

# The Virginia NEWS LETTER

## *Felons and the Right to Vote in Virginia: a Historical Overview*

by Helen A. Gibson

### Introduction

The broad-based, automatic loss of voting rights for people with felony convictions who have completed their sentences is a practice unique to the United States among the world's major democracies and industrialized nations.<sup>1</sup> Like other voting rights restrictions associated with the Jim Crow era after the Civil War, when Southern states endeavored to undercut the voting strength of black citizens, the disenfranchisement of felons has a long history of racial discrimination in the United States. Unlike other discriminatory measures such as poll taxes and literacy tests, the denial of voting rights for a felony conviction has continued largely unabated until the present time, with almost 6 million citizens prohibited from voting in the most recent national elections.<sup>2</sup> Despite recent steps toward reform, Virginia continues to struggle with its legacy of one of the highest disenfranchisement rates in the nation.<sup>3</sup> Beyond correcting racial discrimination, proponents of full voting rights for felons argue that such rights keep felons and ex-felons connected to society at large and support the purported objective of incarceration, which is rehabilitation.<sup>4</sup> Moreover, voting is seen as a civic responsibility, and the right to vote is one of the core principles of democracy. Embracing the view that felons need and deserve to be reconnected to civic life, Maine and Vermont, as well as most countries, allow incarcerated felons to vote.



Helen A. Gibson

The following article will examine felon disenfranchisement and recent developments in Virginia in comparison with other states and will trace its history in the years following the Civil War, when a sizeable African American electorate emerged and was soon sidelined by various tactics. The article concludes by describing avenues for establishing fairer practices. The article will use the term *felon disenfranchisement* to refer to the denial of voting rights to convicted felons who are currently incarcerated, on probation, or on parole. *Ex-felon disenfranchisement* refers to the practice of denying voting rights to felons who have completed their sentences.

Until 2014 Virginia was tied with Kentucky for the strictest disenfranchisement laws and highest disenfranchisement rate in the nation. For many years, Virginia disenfranchised felons indefinitely as soon as they were convicted.<sup>5</sup> But even with some recent reforms the state's current disenfranchised population numbers approximately 450,000 of its 6.4 million voting-age residents,<sup>6</sup> and its felon disenfranchisement laws disproportionately affect black citizens. As of 2010, over 20 percent of the state's voting-age African American population could not vote as a result of a felony conviction, and nearly 7 percent of the state's total population 18 and older was disenfranchised.<sup>7</sup> These statistics reflect both the extent of Virginia's felon disenfranchisement laws and the fact that African Americans in Virginia are currently incarcerated



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at a rate of approximately six times greater than the white population.<sup>8</sup> (Ethnic minorities such as Hispanic Virginians are currently incarcerated at a rate comparable to that of non-Hispanic white Virginians.<sup>9</sup>)

Various Virginia governors and civil rights organizations have worked to reform laws regarding the restitution of civil rights for felons and ex-felons over the last several decades and have made progress. As of April 2014, non-violent offenders currently incarcerated in Virginia receive an automatic restoration of rights upon leaving prison and past offenders may apply for restoration. Drug offenses are no longer deemed “violent.” Meanwhile, the waiting time for ex-felons convicted of violent crimes has been reduced to three years after their release before they can apply for the restored right to vote. While the felon disenfranchisement laws of states around the country vary in scope and level of restriction, Virginia’s requirements that ex-felon restoration of rights applicants have completed their probation or parole, have no pending felony charges and have paid all court fines, restitutions to victims, and fees to the commonwealth, in addition to the waiting period and additional eligibility requirements for violent offenders, continue to make Virginia one of the nation’s most restrictive states.<sup>10</sup>

### **A Brief History of Felon Disenfranchisement in Virginia**

Although the racially discriminatory impact of the state’s felon disenfranchisement laws is often said to have arisen during the Jim Crow era that followed Reconstruction, the seeds of discrimination were planted in colonial era statutes that differentiated between felony conviction and sentencing for white and non-white Virginians.

Statutes related to felonious theft were one of the earliest means of criminalizing Native and African American members of the colonial Virginia population.<sup>11</sup> While white residents were also affected by the increasingly numerous laws related to felony conviction and sentencing in the 18th century, free black Virginians experienced a particularly precarious legal status.<sup>12</sup>

### **Race and Criminality in Antebellum Virginia**

By the early 19th century, the perceived threat of free African Americans’ political strength in Virginia had inspired such harsh punishments as a temporary measure allowing for those sentenced to two years or more for a felony conviction to be whipped and sold into slavery.<sup>13</sup> In 1828, this practice was dropped and a new mandatory five-year minimum sentence was set for black

Virginians convicted of a felony, while the minimum for whites was two years in prison.<sup>14</sup> This was the situation in 1830, when the 1776 Constitution of Virginia was revised and the state’s first explicit felon disenfranchisement measure, denying voting rights to “any person convicted of any infamous offense,” was implemented.<sup>15</sup>

