constitution, lacking its predecessor's explicitly racist intentions, ostensibly removed its racist taint. In other Southern states with explicitly discriminatory intent underlying their felony disenfranchisement provisions, federal circuit courts have found that later amended and reenacted provisions can remove the "discriminatory taint" from the law.<sup>70</sup>

The principal draftsman of the 1971 constitution, A.E. Dick Howard,<sup>71</sup> has expressed his "biggest regret" is that the provision permanently depriving convicted felons of their voting rights remained in the

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<sup>62</sup> Ortiz, *supra* note 43, at 159.

<sup>63</sup> MICHAEL PERMAN, STRUGGLE FOR MASTERY: DISENFRANCHISEMENT IN THE SOUTH, 1888–1908, at 221–222 (2001).

<sup>64</sup> Gibson, *supra* note 20, at 5 ("Beginning in 1906, Virginia governors' reports to the General Assembly began to distinguish between pardons granted and the removal of political disabilities.").

<sup>65</sup> Ortiz, *supra* note 43, at 163.

<sup>66</sup> *Segregation in America*, EQUAL JUST. INITIATIVE (2018) ("If we can organize the Southern States for massive resistance to this order, I think that in time the rest of the country will realize that racial integration is not going to be accepted in the South."), <https://segregationinamerica.eji.org/report/massive-resistance.html>.

<sup>67</sup> Ortiz, *supra* note 43, at 156.

<sup>68</sup> Ortiz, *supra* note 43, at 178 ("Overt racist language like that of the 1901 Constitutional Convention was absent in 1969 and 1970, but, to paraphrase the aphorism, absence of racial evidence is not evidence of racial absence.").

<sup>69</sup> Ortiz, *supra* note 43, at 178.

<sup>70</sup> See e.g., *Cotton v. Fordice*, 157 F.3d 388, 392 (5th Cir. 1998). See also Suvall, *supra* note 7, at 1941; Guarnieri, *supra* note 18, at 461 ("Citing *Cotton*, a Florida district court held that a 're-enactment of the felon disenfranchisement provision in 1968 cleansed Florida's felon disenfranchisement scheme of any invidious discriminatory purpose that may have prompted its inception in Florida's 1868 Constitution.'").

<sup>71</sup> Howard, *supra* note 19, at 121–22 (suggesting that the felony disenfranchisement provision remained in the new progressive constitution, because "other barriers, for example, the poll tax, may have loomed larger in the commissioners' minds").

constitution.<sup>72</sup> Combined with the exponential rise in felony convictions for Black Virginians during the War on Drugs and Mass Incarceration eras,<sup>73</sup> the enduring felony disenfranchisement provision produced a dangerous concoction for Virginia’s democracy.<sup>74</sup> Beginning in 1973, the U.S. prison population began its unprecedented rise, peaking in 2009.<sup>75</sup> In Virginia, as in the rest of the country, Black Americans have been disproportionately incarcerated.<sup>76</sup> Since 1978, the Black incarceration rate has increased 121%.<sup>77</sup> In 2017, Black Americans were still incarcerated at 4.2 times the rate of White Americans.<sup>78</sup> The growing incarceration rate was mirrored by the national disenfranchisement rate, which increased by about 500% since 1980.<sup>79</sup> From 1976 to 2000, the total disenfranchised population more than doubled, growing from 1% to 2.3% of the national electorate.<sup>80</sup>

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<sup>72</sup> Schneider, *supra* note 44; *see also* Memory Wars, *Branded: The Fight Over Restoring Voting Rights*, RADIO IQ (Oct. 25, 2023), <https://www.wvtf.org/branded-the-fight-to-restore-voting-rights>; Beyer, *supra* note 14.

<sup>73</sup> Brief of Amici Curiae Gregory P. Downs and Kate Masur in Support of Plaintiffs and in Opposition to Defendants’ Motion to dismiss the Complaint at 24 n. 43, *King v. Youngkin*, No. 3:23-cv-00408 (E.D. Va. filed June 26, 2023) (“The capacious term ‘any felony’ would have stark racial ramifications. For example, most of the controlled-substance felonies that have contributed so heavily to the mass incarceration of Black people did not exist before 1909. . . Those laws have affected Black people disproportionately. In 2013, Black people comprised 13 percent of the U.S. population and were consistently documented by the U.S. government to use drugs at similar rates to people of other races; yet they comprised 30 percent of those arrested for drug-law violations and nearly 40 percent of those incarcerated in state or federal prison for drug-law violations . . . Disenfranchisement for ‘any felony’ thus resulted in a vast expansion of crime-based disenfranchisement of Black people based on drug-related convictions.”).

