FELON DISENFRANCHISEMENT: A CASE STUDY OF AFRICAN AMERICAN VOTER TURNOUT BETWEEN NEW YORK AND FLORIDA

by

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Felon disenfranchisement is the suspension of voting rights for citizens with a felony conviction. These laws have been around since the Jim Crow era (early nineteenth century) in America, and while two states have done away with felon disenfranchisement all together (Maine and Vermont), there are many who still have very restrictive voting rights for felons as well as difficult processes in order to earn the right to vote back. I analyze the history behind the adoption of American felon disenfranchisement laws, the rationales behind laws, their ability to achieve criminal sanction rationales (deterrence, retribution, rehabilitation, and incapacitation) and how the implementation of these laws have changed since their first appearance in the United States. I chose to take a multi-faceted approach by conducting a case study between New York and Florida — they have similar populations, African American populations, poverty rates, Florida has more restrictive disenfranchisement laws than New York does — to understand how felon disenfranchisement law affects African American voter turnout. With this understanding, I will posit a mock statute regarding felony disenfranchisement that I believe will balance the relevant interests for proponents and opponents of felon disenfranchisement.

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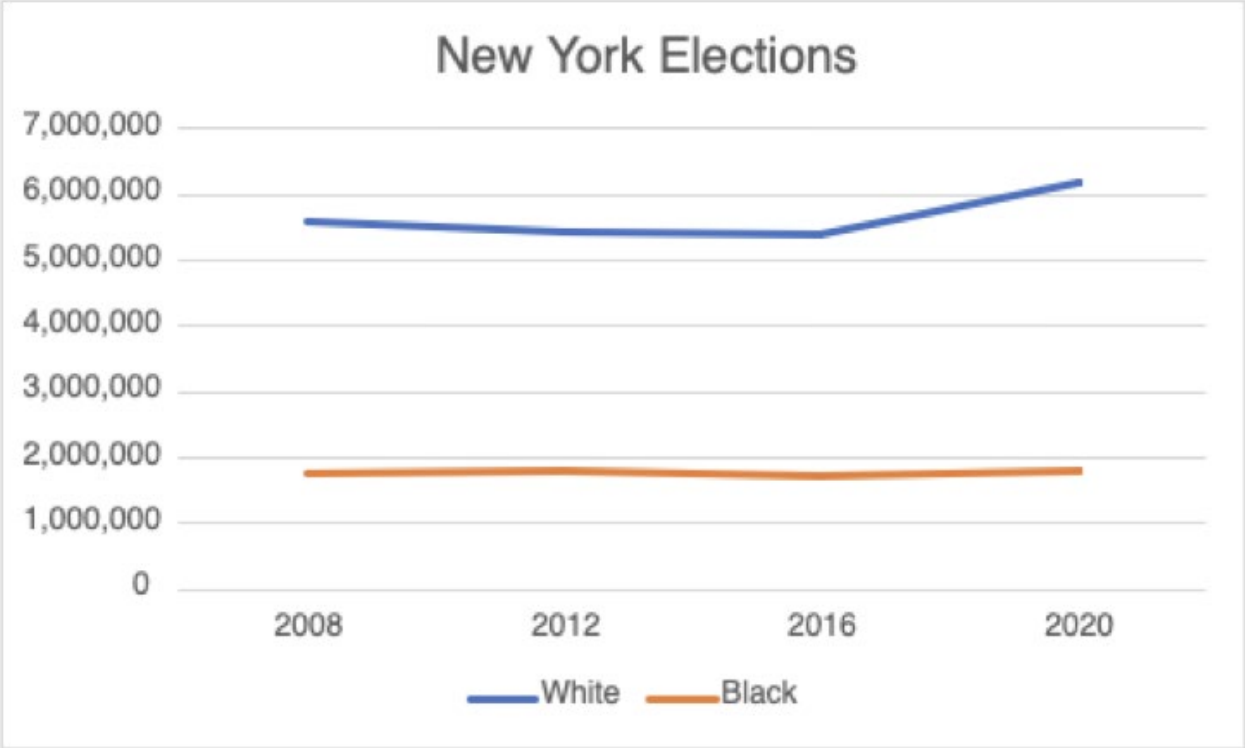