The primary questions of the 1829-30 Virginia State Convention had been whether to extend the franchise to all free residents of the state and how to apportion legislative representation. An example of the convention’s linkage of free African Americans to crime is found in an address made to the convention’s executive committee by then-Governor Giles in 1829.<sup>16</sup> He extolled the “highly honorable...present moral condition of the white population of Virginia, compared to that of any other State” according to comparisons made by the director of corrections (then-“superintendent of the penitentiary”) following a visit to correctional facilities in other states. The governor cited the fewer number of incarcerated white Virginians, as compared to other states, as evidence of the “honorable” moral condition of the race. He also observed that the head of Virginia corrections had discovered,

“[t]hat there were fewer convictions for Penitentiary offences by slaves [in Virginia], than the free white population of Virginia according to their relative numbers—doubtlessly arising from the comfortable condition of the slaves...[w]hilst the number of convictions of the free coloured, is about four times greater, according to the numbers, than either the free white, or coloured slave, population.”<sup>17</sup>

The governor concluded that no good could come of the implementation of universal suffrage. Once the conclusion was reached that free blacks were prone to criminal conviction and subsequent incarceration, the framers inserted a phrase allowing for disenfranchisement for “infamous crime” and the simultaneous stipulation that only propertied whites could vote.<sup>18</sup> The state’s explicit undergirding of white supremacy in the 1830 revision to the Constitution of Virginia rested in part on the assumption that free African Americans were disqualified for the vote because of their proclivity for crime.

By 1845, free African Americans represented only 6 percent of the non-slave population of Virginia (“excluding foreigners”) but over 40 percent of non-slave Virginians incarcerated in the state penitentiary.<sup>19</sup> Government officials of the day interpreted the discrepancy in incarceration rates

of free black and white Virginians as evidence of the former's moral depravity, or "infamy." In a speech to the Virginia General Assembly in 1846, Governor William Smith elaborated on this logic. "The free negroes constitute only about one-tenth of [Virginia's] negro race," he began, "and yet they perpetrate about six-sevenths of the crimes committed by it." The governor continued:

"Our criminal statistics develop these results, which I am satisfied are substantially correct. They demonstrate the moral degradation of the free negro, the hopelessness of his reform, the mischievous influences of his association, and the necessity of his removal. Occupying here that space which separates the white man from the slave, he corrupts portions of both races...I regard our free negro population as one of our greatest evils, and to get rid of it as one of our highest duties."<sup>20</sup>

While slavery was soon to be abolished in the 13th Amendment to the United States Constitution, the governor's sentiments would prevail in Virginia through the continued erroneous conflation of blackness and criminality. Within thirty years after the governor's speech, the practice of incarcerating African Americans convicted of felonies and petty theft revealed itself as an effective means of disenfranchisement in a new, ostensibly more democratic, era.

### Disenfranchisement for Petit Larceny in Postbellum Virginia

Following Virginia's readmission to representation in Congress after the Civil War, African Americans gained the explicit right to vote. As a result, white Virginians, including those who were postbellum Democrats, pushed for new laws and constitutional provisions disenfranchising persons convicted of petty theft. (In the 19th century African Americans and abolitionists tended to vote for the Republican party of Abraham Lincoln, while Democrats of the day counted among their ranks many ex-Confederates.) Racial antagonists in the late-19th century succeeded in enshrining disenfranchisement for felony conviction in the Virginia Constitution, using lists of convicted felons and petit larcenists to deny African Americans the vote in majority-black precincts on Election Day.<sup>21</sup>

Petit larceny, believed to be a crime to which former slaves were prone (or of which they could be easily accused and convicted), was added through an 1876 amendment to the Virginia Constitution to the list of convictions that disqualified

one for the vote.<sup>22</sup> (Petit larceny, or petty theft, refers to the act of stealing an object or sum of money from another person, currently defined in the *Code of Virginia* as a "value of less than \$5" when taken directly from another person, or "of the value of less than \$200" for stolen property not physically attached to a person.<sup>23</sup>) Notably, the crime of petit larceny was subsequently punished not only with disenfranchisement, but also with potential whipping. Punishment by whipping rendered the crime of petit larceny infamous, helping to justify subsequent disenfranchisement. The 1876 law echoed similar legislation from the late 17th century defining hog stealing by slaves as felonious and punishable by death or whipping.<sup>24</sup> Following colonial precedent, most felony convictions of slaves in early 19th century Virginia had been for alleged theft.<sup>25</sup> Legislation in antebellum Virginia had also frequently stipulated that free African Americans be whipped for minor offenses for which white Virginians were obliged to pay a fine.<sup>26</sup>

Following the 1876 passage of Virginia's petit larceny disenfranchisement measure, the General Assembly established an officially race-neutral policy of checking the criminal records of potential voters at the polls on Election Day.<sup>27</sup> The *Staunton Spectator* trumpeted the new legislation in a May 1, 1877 article thusly:

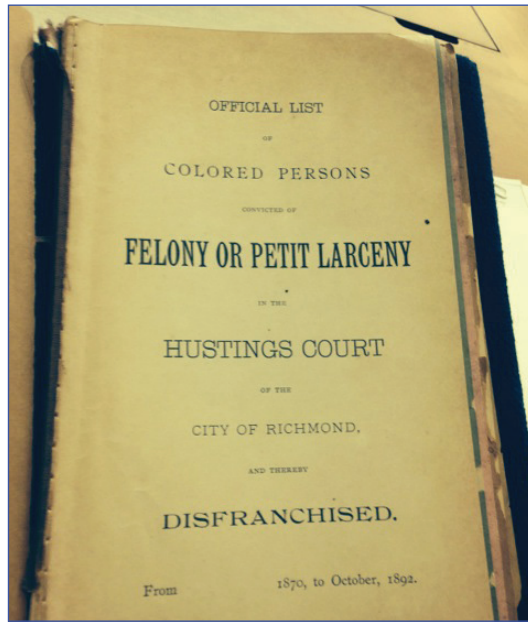
"The clerk of the County Court and Hustings, or Corporation Court, shall at each registration, deliver to each registrar in his county or city, a list of all voters who have died, or who have been convicted of felony or petit larceny since last registration...and he shall strike from the list of voters the name of any person convicted of felony or petit larceny..."<sup>28</sup>

In practice, such laws were implemented throughout the postbellum South, particularly by Democrats in close races, almost exclusively to the detriment of African American voters.<sup>29</sup> A November 1883 copy of the *Richmond Daily Dispatch* put the issue succinctly: "We publish elsewhere a list of negroes convicted of petit larceny in the Police Court of the city of Richmond," the paper stated; "Democratic challengers should examine it carefully."<sup>30</sup> As black and white citizens voted in separate lines in elections of the day, lists of convicted felons were a means of delaying and discouraging black voters in majority African American districts as well as of purging the voter rolls.<sup>31</sup>

A November 1889 *Washington Bee* article entitled "Our Trip to Richmond" provides further

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Exhibit 1: Disenfranchisement Court Document



*Official List of Colored Persons Convicted of Felony or Petit Larceny in the Hustings Court of the City of Richmond, and Thereby Disfranchised. From 1870, to October, 1892.*

Source: Albert and Shirley Small Special Collections Library, University of Virginia.

*“The 1902 constitution, notoriously fostered in a climate of racial hostility, would perpetuate some previous felon disenfranchisement legislation through the 1971 revision to the constitution and beyond.”*

evidence of racially discriminatory use of the 1877 law.<sup>32</sup> The article describes voter intimidation in one of Richmond’s historically most politically active African American districts, Jackson Ward, on the occasion of the 1889 gubernatorial election. Upon arrival at the third voting precinct in the district, the author of the article encountered a line of over 900 African Americans waiting to vote, all of whom he queried were self-proclaimed Republicans. At the fourth precinct, over 600 African Americans were waiting to vote, some of whom having camped out over night. “Occasionally a colored Republican would be called on to vote,” the author wrote. Voter intimidation through accusations of larceny and use of delay tactics ensued thusly, according to the author:

“There were over 600 men in line, as we said before, and about a dozen or more at the window, a Democratic registrar takes the colored vote[r] in hand: Where do you live? On such and such a street. Have you been convicted for stealing? No sir; well, we believe that you have been convicted for stealing. Mr. Challenger go and find Tom Jones...In the meantime Smith is asked whether he knows the Election Laws? Yes sir, says Smith. I don’t believe you do, says the registrar, and I shall read them to you...After having kept the man at the window 25 or 30

minutes, Tom Jones returns and challenged the vote of Smith. He was hustled out of the line and if he attempted to give impudence he was arrested.”<sup>33</sup>

### The Jim Crow Constitution of 1902

Post-Civil War disenfranchisement for petit larceny and other minor offenses would find its way into the Jim Crow-era 1902 revision of the Constitution of Virginia. The 1902 constitution, notoriously fostered in a climate of racial hostility, would perpetuate some previous felon disenfranchisement legislation through the 1971 revision to the constitution and beyond. A hodgepodge of new and historical voting rights restrictions, the section of the 1902 revision to the constitution relevant to felon disenfranchisement read:

“The following persons shall be excluded from registering and voting: Idiots, insane persons, and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery or perjury; persons who, while citizens of this State, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such a duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel.”<sup>34</sup>

In the crafting of the above, expanded disenfranchisement clause, delegates to the Constitutional Convention of 1901-02 used such composite documents as a report entitled, “Communication from the Superintendent of the Penitentiary in Relation to Number of Colored Convicts Now in the Penitentiary, and the Number which can Read and Write, and the Number that has Attended Public Free Schools.”<sup>35</sup> Contemporary journalistic publications completed the picture by publicizing the efforts to thwart intended recipients of the revised legislation.