<sup>74</sup> *See* Angela Behrens & Christopher Uggen, *Ballot Manipulation and the “Menace of Negro Domination”*: *Racial Threat and Felon Disenfranchisement in the United States, 1850-2002* 109 AM. J. SOCIO. 559, 596 (2003) (“States with greater nonwhite prison populations have been more likely to ban convicted felons from voting than states with proportionally fewer nonwhites in the criminal justice system.”).

<sup>75</sup> Ashley Nellis, *Mass Incarceration Trends*, SENT’G PROJECT (Jan. 25, 2023) (noting that by year end 2021, the prison population had declined 25% since the 2009 peak), <https://www.sentencingproject.org/reports/mass-incarceration-trends/>. *See also*, Porter & McLeod, *supra* note 17 (“These changes, both administrative and statutory in recent decades, coupled by recent modest declines in the population of incarcerated people and those under community supervision reduced the total number of people disenfranchised by 24% since reaching its peak in 2016.”); Uggen et al., *supra* note 4 (noting that “[l]evels of disenfranchisement today are closer in absolute number to the 4.69 million who were denied the vote in 2000”).

<sup>76</sup> *Virginia Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/VA.html#:~:text=Black%20people%20in%20Virginia%20are,times%20higher%20than%20white%20people.&text=The%20cost%20of%20incarcerating%20older,over%20the%20age%20of%20055>.

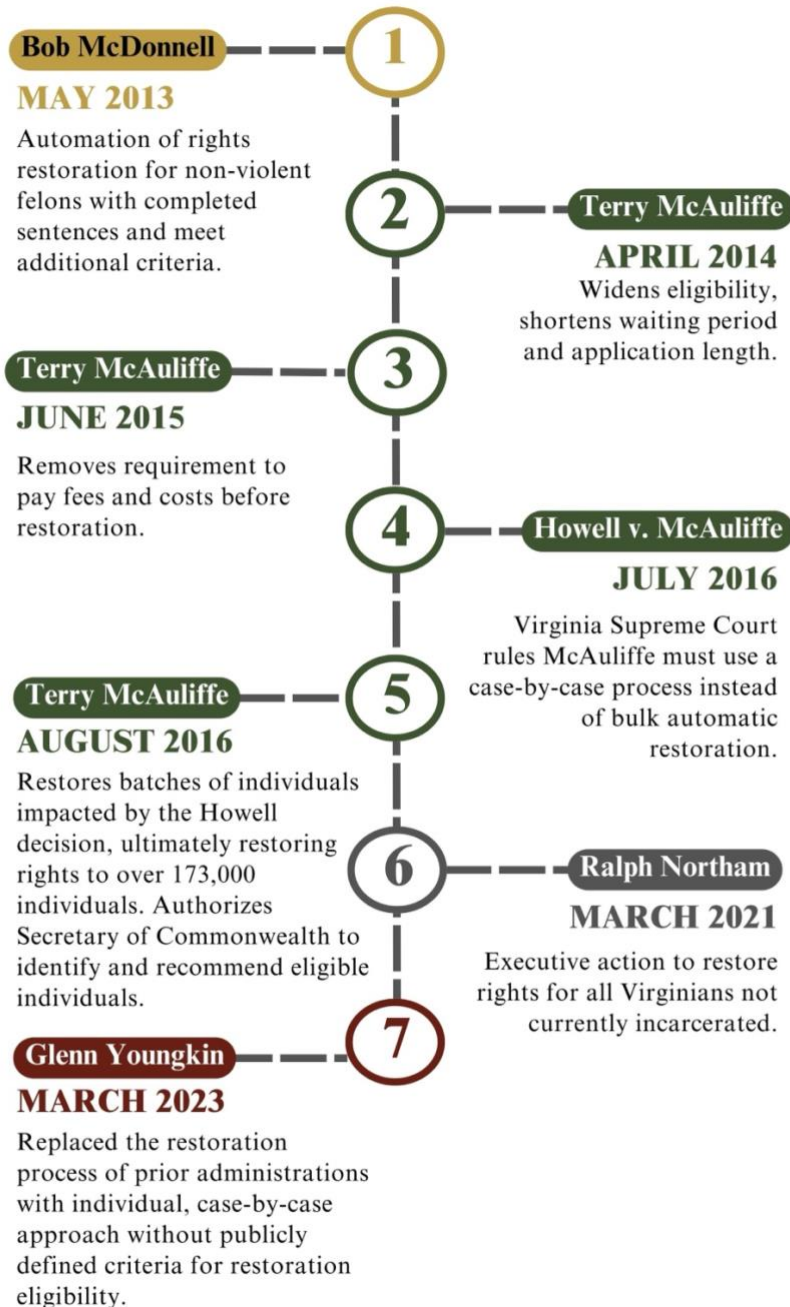
<sup>77</sup> *Incarceration Trends in Virginia*, VERA INST. (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-virginia.pdf> (last visited Mar. 13, 2024).