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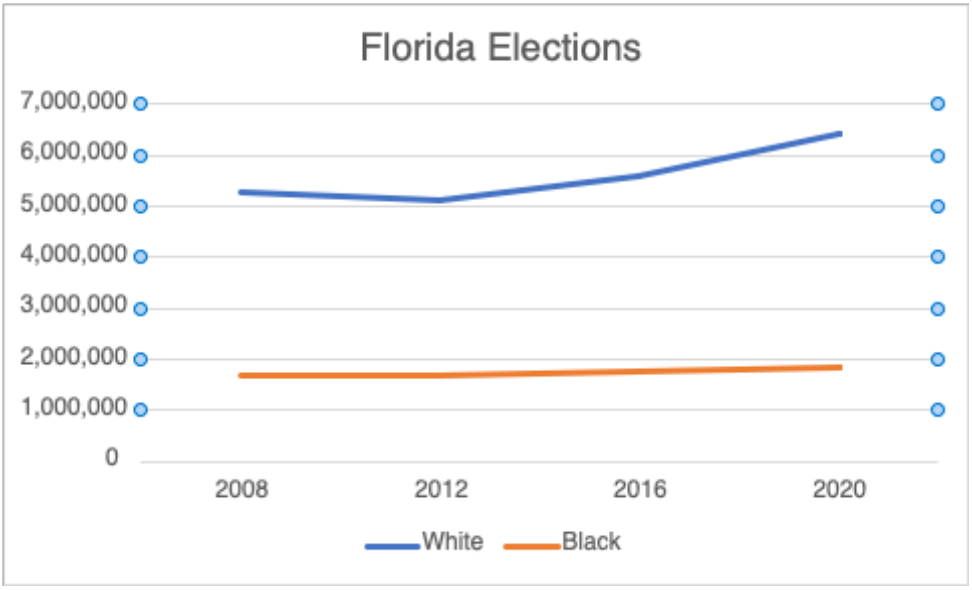

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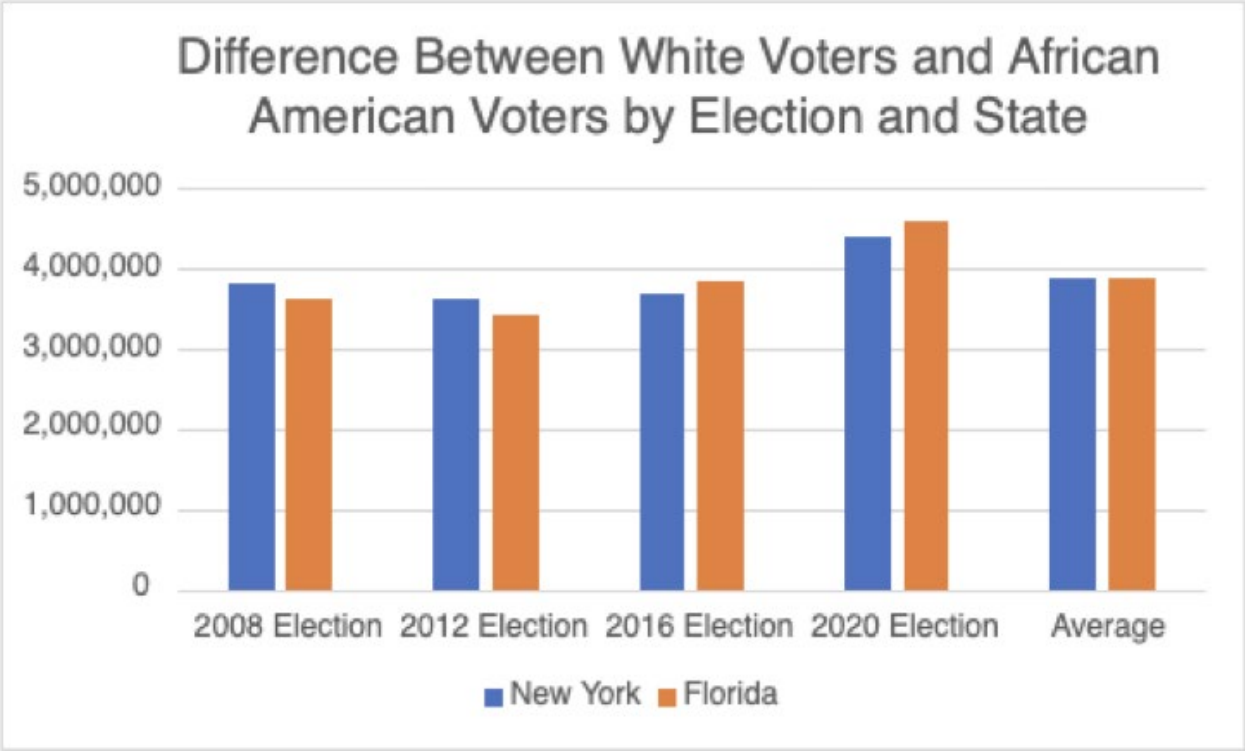