A May 1902 article from the *Richmond Dispatch*, entitled “Democrats Determined,” made the continued discriminatory targeting of African Americans through use of provisions in the revised Virginia Constitution explicit. “The Democrats

are determined to elect the ticket nominated at the primary,” the article began:

“and to that end have provided challengers at each precinct to see that only such negroes vote as are entitled to do so. *Lists of dead negroes and those disenfranchised by crime have been provided and they will be barred.*”<sup>36</sup>

Three years later, a May 1905 article from the *Times Dispatch*, entitled “Many Voters Disqualified,” announced that “[f]ive hundred and fifty names are included in the lists of persons convicted in the Police Court between October, 1902, and May, 1906, of offenses which, under the provision of Section 23 of the Constitution, would disfranchise them. The lists...have been mailed to all the registrars in the city.”<sup>37</sup> With the revised Article 2, Section 23 of the constitution remaining in tact throughout most of the 20th century, the only recourse for African Americans and others convicted of disenfranchising crimes was to petition the governor for the reinstatement of their civil rights.<sup>38</sup>

### Origins of the Gubernatorial Pardon in Virginia

Legal references to the tradition of royal pardons granted by the King of England date to at least the 14th century; evidence of the practice of pardoning convicted felons in Virginia exists as early as 1736, the first year of publication of the colony’s first established newspaper, the *Virginia Gazette*.<sup>39</sup> A feature of the early Virginia justice system, a pardon from the governor, was a recourse available to the slave population as well as non-slave residents of the colony, though slaves were sometimes hanged despite a pardon.<sup>40</sup> While reporting on 18th century pardons for convicted felons in Virginia was both rare and opaque, the practice of granting pardons represented an important aspect of the history of felon disenfranchisement that persists to this day: the power of the governor to accord clemency to individual convicted criminals and to override the elected Virginia legislature in determining the parameters of the state’s role as keeper and conferrer of citizenship status.

The 1870 revision to the Virginia Constitution underlined the power of the governor “to grant reprieves and pardons after conviction” as well as “to remove political disabilities consequent upon conviction for offenses prior or subsequent to the adoption of this constitution, and to commute capital punishment.”<sup>41</sup> The revised constitution stipulated that the governor report to each session of the General Assembly the number of

pardons and reprieves granted, in addition to any commuted punishments and the reasons for each action taken. In 1883, the Virginia Supreme Court decided in *Edwards v. The Commonwealth* that a separate measure other than a gubernatorial pardon was needed to restore citizenship rights.<sup>42</sup> Beginning in 1906, Virginia governors’ reports to the General Assembly began to distinguish between pardons granted and the removal of political disabilities.<sup>43</sup> While interpretations have varied over time, the removal of political disabilities today restores one’s right to vote, to run for and serve elected office, to serve on juries, and to serve as a public notary.<sup>44</sup>

In conjunction with the continued disenfranchisement of felons in Virginia, as provided for in the most recently revised constitution of 1971, the practice of reporting to each General Assembly session the number of pardons and restorations of rights granted by the governor persists today. Petit larceny, which was officially removed from the felon disenfranchisement clause of the Virginia Constitution in 1971, has continued into the 21st century to serve as a marginalizing misdemeanor offense for some non-citizen residents of Virginia. Petit larceny still features in the most recent annual reports from the governor to the General Assembly on clemency granted.<sup>45</sup>

### Reform in the Age of Colorblindness

Today, after a successful petition for their restoration of rights, ex-felons in Virginia may pursue a pardon from the governor.<sup>46</sup> Moreover, petitioning for a restoration of rights is no longer necessary for offenders currently incarcerated for non-violent felonies. The gubernatorial pardon is intended to further elevate the perceived degraded social status of ex-offenders, who face discrimination in the job market and in society at large post-incarceration. The website of the Secretary of the Commonwealth lists three types of gubernatorial pardons available to convicted ex-felons who have been granted a restoration of rights: (1) a simple pardon, (2) a conditional pardon, and (3) an absolute pardon. Only an absolute pardon erases one’s criminal record, while a conditional pardon can modify an inmate’s sentence if certain criteria are met. “A simple pardon is a statement of official forgiveness. While it does not expunge (remove the conviction from) the record, it often serves as a means for the petitioner to advance in employment, education, and self-esteem.”<sup>47</sup>

The 21st century reform of laws governing felon and ex-felon disenfranchisement in Virginia has been steady, if slow. But the commonwealth can do better than symbolic acts of pardon when it comes to discriminatory civil rights restrictions.

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At present, there are at least five varieties of felon disenfranchisement restrictions in practice nationwide based on various state laws: (1) no restriction; (2) inmates only; (3) inmates and parolees; (4) inmates, parolees and probationers; (5) inmates, parolees, probationers, and some or all ex-felons.<sup>48</sup> Despite recent reform efforts, Virginia felon disenfranchisement laws continue to fall into number five, the most restrictive category.