<sup>78</sup> *Id.*

<sup>79</sup> ACLU ET AL., *DEMOCRACY IMPRISONED: A REVIEW OF THE PREVALENCE AND IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES*, 1 (2013).

<sup>80</sup> Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOC. REV., 777, 782 (2002).

# FELONY DISENFRANCHISEMENT LITIGATION, RESTORATION, & GUBERNATORIAL POLICY



## FELONY DISENFRANCHISEMENT AND THE FEDERAL COURTS POST-CIVIL RIGHTS MOVEMENT

Efforts to strike down felony disenfranchisement provisions in the late 20<sup>th</sup> century, following the Fourteenth Amendment Equal Protection revolution, largely failed. In *Richardson v. Ramirez*, the Supreme Court overturned the California Supreme Court's finding that disenfranchising formerly convicted felons who completed their sentences and paroles violated the Equal Protection Clause.<sup>81</sup> Justice Rehnquist, writing for the majority, concluded that the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment reference to "other crimes." Justice Marshall and other legal scholars have interpreted the "scant" legislative history differently, finding the "other crimes" language likely best understood as a political compromise intended to expand the right to vote for Black Americans,<sup>82</sup> or as "intended to apply specifically to crimes surrounding rebellions."<sup>83</sup>

*Hunter v. Underwood* opened a small window for equal protection challenges when the Supreme Court invalidated Alabama's criminal disenfranchisement statute as being intentionally and explicitly designed to discriminate against Black people in the state.<sup>84</sup> However, the Fourth Circuit, closed this window for Virginians in a single sentence in *Howard v. Gilmore*, stating in the unpublished opinion that as a matter of fact, the "decision to disenfranchise felons [could not be] motivated by race [because its] decision . . . pre-dates the adoption of [the Fourteenth and Fifteenth Amendments] as well as the extension of the franchise to African-Americans."<sup>85</sup> This brief and puzzling analysis failed to acknowledge the history and racial animus of subsequent constitutional conventions, ignoring that "the 1902 Virginia Constitution gerrymandered its definition of which crimes one could be disenfranchised for committing in a way that intentionally targeted race."<sup>86</sup>

The Voting Rights Act (VRA) has also provided little reprieve for felony disenfranchisement plaintiffs,<sup>87</sup> with several circuits finding the VRA did not apply to felony disenfranchisement provisions.<sup>88</sup> In a split from other circuits, the 9<sup>th</sup> Circuit has held that "felon[y] disenfranchisement is a voting qualification, and Section 2 is clear that *any* voting qualification that denies citizens the right to vote in a

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<sup>81</sup> 418 U.S. 24 (1974); *see also* Gonzalez, *supra* note 39, at 202.

<sup>82</sup> Martin, *supra* note 42, at 480.

<sup>83</sup> Guarnieri, *supra* note 18, at 460. *See also* Richard M. Re & Christopher M. Re, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, 121 YALE L.J. 1584, 1651 (2012); Abigail M. Hinchcliff, Note, *The "Other" Side of Richardson v. Ramirez: A Textual Challenge to Felon Disenfranchisement*, 121 YALE L.J. 194 (2011).

<sup>84</sup> 471 U.S. 222 (1985); *see* Suvall, *supra* note 7, at 1941.

<sup>85</sup> 205 F.3d 1333 (4th Cir. 2000).