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I. Introduction

Despite branding themselves as the "land of the free," the United States incarceration rate is the largest in the world; in fact, every single U.S. state incarcerates more people per capita than virtually any independent democracy on earth (Widra & Herring 2021). Furthermore, Black Americans are incarcerated in state prisons at nearly five times the rate of White Americans (Nellis 2021). Citizens who are freed after incarceration are often precluded by law from voting. This form of voter suppression appeared in the United States in the 19th century but has endured until present day as a valid criminal sanction. There are multiple reasons attributed to why felon disenfranchisement laws affect African Americans at higher rates than other populations. First, although such laws are a holdover from colonial rule, felon disenfranchisement laws were modified during the Jim Crow era as a mechanism to suppress the African American vote. Second, the over policing of African American neighborhoods guarantee more police contact with African American citizens than other populations, putting them in the path of felony convictions more often. While Maine and Vermont have removed felon disenfranchisement from their state constitutions, and many others have removed felon disenfranchisement from their state constitutions, and many others have softened their felon disenfranchisement laws, there remains a powerful and willful ignorance behind the impact of felon disenfranchisement laws in America on minority communities.

As more is written on the subject, more scholars began research in order to answer the question: Does felon disenfranchisement negatively affect African American voter turnout in the United States? What is a fair way of ensuring the "purity of the ballot box"? I set out to answer this question with a few different modalities in mind; one being a discussion of the origin and social policy behind the enactment of these laws, the legal theory behind how these laws operate,

using my case study of New York and Florida to support my claims of disproportionate impact, and finally present an idea for an act of legislation that I believe tailors disenfranchisement to focus on specific harm in election-related contexts.

When picking states for my case study, I wanted two states that had similar population sizes, African American population sizes, incarceration rate, and poverty rate; but simultaneously also had different felon disenfranchisement laws. New York has a current population of 19.68 million and Florida has a current population of 22.24 million (U.S. Census Bureau, 2023). New York felons' voting rights are restored after prison (Kelley et al. 2017) though you have to re-register to vote (New York Civil Liberties Union 2021). Florida felons are disenfranchised while in prison, on parole, probation, and post-sentence (Kelley et al. 2017). In Florida, any felony conviction for murder or a sexual offense makes a person ineligible to vote unless and until their right is restored by the State Clemency Board (Florida Department of State, 2020). Other felony convictions have to complete all sentences and pay all fees and fines, but they also have the option to go in front of the State Clemency Board to get their right to vote restored (Florida Department of State 2020). Re-registering after getting out of prison for New York felons is a smaller obstacle than paying all fees and fines or going in front of a Clemency Board. Because of this difference in re-enfranchisement processes, and the length of the disenfranchisement sanction, I am going to hypothesize that Florida will have a lower African American turnout than New York on average for the past four Presidential election years: 2008, 2012, 2016, and 2020.

However, before I present the data and my legislation, we have to delve into the backdrop of the enactment of felon disenfranchisement laws in America to understand how they started, how they have endured, and the decades of this issue being swept under the proverbial rug.

II. Origins

Felon disenfranchisement as a concept has been around long before the United States was founded. Felon disenfranchisement has its roots in Greece, Rome, and England. In ancient Greece, citizens couldn't vote if they were pronounced "criminally infamous." They were also prohibited from appearing in court, making public speeches, or serving in the army (Ewald, 1060-1). Rome expanded on this with the concept of "civil death," which endured through the Renaissance. English law states, "a person pronounced attainted after conviction for a felony or… treason [faced] forfeiture corruption of the blood [meaning that land owned by the criminal would pass not to heirs but to king or lord], and loss of civil rights," the criminal essentially became "dead in law" (Ewald, p. 1060). This meant that those who were outside the law were also deprived of the benefits of the law – also known as "outlawry" (Schaefer & Kraska, p. 306). Outlawry occurred as a consequence of a criminal or civil action (The National Archives 2019). Matthew E. Feinberg posits that criminal voting restrictions originated from the desire to prevent individuals who have shown poor decision making skills from electing the officials who will govern the country (Feinberg, p. 65). The idea was that those who broke the law also broke the "social contract" and needed to be punished for it. Keesha M. Middlemass connects social contract theory to felons further, stating, "Upon release from their sentences, social contract theory suggests that former felons enter into a second social contract; however, the problem with this argument is that the felon is no longer an equal party in negotiating the basis of the second contract because he does not have equal standing as a full citizen." (Middlemass, p. 24) This demonstrates the power differential between state-made actions and who the actions affect: the state is an untouchable entity that will have the upper hand at the end of the day. Once the citizen

has the disadvantage, there is little they can do to change their status back to its original condition in the eyes of the state.