For the future there are three avenues of reform of existing laws governing felon and ex-felon disenfranchisement in Virginia—reform via court decision, reform via constitutional amendment, and reform via gubernatorial action.

### Reform Via the Courts

Courts have *not* historically supported Virginia’s felon disenfranchisement reform efforts. On the national level, the U.S. Supreme Court ruled in *Richardson v. Ramirez* (1974) that “the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment,” allowing states’ denial of individuals’ voting rights following felony conviction to continue apace.<sup>49</sup> [The 14th Amendment, which guaranteed universal civil rights, included a provision allowing for disenfranchisement for “participation in rebellion, or other crime.” Section 2 of the amendment, requiring states to count African Americans as part of their electorate in exchange for full representation in the U.S. Congress, also included the provision allowing for disenfranchisement. While some scholars believe the addition of the words “or other crime” to the clause disenfranchising for rebellion was targeted at former Confederates, others propose that the phrase was explicitly designed to mitigate the perceived threat of newly enfranchised African Americans.]<sup>50</sup>

A U.S. District Court rejected a 14th Amendment challenge to Virginia’s felon disenfranchisement laws in *Perry v. Beamer* (1996).<sup>51</sup> The U.S. Fourth Circuit Court of Appeals in *Howard v. Gilmore* (2000) upheld the state’s practice of felon and ex-felon disenfranchisement as not in violation of the Voting Rights Act, among other challenges.<sup>52</sup> In pre-trial rulings in *El-Amin v. McDonnell* (2013), the U.S. District Court in Richmond dismissed three of the plaintiff’s four challenges to Virginia’s felon disenfranchisement laws. The remaining allegation was that the Commonwealth of Virginia had adopted its felon disenfranchisement measures with the specific intent to suppress the African American vote, in violation of the 14th Amendment. The judge held that he would need to have a trial on that point, but before any trial could be held, the plaintiff had his voting rights restored by the governor, making

the issue moot.<sup>53</sup> The case was dismissed without a decision on that final challenge. An earlier U.S. Supreme Court ruling, however, provides a glimmer of hope for Virginia felon disenfranchisement law reform via court decision. In *Hunter v. Underwood* (1985), the court ruled that racial animus against African Americans proven to exist in a state’s original felon disenfranchisement provision, coupled with a continued contemporary discriminatory impact along racial lines, could render a disenfranchisement law unconstitutional.<sup>54</sup>

### Legislative Reform

Unlike court decisions, legislative reform related to felon disenfranchisement laws has had some measurable impact in Virginia to date. A General Assembly bill passed in 2000, for example, required the Virginia Department of Corrections to provide information available to the public on the restoration of rights process.<sup>55</sup> The success of this measure incentivized government officials to streamline the application process.

The General Assembly voted down a constitutional amendment related to further reform of the restoration of rights process, however, for 13 consecutive sessions prior to 2014.<sup>56</sup> The most recent legislative attempts to reform laws governing voting rights have continued to fail in the House of Delegates and the Senate. However, some 2014 proposals are being carried over for consideration in 2015.<sup>57</sup> A further unfavorable development was a legislative cut in funding for the Secretary of the Commonwealth to pursue restoration of rights work in the 2014-16 biennium.<sup>58</sup>

Virginia voters rejected a constitutional amendment to streamline the restoration of rights process in 1982.<sup>59</sup> With enough public support, a constitutional amendment repealing current felon disenfranchisement measures could eventually pass in Virginia.

### Executive Action

The governor of Virginia remains one of the most potent agents of reform of felon disenfranchisement in the state today beyond a constitutional amendment or influential court decision. Recent Virginia governors have played an important role in the incremental steps towards more comprehensive enfranchisement taken in the 21st century thus far. The last several governors of the state, Democrat and Republican alike, have addressed the issue of reform directly. Most recent governors have chosen to tackle the restoration of rights process itself in lieu of the more controversial issue of felony conviction. Then-Governor Mark Warner, for example, used his executive clout in 2002 to streamline 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 and reducing the number of pages in the application for non-violent offenders from 13 to 1.<sup>60</sup> Governor Warner is seen as having compromised, however, in leaving drug offenses under the category of violent felonies.<sup>61</sup>

Following an executive order of then-Governor Bob McDonnell in May 2013, approximately 350,000 Virginians convicted of non-violent felonies became eligible to have their voting rights restored without the previous mandatory three-year waiting period. (The percentage of ex-felons in Virginia's history granted a restoration of rights prior to May 2013 is estimated to have been less than 3 percent.<sup>62</sup>) Yet because the state had not kept track of ex-felons who had finished their sentences, probations and parole, and paid their court costs, fines, and restitutions, there was no efficient means for the commonwealth to inform past offenders of the news. Relying on the help of advocacy groups like Virginia Organizing, statewide progress was slow following the July 15, 2013 implementation of the speeded-up process.<sup>63</sup>