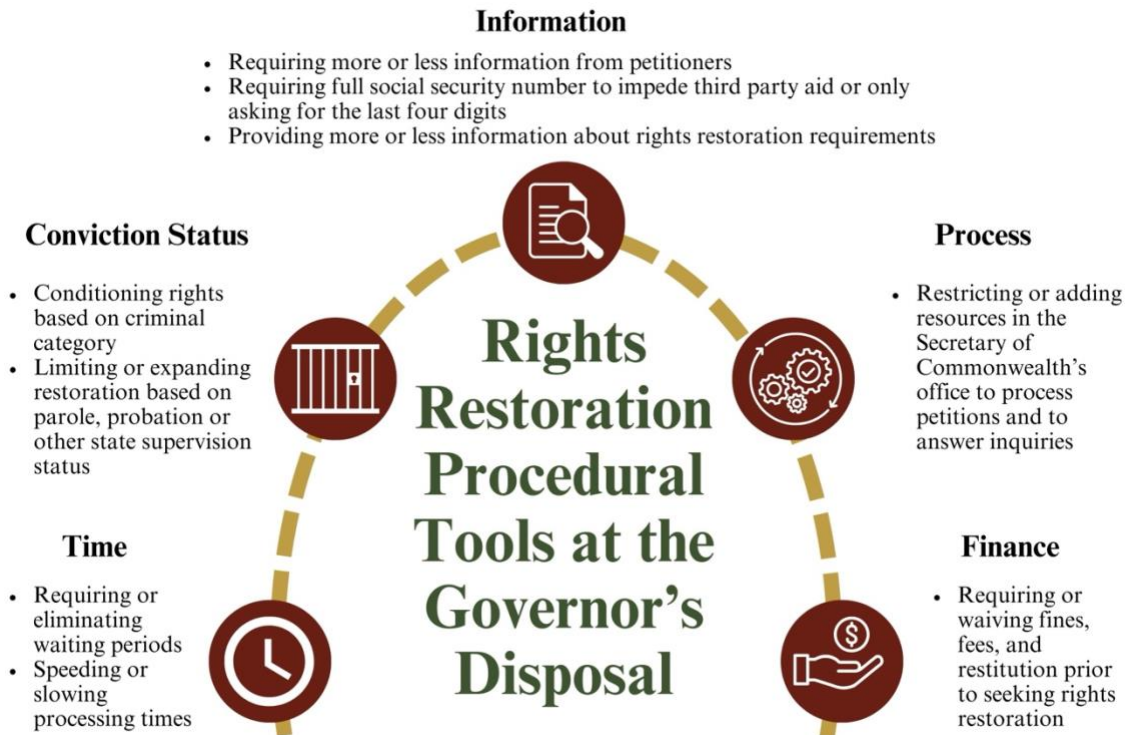
<sup>86</sup> Ortiz, *supra* note 43, at 180.

<sup>87</sup> *See* Gonzalez, *supra* note 39, at 204; Guarnieri, *supra* note 18, at 462.

<sup>88</sup> Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006); Johnson v. Governor of Florida., 405 F.3d 1214 (11th Cir. 2005); Simmons v. Galvin, 575 F.3d 24 (1st Cir. 2009).

discriminatory manner violates the VRA.”<sup>89</sup> However, the 9<sup>th</sup> Circuit later adopted a heightened causal standard for VRA §2 claims in the context of felony disenfranchisement, effectively requiring a showing of discriminatory intent,<sup>90</sup> even though §2 claims do not require proof of intent.<sup>91</sup> The Fourth Circuit did not rule out the applicability of the VRA to felony disenfranchisement in *Howard*.<sup>92</sup>

Outside mainstream voting rights litigation, an en banc panel in the 5<sup>th</sup> Circuit is considering whether to overrule a three-judge panel ruling (2-1) that permanent disenfranchisement in Mississippi violates the 8<sup>th</sup> Amendment guarantee against cruel and unusual punishment.<sup>93</sup>



<sup>89</sup> *Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Cir. 2003).

<sup>90</sup> *Farrakhan v. Gregoire*, 623 F.3d 990, 992–94 (9th Cir. 2010).

<sup>91</sup> Jamelia N. Morgan, *Disparate Impact and Voting Rights: How Objections to Impact-Based Claims Prevent Plaintiffs from Prevailing in Cases Challenging New Forms of Disenfranchisement*, 9 ALA. C.R. & C.L. L. REV. 93, 147 (2018).

<sup>92</sup> 205 F.3d at 1333; *see also* *Frazier*, *supra* note 2, at 486.

<sup>93</sup> *Hopkins v. Sec'y of State Delbert Hosemann*, 76 F.4th 378 (5th Cir.), *reh'g en banc granted, opinion vacated sub nom*, 83 F.4th 312 (5th Cir. 2023).