Disenfranchisement policies, initially adopted in the United States as a holdover from the colonial period, were modeled after European laws. Citizenship was limited to certain individuals, at first based on religion/property ownership, allowing those with more wealth and the proper morals to disenfranchise those that they deemed scandalous or corrupt However, during the post-Reconstruction period in the United States, in the wake of the abolition of slavery, many southern states began adopting disenfranchisement sanctions catering to race-based perceptions of criminality, such as disenfranchising those who have committed low level crimes (e.g., petty larceny). "In some states, this meant that a person convicted of stealing a chicken would lose the right to vote, but not someone who killed the chicken's owner" (Mauer, p. 14). Since the public generally saw crimes such as "theft, vagrancy, wife-beating, living in adultery, larceny, bribery, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy" (Middlemass, p. 25) as crimes that African American men are more likely to commit, attaching the sanction to these crimes in particular was intentional. By not attaching the disenfranchisement sanction to other crimes such as murder or assault – because they believed African Americans and Whites commit those crimes at equal rates (Middlemass, p. 25) – only attaching disenfranchisement to crimes "more likely" to be committed by African American men, Southern states were communicating a clear goal: to disenfranchise all newly freed African American slaves and cut them out of the voting population.

Roger Clegg argues to the contrary that because several states already had felon disenfranchisement laws in place before the Civil War and they are originally rooted in Greek

and Roman traditions, this disproves their purported racial motivations. He states, "Their antebellum origins show that they were aimed at whites and were maintained for race-neutral reasons: before the ratification of the Fourteenth Amendment, the states were free to, and the vast majority did, impose direct and express racial qualifications on the franchise." (Clegg et al., p. 3) He notes that the Eleventh Circuit upheld Florida's disenfranchisement law in *Johnson v. Governor of State of Florida*, in which the court stated "[A]t that time, the right to vote was not extended to African-Americans were still enslaved and, therefore, they could not have been the targets of any [felon] disenfranchisement law" (Eleventh Circuit Court of Appeals, *Johnson v. Governor of State of Florida*, 405, F.3d, 2005) Clegg adds that because the laws were enacted pre-Civil War, it "indicates that felon disenfranchisement was not an attempt to evade the requirements of the Civil War Amendments or to perpetuate racial discrimination forbidden by those amendments" (Clegg et al., p. 4).

However, I think we should focus less on proving outwardly racist intentions or origins to prove current day disproportionality and more on how the legislators implemented the felon disenfranchisement laws once African-Americans had the right to vote. While I concede that Clegg has a valid argument that pre-Antebellum laws indicate race-neutral origins, to ignore the literature pointing to the use of felon disenfranchisement laws post-Civil War to pursue racist ideologies and to suppress the Black vote is a mistake. This is common knowledge among felon disenfranchisement scholars, including Bridgett A. King & Laura Erickson who stated, "Following the Civil War, states in the South expanded their disenfranchisement laws to include crimes not previously included… Many states expanded the criminal codes to punish offenses that they believed freedmen (former slaves) were most likely to commit, including vagrancy, petty larceny, miscegenation, bigamy, and receiving stolen goods" (King & Erickson, p. 801).

Alec C. Ewald states that American proponents of racist political ideologies use criminal disenfranchisement to "pursue their vision of a healthy polity" (Ewald, p. 801). Though felon disenfranchisement laws are always defended as a way to keep immoral people out of the polity, the fact of the matter is that "immorality" and non-Whiteness have been conflated over time, and the post-Antebellum application of these laws proves that.

III. Modern Disenfranchisement

After the Civil Rights Act served as an "authoritative legal and political rebuke of the Jim Crow social order," the United States essentially switched over from de jure racism to de facto racism – that is, from overt racism to covert racism (Behrens et al., p. 568). Bobo and Smith (1998) describe this as a shift from "Jim Crow racism" to "laissez-faire racism," with "[t]he latter is based on notions of cultural rather than biological inferiority, illustrated by persistent negative stereotypes, a tendency to blame African-Americans for racial gaps in socioeconomic standing (and, arguably, criminal punishment), and resistance to strong policy efforts to combat racial social institutions" (Behrens et al., p. 569). This paints a picture of a more covert operation being at play in the modern upkeep of felon disenfranchisement laws, relying on social cues and political peer pressure to continue disenfranchising entire neighborhoods and generations while blaming them for their own personal shortcomings.