In April 2014, Governor Terry McAuliffe moved to reduce the waiting time for restorations of rights applications for a violent felony conviction from five to three years following the completion of a sentence, parole, probation, and payment of all outstanding court fines, restitutions, and fees.<sup>64</sup> The governor also petitioned successfully to have drug offenses removed from the list of violent felonies, a racially significant move in a state where 20 percent of the state population, 60 percent of Virginians in prison, and 72 percent of Virginians incarcerated for drug offenses are African American.<sup>65</sup>

## Conclusion

Virginia is not alone in its continued denial of civil rights to inmates, parolees, probationers, and many ex-offenders; there are currently more than 5.85 million disenfranchised felons and ex-felons nationwide, of whom nearly 40 percent are African Americans.<sup>66</sup> The moment has arrived, however, to acknowledge both the discriminatory origins and continued racial impact of Virginia's felon disenfranchisement laws. Virginia has long been a state of "firsts." There is still time to become the first Southern state to join other world democracies in guaranteeing the right to vote to all of its adult citizens, including inmates and ex-felons.

### ABOUT THE AUTHOR:

Helen Gibson completed her M.A. in American history, culture and society at the University of

Munich (LMU) in September 2014. This article is based on her thesis, "The Role of Race in the History of Felon Disenfranchisement in Virginia." In addition to her graduate studies, she has spent the last five years teaching and managing English language schools for adults in the German state of Bavaria. Prior to moving abroad, she directed a political canvass office in Washington, D.C. Helen received her B.A. in American studies from the University of Virginia in 2005 and spent a semester studying anthropology at the University of Lyon II in Lyon, France. While at U.Va. she worked as a newscaster for WNRN Public Radio. She plans to continue her studies of American civil rights history at the doctoral level in the fall of 2015.

## Endnotes

- 1 Representative John Conyers, Jr., "Forward," in Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* (Philadelphia: Temple University Press, 2006), ix. The nation of Chile is a notable exception. *Ibid.*, 13.
- 2 The Sentencing Project, Research and Advocacy for Reform. <http://www.sentencingproject.org/template/page.cfm?id=133>. (Approximately 2.23 million African Americans are disenfranchised nationally due to felony conviction.)
- 3 Erica Hellerstein, "The Last Gasp of Jim Crow: The High-Stakes Battle to Restore Voting Rights to 350,000 Virginians," *ThinkProgress* (October 24, 2014). <http://thinkprogress.org/election/2014/10/24/3583884/disenfranchised-in-virginia/>.
- 4 Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford University Press, 2008), 36-37.
- 5 "Virginia Civil Rights Restoration Guide 2013," Advancement Project, August 23, 2013, [http://b3cdn.net/advancement/ct54939bb-16ba7cbc9\\_acm6vunw0.pdf](http://b3cdn.net/advancement/ct54939bb-16ba7cbc9_acm6vunw0.pdf).
- 6 The Sentencing Project, Research and Advocacy for Reform. <http://www.sentencingproject.org/map/map.cfm>.
- 7 *Ibid.* African Americans make up approximately 20 percent of the state's population. See "State and County QuickFacts: Virginia," <http://quickfacts.census.gov/qfd/states/51000.html>.
- 8 The Sentencing Project, Research and Advocacy for Reform.
- 9 The rate is 1.2:1 (*Ibid.*). The Hispanic population of Virginia represented 8.6 percent of the total population in 2013 ("State and County QuickFacts: Virginia").
- 10 Secretary of the Commonwealth, "Restoration of Rights." <http://1.usa.gov/1IBLIEv>.
- 11 "Act XXVII," 1632: "AND because wee hold the neighbouring Indians our irreconcilable enemeyes, it is further thought fitt, That yf any Indians doe molest or offend any plantations in their cattle, hoggs, or anythinge else, or that they bee found lurkinge about any plantation, then the commander shall have the power by virtue of this act to rayse a sufficient partie and fall out upon them, and persecute them as he shall finde occasion" (Hening, ed., *The Statutes at Large*, Vol. 1, 193). "An act for suppressing outlying Slaves," 1691, allowed for "negroes, mulattoes, and other slaves [who] unlawfully absent themselves from their masters and mistresses service, and lie hid and lurk in obscure places killing hogs and committing other injuries to the inhabitants of this dominion..." to be apprehended and killed (Hening, ed., *The Statutes at Large*, Vol. 3, 86). "An act for the more speedy prosecution of slaves committing Capitall Crimes," 1692, provided for the incarceration of accused slaves in county jails, to be followed by an indictment and trial "without the sollemnitie of jury," and, if found guilty, death by execution. The same law mandated the acquisition by the local church parish of any livestock theretofore considered the property of African American or Native American slaves (*Ibid.*, 102-03).