## FELONY DISENFRANCHISEMENT AND VOTER RESTORATION IN VIRGINIA – GUBERNATORIAL POLICIES

Through the 1990s, governors of Virginia restored civil rights to very few Virginians. Republican Governors James Gilmore and George Allen, respectively restored the voting rights of 238 and 460 former felons.<sup>94</sup> In 2002, Democratic Governor Mark Warner took the first steps towards the modern Virginian restoration scheme by streamlining the application process for non-violent offenders, reducing the mandatory post-sentence five-to-seven-year waiting period for non-violent offenders to three years, removing the requirement for three letters of reference, and reducing the number of pages in the application for non-violent offenders from 13 pages to 1 page.<sup>95</sup> Warner also shortened the administrative turnaround time to sixty days.<sup>96</sup> Violent and drug offenders still faced high administrative burdens during this period.<sup>97</sup> Warner restored civil rights to approximately 3,500 Virginians.<sup>98</sup> Warner’s successor, Democratic Governor Tim Kaine, restored voting rights to 4,402 people during his term.<sup>99</sup>

In 2013, Republican Governor Robert McDonnell took the next big step in modernizing voter restoration in Virginia by announcing he would restore the vote to former felons convicted of non-violent crimes if they completed their sentence, probation or parole and paid all court costs, fines, and restitution. Unfortunately, this initiative was complicated administratively because the state’s records failed to comprehensively track eligible individuals, preventing Virginia from effectively informing past offenders about the status of their right to vote.<sup>100</sup> Nonetheless, Governor McDonnell restored more than 8,000 individuals’ civil rights, including future Speaker of the House of Delegates, Don Scott (elected to serve in the General Assembly in 2020, rising to the speakership in January 2024).<sup>101</sup>

Democratic Governor McAuliffe capitalized on the restoration momentum and reduced the waiting time for individuals convicted of violent felonies from five years to three years, later removing the administrative distinction. He then removed drug offenses from the list of violent felonies, beginning to undo the systemic imprint of mass incarceration on Black Virginians, which “represented 20 percent of

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<sup>94</sup> Howard, *supra* note 19, at 123.

<sup>95</sup> Gibson, *supra* note 20, at 7.

<sup>96</sup> Martin, *supra* note 42, at 489.

<sup>97</sup> Martin, *supra* note 42, at 489.

<sup>98</sup> See *Branded: The Fight Over Restoring Voting Rights*, *supra* note 72.

<sup>99</sup> Howard, *supra* note 16, at 123.

<sup>100</sup> CAMPAIGN LEGAL CTR., VOTING RIGHTS IN VIRGINIA: 2006-21, at 30–31 (2021), <https://campaignlegal.org/sites/default/files/2021-08/CLC%20VA%20VRA%20Report%20-%20Final.pdf>.

<sup>101</sup> See *Branded: The Fight Over Restoring Voting Rights*, *supra* note 72 (“McDonnell says his Catholic faith played a big role in his thinking on the issue. And he figured he’d take advantage of his political reputation. ‘And I felt that, you know, as a former prosecutor, former attorney general, tough on crime guy, I had a lot of credentials, if you will. Or a lot of grace and political capital built up, that if I took on this issue of restoration of rights, which people thought was a Democratic issue, that I could probably do a lot.’”).



the state population at the time but 60 percent of Virginians in prison, including 72 percent of Virginians incarcerated for drug offenses.”<sup>102</sup> In 2015, McAuliffe “abolished the requirement that citizens must pay their court costs and administrative fees in full before they could apply to have their right to vote restored.”<sup>103</sup> McAuliffe then attempted to restore the civil rights of 206,000 former felons. The Republican leaders of the House of Delegates and Senate sued to stop the blanket restoration order. In *Howell v. McAuliffe*, the Virginia Supreme Court ruled that the governor’s decision to issue blanket restoration orders without individualized consideration violated the Virginia constitution. Governor McAuliffe responded by signing restoration orders for individual Virginians in batches every month.<sup>104</sup> Although the Republican majority leaders tried to hold McAuliffe’s new scheme to be in contempt of the court’s order, the Virginia Supreme Court refused to intervene. By the end of McAuliffe’s term, he had restored the voting rights of 173,166 Virginians, “almost five times more than the total for the 19 governors who had preceded him.”<sup>105</sup> Democratic Governor Northam continued restoring rights at a historic pace, restoring the vote to former felons who had completed their sentence or incarceration, including those on parole or probation.<sup>106</sup> During his term, Northam restored civil rights to over 126,000 people.<sup>107</sup>

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<sup>102</sup> CAMPAIGN LEGAL CTR., *supra* note 100, at 31.

<sup>103</sup> CAMPAIGN LEGAL CTR., *supra* note 100, at 31.