Brian. P. Schaefer & Peter B. Kraska highlights Brewer and Hertzig (2008)'s argument that we "live in an era of color blind racism" (Schaefer & Kraska, p. 312). Schaefer & Kraska dissect the relevant Supreme Court decisions regarding felon disenfranchisement. "The *Hunter* court ruled that a disenfranchisement law violates the Equal Protection Clause only if the plaintiff can prove discriminatory intent and disproportionate impact" (Schaefer & Kraska, p. 309, in

reference to United States Supreme Court, *Hunter v. Underwood*, 471, U.S., 1985). In 2004, the Court in *Muntaqim v. Coombe* reasoned that "Because felon disenfranchisement laws pre-date the Civil War, the contention that states have used them disingenuously to evade the subsequently enacted Reconstruction Amendments proves a dubious proposition" (Schaefer & Kraska, p. 312, referencing Second Circuit Court of Appeals, *Muntaqim v. Coombe*, 01-7260, 2004). *Farrakhan v. Washington*, which came out the same year as *Muntaqim*, stated that "Constitutional challenges to criminal disenfranchisement laws based on *Hunter* will only succeed if the plaintiffs are able to demonstrate purposeful discrimination in the law's enactment (Ninth Circuit Court of Appeals, *Farrakhan v. Washington*, 330, F.3d, 2003). The plaintiff must show that the illicit purpose played a substantial role in the passage of the law" (Schaefer & Kraska, p. 313). The current standard of judicial review holds "that felon disenfranchisement is a constitutionally allowable form of punishment detached from its racially biased history, unless *intentional* voter bias or dilution can be shown" (Schaefer & Kraska, p. 312). This standard has not yet been met, as proving intentional voter bias or dilution in a court of law is a nearly impossible task that would require mountains of evidence that is intangible and difficult to obtain.

The framework in which I understand felon disenfranchisement laws to operate is one that is facially neutral, but racially biased. This kind of law and application of the law flourishes in our new era of "color-blind racism," where the world in which African Americans live is fundamentally different to the world in which White Americans live. Schaefer & Kraska explained this dichotomy of ignoring racism yet perpetuating it, stating "Since race has traditionally occupied a role in determining the status of African Americans in society, the discriminatory effects of race consciousness should remain a consideration of the courts. The

overt racism of the past has diminished; however, covert discrimination remains and lies in the application of rules and legal decisions that do not take into account the discriminatory consequences of race" (Schaefer & Kraska, p. 313). In other words, you cannot solve the problem in front of you if you are ignoring an entire factor that is present. If racism perpetuated the drafting and implementation of felon disenfranchisement laws in the United States, it also certainly has perpetuated the application of them. When courts and social discourse disregard race in this context, you are ignoring the entire reason we are monitoring these laws in the first place.

The inexplicable fact is that race and criminal punishment have a relationship in America. This becomes clear when we look at the Thirteenth Amendment of the Constitution. The Thirteenth Amendment, ratified in 1865, abolished "slavery [and] involuntary servitude," with a caveat: "except as punishment for a crime whereof the party shall have been duly convicted" (National Archives, 2022) The Fifteenth Amendment, ratified five years later in 1870, states that the right to vote "shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" (Ewald, p. 1131). Though both of these Constitutional Amendments are intended to either be applied to all persons equally (Thirteenth Amendment) or to account for past inequalities (Fifteenth Amendment), they actually end up working against each other because it's difficult to determine when someone is being discriminated against for race, color or previous condition of servitude when there isn't anything in the actual letter of the law showing that discrimination is taking place. Additionally, since the adoption of the Thirteenth Amendment, African-American imprisonment rates have consistently exceeded white rates since at least the Civil War era and remain approximately seven times higher than rates among whites today" (Behrens, et al., p. 560). If more African Americans are

being arrested at higher rates than White people because of over policing, among other factors, it follows logically that they are being charged with felony convictions at higher rates. Therefore, implementing felon disenfranchisement law and strict felon re-enfranchisement laws in conjunction, will disenfranchise African-Americans at a higher rate than Whites. While the actual act that receives the felony conviction is not directly regarding their race or skin color, everything that led to that act has been tainted by the racial vacuum we have created in the United States, where African American and White people are treated differently in the eyes of the law.