- 12 A 1723 act of the General Assembly entitled “An act directing the trial of Slaves, committing capital crimes; and for the more effectual punishing conspiracies and insurrections of them; and for the better government of Negroes, Mulattos and Indians, bond or free,” made explicit the racial barriers to suffrage, stating “That no free negro, mulatto, or indian whatsoever shall hereafter have any vote at the election of burgesses, or at any election whatsoever” (Hening, ed., *The Statutes at Large*, Vol. 4, 131-39). (Misspellings are in the original.)
- 13 This law was in place from 1823-28 [John H. Russell, *The Free Negro in Virginia, 1619-1865* (Baltimore: Johns Hopkins Press, 1913), 105-06].
- 14 *Ibid.*, 106.
- 15 *Virginia Constitution*, 1830, Article 3, Section 14.
- 16 *Proceedings and Debates of the Virginia State Convention, of 1829-1830, to which are Subjoined, the New Constitution of Virginia, and the Votes of the People* (Richmond: Printed by Samuel Sheperd & Co. for Ritchie & Cook, 1830), 905-13.
- 17 *Ibid.*, 911.
- 18 *Virginia Constitution*, 1830, Article 3, Section 14.
- 19 *Journal of the Senate of the Commonwealth of Virginia, 1846* (Richmond, VA: John Warrock, Printer to the Senate, 1846), 13. The statistics cited are taken from a speech delivered to the General Assembly by the then-Governor of Virginia, William Smith.
- 20 *Ibid.*, 13-14.
- 21 One such list is available for viewing at the *Albert and Shirley Small Special Collections Library* at the University of Virginia: “Official List of Colored Persons Convicted of Felony or Petit Larceny in the Hustings Court of the City of Richmond, and Thereby Disenfranchised,” (Richmond: Hustings Court, 1892).
- 22 John Dinan, *The Virginia State Constitution*, 2<sup>nd</sup> ed., (Oxford UP, 2014), 85. A joint resolution from March 1875 added “or petit larceny” to the end of the Constitutional measure disenfranchising “Persons convicted of bribery in any election, embezzlement of public funds, treason, or felony,” *Journal of the Senate of the Commonwealth of Virginia*, 1875 (Richmond: R.F. Walker, 1875), 41-42.
- 23 *Virginia Code* § 18.2-96. <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-96>.
- 24 “An act for the punishment of slaves for the first and second offence of Hog stealing,” 1699 (Hening, ed., *The Statutes at Large*, Vol. 3, 179); “An act against stealing Hogs,” (*Ibid.*, 276-78).
- 25 Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Union, NJ: The Lawbook Exchange, Ltd., 1998), 131, 202.
- 26 Russell, *The Free Negro in Virginia*, 104-05.
- 27 Act of April 2, 1877, ch. 271, 1877 *Virginia Acts* 280, 282.
- 28 “Important to Registrars and Voters,” *Staunton Spectator*, May 1, 1877, *Virginia Newspaper Project*, Library of Virginia, <http://virginiachronicle.com/cgi-bin/virginia?a=d&d=SS18770501.1.2&csrpos=1&ce=-----187-cn-20--1--txt-IN-petit+larceny+vote---#>. A “Hustings” or “Corporation” Court was a local Virginia court of law, a legacy of the colonial era that dealt with low-level disputes.
- 29 Pippa Holloway, *Living in Infamy: Felon Disfranchisement and the History of American Citizenship* (Oxford University Press, 2014), 67-71, 187 n. 70.
- 30 *The Daily Dispatch*, Nov. 4, 1883, *Chronicling America: Historic American Newspapers*, Library of Congress, <http://chroniclingamerica.loc.gov/lccn/sn84024738/1883-11-04/ed-1/seq-6/>.
- 31 Holloway, *Living in Infamy*, 70.
- 32 “Our Trip to Richmond,” *The Washington Bee*, Nov. 9, 1889, *Chronicling America: Historic American Newspapers*, Library of Congress, <http://chroniclingamerica.loc.gov/lccn/sn84025891/1889-11-09/ed-1/seq-2/>.
- 33 *Ibid.*
- 34 *Virginia Constitution*, 1902, Article 2, Section 23. (Emphasis added.)
- 35 *Journal of the Constitutional Convention of Virginia, 1901* (Richmond: J. H. O’Bannon, 1901), 581-84.
- 36 “Democrats Determined,” *Richmond Dispatch*, May 22, 1902, *Chronicling America: Historic American Newspapers*, Library of Congress, <http://chroniclingamerica.loc.gov/lccn/sn85038614/1902-05-22/ed-1/seq-1/>. (Emphasis added.)
- 37 “Many voters disqualified,” *The Times Dispatch*, May 27, 1905, *Chronicling America: Historic American Newspapers*, Library of Congress, <http://chroniclingamerica.loc.gov/lccn/sn85038615/1905-05-27/ed-1/seq-5/>.