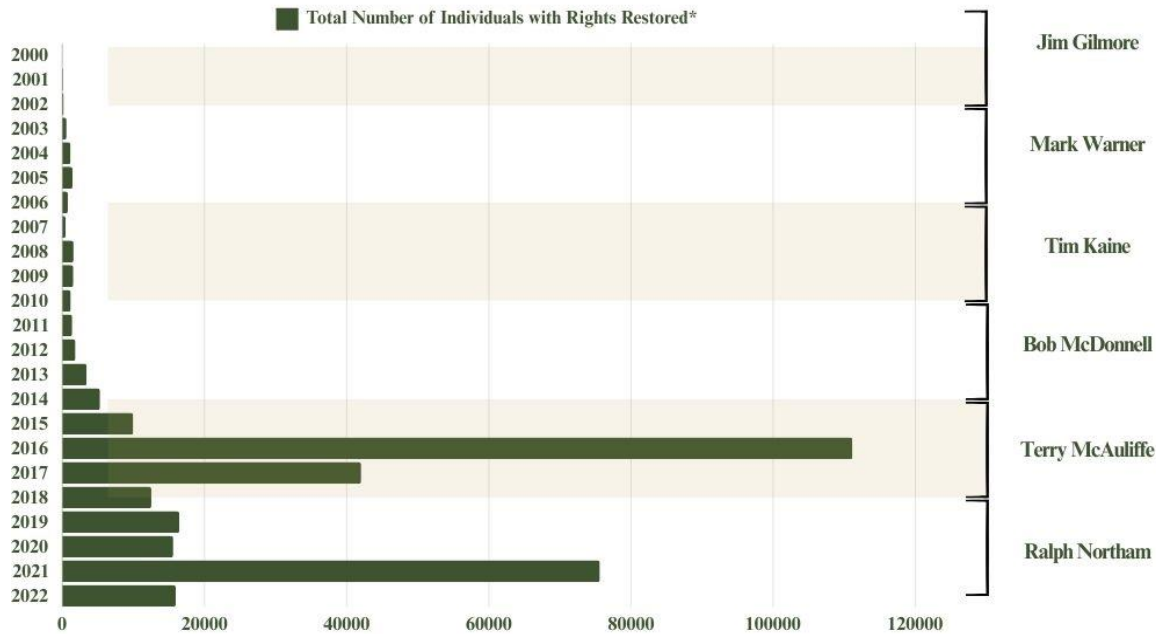
<sup>104</sup> See News Release, Governor McAuliffe Announces Process for Case-by-Case Restoration of Former-Felons’ Civil Rights, (Aug. 22, 2016), <https://www.governor.virginia.gov/newsroom/all-releases/2017/mcauliffe-administration/headline-826606-en.html>; see also Emily Rong Zhang, *New Tricks for an Old Dog: Deterring the Vote through Confusion in Felon Disenfranchisement* 84 MO. L. REV. 1037, 1046 (2019).

<sup>105</sup> Howard, *supra* note 16, at 127.

<sup>106</sup> Howard, *supra* note 16, at 127.

<sup>107</sup> *Over 4 Years, Gov. Northam Granted More than 1,200 Pardons, Restored Civil Rights to 126,000*, WAVY.COM, (Jan. 14, 2022, 9:26 PM), <https://www.wavy.com/news/virginia/over-4-years-gov-northam-granted-more-than-1200-pardons-restored-civil-rights-to-126000/>.

# Restoration of Rights in Virginia



SOURCE: SD2 - LIST OF PARDONS, COMMUTATIONS, REPRIEVES AND OTHER FORMS OF CLEMENCY ANNUAL REPORTS FROM 2000 - 2023

\*FOUR INDIVIDUALS DID NOT HAVE A DATE RECORDED FOR THEIR RIGHTS RESTORATION AND ARE NOT INCLUDED IN THE GRAPH

Republican Governor Glenn Youngkin initially continued the trend of categorical restoration and restored the rights of 3,469 Virginians in his first year in office.<sup>108</sup> However, he soon reversed course without announcement, ending almost a decade of robust rights restoration policies that had begun with the McDonnell administration.<sup>109</sup> It has been impossible for the public to discern exactly what changes Governor Youngkin’s administration has made to the rights restoration process in Virginia without public communication on the matter from the administration. Among the clues, Governor Youngkin’s administration added three questions to restoration petition, asking whether people committed a violent offense, whether they paid court fines, fees and restitution, and confirming whether the person applying is currently on probation or other state supervision.<sup>110</sup> In response to public and legislative backlash against the lack of transparency in changing the restoration process, former Secretary of Commonwealth Kay Coles James stated that the administration was considering each application individually, but declined to

<sup>108</sup> *Voting Rights Restoration Efforts in Virginia: A Summary of Current Felony Disenfranchisement Policies and Legislative Advocacy in Virginia*, supra note 8.