- 38 *The Virginia Constitution* underwent a revision in 1928 as well as scrutiny during two limited constitutional conventions in 1945 and 1956 (Dinan, *The Virginia State Constitution*, 18-23). Voter disenfranchisement measures were not revised, however, until 1971 (*Virginia Constitution*, 1971).
- 39 “Respecting Pardons” in John Raithby, ed., *The Statutes at Large, of England and Great Britain: From Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. 2 (London, 1768-1774), 1389-90; *Virginia Gazette* (Parks), Nov. 5, 1736, page 4, <http://research.history.org/DigitalLibrary/VirginiaGazette/VGImagePopup.cfm?ID=66&Res=HI&CFID=13468096&CFTOKEN=14905566>.
- 40 Schwarz, *Twice Condemned*, 157.
- 41 *Virginia Constitution*, 1870, Article 4, Section 5.
- 42 *Edwards v. The Commonwealth*, 78 Va. 39 (Va. 1883).
- 43 Holloway, *Living in Infamy*, 107.
- 44 Secretary of the Commonwealth, “Restoration of Rights.”
- 45 Office of Governor Terence R. McAuliffe, “Senate Document No. 2: List of Pardons, Commutations, Reprieves, and Other Forms of Clemency,” March 8, 2014, [http://leg2.state.va.us/dls/h&csdocs.nsf/By+Year/SD22014/\\$file/SD2.pdf](http://leg2.state.va.us/dls/h&csdocs.nsf/By+Year/SD22014/$file/SD2.pdf); Office of Governor Robert F. McDonnell, “Senate Document No. 2: List of Pardons, Commutations, Reprieves, and Other Forms of Clemency,” February 23, 2013, [http://leg2.state.va.us/dls/h&csdocs.nsf/By+Year/SD22013/\\$file/SD2.pdf](http://leg2.state.va.us/dls/h&csdocs.nsf/By+Year/SD22013/$file/SD2.pdf).
- 46 Secretary of the Commonwealth, “Restoration of Rights.”
- 47 “Pardons,” Secretary of the Commonwealth. <https://commonwealth.virginia.gov/judicial-system/pardons/>.
- 48 Manza and Uggan, *Locked Out*, 247.
- 49 *Richardson, County Clerk and Registrar of Voters of Mendocino County v. Ramierz et al.*, 418 U.S. 24 (1974).
- 50 Holloway, *Living in Infamy*, 11-12.
- 51 Dinan, *The Virginia State Constitution*, 89; *Perry v. Beamer*, 933 F. Supp. 556 (E.D. Va. 1996).
- 52 Dinan, *The Virginia State Constitution*, 90; *Howard v. Gilmore*, 99-2285 (4th Cir. 2000).
- 53 Dinan, *The Virginia State Constitution*, 90(n); *El-Amin v. McDonnell*, 013-3-139 (E.D. Va. 2013).
- 54 Dinan, *The Virginia State Constitution*, 89; *Hunter v. Underwood*, 471 U.S. 222 (1985).
- 55 Ryan S. King, “A Decade of Reform: Felony Disenfranchisement Policy in the United States,” *The Sentencing Project*, October 2006, [http://www.sentencingproject.org/doc/publications/fd\\_decade\\_reform.pdf](http://www.sentencingproject.org/doc/publications/fd_decade_reform.pdf), 16.
- 56 “Virginia Civil Rights Restoration Guide,” The Advancement Project, 4.
- 57 “2014 Virginia Legislative Session Provides Mixed Results for Civil Liberties,” American Civil Liberties Union of Virginia, March 6, 2014, <https://acluva.org/14805/2014-virginia-legislative-session-provides-mixed-results-for-civil-liberties/>.
- 58 Hellerstein, “The Last Gasp of Jim Crow.”
- 59 Dinan, *The Virginia State Constitution*, 77.
- 60 King, “A Decade of Reform,” 16.
- 61 “Harold Folley, Interviewed by Tshepo Morongwa Chéry,” in *The Punitive Turn: New Approaches to Race and Incarceration*, ed. Deborah E. McDowell, Claudrena N. Harold, and Juan Battle (Charlottesville: University of Virginia Press, 2013), 279-289.
- 62 “Virginia Civil Rights Restoration Guide,” The Advancement Project, 4. (The estimation is 2.77 percent.)
- 63 Dawnthea Price, “Felons slow to seek restoration of rights,” *The Free Lance-Star*, September 18, 2013, [http://www.fredericksburg.com/news/felons-slow-to-seek-restoration-of-rights/article\\_a07c07d3-91f6-5a9b-a398-27bea6219f50.html](http://www.fredericksburg.com/news/felons-slow-to-seek-restoration-of-rights/article_a07c07d3-91f6-5a9b-a398-27bea6219f50.html).
- 64 Olympia Meola, “McAuliffe to Speed Rights Restoration,” *Richmond Times-Dispatch*, April 17, 2014, <http://bit.ly/1GvvCSz>.
- 65 Roger Chesley, “Changes to Voting Rights for Felons Need to go Further,” *The Virginian-Pilot*, April 22, 2014, <http://hamptonroads.com/2014/04/changes-voting-rights-felons-need-go-further>.
- 66 The Sentencing Project, Research and Advocacy for Reform.



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