<sup>109</sup> *Voting Rights Restoration Efforts in Virginia: A Summary of Current Felony Disenfranchisement Policies and Legislative Advocacy in Virginia*, supra note 8.

<sup>110</sup> *Gov. Youngkin Slows Voting Rights Restorations in Virginia, Bucking a Trend*, NPR (Apr. 13, 2023, 8:16 PM), <https://www.npr.org/2023/04/13/1169550479/youngkin-felon-voting-rights-virginia>.

share criteria used to evaluate those individuals.<sup>111</sup> Further frustrating the restoration process, during the November 2023 state elections, nearly 3,400 individuals who had their rights restored were taken off the voting rolls in an apparent mistake in voter list maintenance.<sup>112</sup> Youngkin’s administration had incorrectly marked some Virginians as receiving new felony convictions, at first uncovering 270 wrongly purged voters, then nearly 3,400, leading to confusion and to restored voters being turned away at the polls.<sup>113</sup> The Virginia Inspector General blamed poor communication between state agencies and outdated technology for the error. In 2022, Governor Youngkin restored the voting rights of approximately 4,000 people in total.<sup>114</sup>

## FELONY DISENFRANCHISEMENT AND VOTER RESTORATION IN 2024

There are several ongoing attempts to end or alter the current felony disenfranchisement and voter restoration schemes in Virginia, including two federal lawsuits, FOIA litigation, and legislative efforts to amend Virginia’s constitution.

In *Hawkins v. Youngkin*, the plaintiff is arguing that the discretion afforded to the Governor constitutes unfettered discretion in violation of the First Amendment.<sup>115</sup> The argument rests on Supreme Court precedent that prohibits the arbitrary licensing of First Amendment-protected expression or expressive conduct, in this case, voting. A successful result for the *Hawkins* plaintiff would halt the current “arbitrary” voting rights restoration scheme and replace it with a “non-arbitrary voting rights restoration scheme which restores the right to vote based on specific, neutral, objective, and uniform rules and/or criteria and within reasonable, definite time limits.”<sup>116</sup>

In *King v. Youngkin*, plaintiffs argue that Virginia is in violation of the 150-year-old Virginia Readmission Act, which established the terms of Virginia’s readmission to the United States Congress after the Civil War.<sup>117</sup> The Act prohibits disenfranchising citizens for felonies that were not “felonies at common law,” which plaintiffs argue do not include modern-day felonies like drug crimes. Plaintiffs seek declaratory judgment that the Governor’s enforcement of Article II, Section I of the Virginia Constitution

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<sup>111</sup> *See id.*

<sup>112</sup> Dean Mirshahi, *After Nearly 3,400 Removed from Virginia’s Voter Rolls, Advocates Raise Doubts Over Youngkin’s Response*, ABC 8 NEWS (Nov. 1, 2023, 6:26 PM), <https://www.wric.com/news/virginia-news/after-nearly-3400-removed-from-virginias-voter-rolls-advocates-raise-doubts-over-youngkins-response/>.

<sup>113</sup> Alex Burness, *“I Don’t Think They Care”: Virginia Is Slow-Walking the Fix to a Wrongful Voter Purge*, BOLTS (Oct. 17, 2023), <https://boltsmag.org/virginia-erroneous-voter-purge/>; Ben Paviour, *Virginia Inspector General Says Voter Removals Were Accidental*, NPR (Dec. 18, 2023), <https://www.vpm.org/news/2023-12-18/virginia-elections-voter-purge-2023-inspector-general-report>.

<sup>114</sup> Beyer, *supra* note 14.

<sup>115</sup> Complaint at 1, 11, *Hawkins v. Youngkin*, No. 3:23-cv-00232 (E.D. Va. filed Apr. 6, 2023).

<sup>116</sup> *Id.* at 23.

<sup>117</sup> *King v. Youngkin*, No. 3:23-cv-00408 (E.D. Va. filed June 26, 2023); *see also* Homer & Menendez, *supra* note 58.

violates the Virginia Readmission Act and an injunction enjoining enforcement of this part of the Virginia Constitution with respect to citizens convicted of non-common law felonies.

Lastly, seeking more transparency into the Governor's changes to the rights restoration process, the Virginia NAACP has sued Governor Youngkin for failing to produce all of the relevant documents in response to their Virginia FOIA (VFOIA) request.<sup>118</sup> Although suffering a setback after a limited ruling held "the Governor's restoration of rights database is exempt from production under VFOIA," the case is ongoing.<sup>119</sup>

So far without success, Virginia legislators have attempted to amend the disenfranchisement provision numerous times (despite studies that find popular support among Americans).<sup>120</sup> Nationwide surveys indicate that almost seven-in-ten Americans and both a majority of Republicans and Democrats favor granting voting access to those convicted of felonies after they serve their sentences.<sup>121</sup> Without the protection of the VRA's preclearance regime or other federal legislation,<sup>122</sup> disenfranchised Virginians will likely remain subject to the whims of gubernatorial discretion in Virginia.

## CONCLUSION

The United States stands "alone among modern democracies in stripping voting rights from millions of citizens on the basis of criminal convictions."<sup>123</sup> Through the permanent disenfranchisement laws and policies of states like Virginia, the United States fails to meet its requirement under Article 25 of the International Covenant on Civil and Political Rights, which provides that every citizen will have the right and opportunity to vote without unreasonable restrictions.<sup>124</sup> International treaty non-compliance and

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<sup>118</sup> Virginia State Conference NAACP v. Governor Glenn A. Younkin, Docket No. CL23004731-00 (Va. Cir. Ct. filed Oct. 17, 2023).

<sup>119</sup> Press Release, Virginia NAACP, Virginia NAACP Statement Following Initial Hearing in Lawsuit to Obtain Public Records on Governor's Discriminatory Restoration of Rights Process (Dec. 12 2023, 6:50 PM), <https://naacpva.org/virginia-naacp-statement-following-initial-hearing-in-lawsuit-to-obtain-public-records-on-governors-discriminatory-restoration-of-rights-process/>.

<sup>120</sup> Monica Robbers, *Ramifications of Felony Disenfranchisement on the Voting Population in the Commonwealth of Virginia*, 11 RICH. J.L. & PUB. INT. 1, 6 (2008).

<sup>121</sup> See Kristen Bialik, *How Americans View Some of the Voting Policies Approved at the Ballot Box*, PEW RSCH. CTR. (Nov. 15, 2018), <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-someof-the-voting-policies-approved-at-the-ballot-box/>; see also Jeff Manza et al., *Public Attitudes Toward Felon Disenfranchisement in the United States*, 68 PUB. OP. Q. 275 (2004).

<sup>122</sup> See CAMPAIGN LEGAL CTR., *supra* note 100, at 6; Montana Birringer, *The Right to Vote: Felony Disenfranchisement and Making Restoration a Reality*, 27 PUB. INT. L. REP. 42, 49 (2021).

<sup>123</sup> Kelley, *supra* note 31, at 1; see also Behrens & Uggen, *supra* note 74, at 599.

<sup>124</sup> See ACLU ET AL., *supra* note 79, at 4.

ensuing condemnation may do little to alleviate the burdens associated with disenfranchisement for formerly incarcerated Americans.

In Virginia, these burdens include navigating the administratively opaque restoration process,<sup>125</sup> while overcoming associated burdens such as stigma and misinformation.<sup>126</sup> Once again echoing Virginia's discriminatory past, these burdens fall on Virginians of lower socioeconomic status and racial minorities, especially Black Virginians.<sup>127</sup> As approximately 22,000 individuals convicted of felonies are released from incarceration each year in Virginia and the restoration of rights is restricted by the current governor's policies, the number of disenfranchised Virginians is again rising by the tens of thousands.<sup>128</sup> In the absence of modifications or relief from the federal or state legislative, judicial, or executive branches, minimizing the effects of felony disenfranchisement and helping restore the votes of Virginians will fall on civil society, such as the organizations and individuals gathered at the Rights Restoration Summit at William & Mary Law School on March 21, 2024.

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<sup>125</sup> See Suvall, *supra* note 7, at 1953; Cammett, *supra* note 41, at 353.

<sup>126</sup> See Cammett, *supra* note 41, at 353; Marc Meredith & Michael Morse, *Do Voting Rights Notification Laws Increase Ex-Felon Turnout?*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 220, 241 (2014).

<sup>127</sup> Kelley, *supra* note 31, at 3.

<sup>128</sup> Beyer, *supra* note 14.