The Court in *Wesley v. Collins*, held "that the state's 'legitimate and compelling interest' in disenfranchising felons outweighed any supposed racial impact" (Clegg, et al., p. 12, in reference to the District Court of Middle District Of Tennessee, *Wesley v. Collins*, 605, F. Supp., 1985). Clegg uses this decision to bolster his argument that "states have substantial reasons to limit the right to vote to persons deemed trustworthy and thereby exclude children, aliens, the mentally incompetent, and those who have been convicted of serious crimes" (Clegg, et al., p. 12). However, other facets of life have also been deemed acceptable for criminals to partake in. As Marc Mauer states, "Even while incarcerated, prisoners can get married or divorced and buy or sell property" (Mauer, p. 23). Surely those acts should require some form of trustworthiness and competence, at the very least they are signing contracts during some of those transactions. Furthermore, if certain voting crimes, such as voter fraud, are mere misdemeanors in many states that also deem having marijuana on your person a felony, then it becomes less about the so-called "moral compass" of the voter and more about the societal distaste for criminals in general and the subsequent racialization of criminals that comes along with it.

Allow me to pose a hypothetical. Two defendants (Defendant 1 and Defendant 2) are charged with the same crime – let's say, felony assault. Defendant 1 is richer, has more resources and support. Defendant 2 is impoverished. Defendant 1 is able to afford a more sophisticated lawyer, post bail, and negotiate a plea deal for a misdemeanor conviction – therefore bypassing the disenfranchisement sanction. Defendant 1, by virtue of having more resources is also likely not going to have a criminal record before this current charge (or at least not one as long as Defendant 2). Defendant 2 may already have a criminal record due to his economic status (many criminals are born out of necessity, stealing so they can survive). Defendant 2 won't be able to post bail, or hire an attorney with the time to dedicate to his case (rather than an overworked court-appointed public defense attorney). All of this is more likely to lead Defendant 2 to a felony conviction even though they were charged with the same offense as Defendant 1. Defendants 1 and 2 can be charged in the same jurisdiction, be in the same courthouse, and go in front of the same judge and receive completely different punishments simply because of the disparity of economic resources between them. This scenario doesn't boil down to Defendant 1 being more "trustworthy" than Defendant 2, but rather the allocation of resources affording certain people better choices in what they do when faced with a charge. Economic disparities are often divided among racial lines, making communities of color generally poorer than white communities. Since felonies will come easier to those with less money, and therefore non-White, White people can see disenfranchisement as a comfortable and objective bright-line because of how they rationalize concepts of crime and criminals while also denying that they are racialized.

Furthermore, the argument regarding "mentally incompetent" people also falls short when you consider that there is no maximum age limit for voting. What is the test or rationale for

determining competency? If we are to assume that everyone who is convicted of a felony is morally corrupt (since many can be), then it's safe to assume that everyone who becomes elderly is mentally incompetent (since many elderly people develop Alzheimer's or other memory/cognition failures), similar to the same vein that prevent children from voting. We already make elderly people retake driving tests past a certain age to check their motor skills. How are we to ignore the idea that their mental faculties have also weakened, yet they are allowed to continue to vote for policies that they likely won't live long enough to see the effects of? A 17-year-old in the present day with access to the Internet and a particular affinity for politics may actually be more informed or competent when voting than a 90-year-old Alzheimer's patient. Not all bright-line rules are ones that society would be comfortable with, such as a maximum age limit for voting, but the felon disenfranchisement bright-line rule is one that keeps the invisible wedge between the public and prisoners firmly in place, even post-incarceration. And merely allowing states to disenfranchise all felons based on preconceived notions that they are morally corrupt would be an insult to all the nuance we attempt to pride ourselves with as voters, policymakers, and citizens in this country.

Angela Behrens, Christopher Uggen, and Jeff Manza discuss this further with the social psychological aspects of group threat that may be linked to felon disenfranchisement. They state, "Race prejudice operates as a collective process, whereby racial groups project negative images onto another that reinforces a sense of exclusiveness… One particularly salient image that may be projected onto an ethnic or racial group is that of 'criminal'... Regardless of the actual crime rate, for example, the percentage of young African-American males in an area is directly related to the fear of crime among white residents, particularly when whites perceive themselves to be racial minorities in their own neighborhoods" (Behrens et al., p. 574). This racialized identity

attached to “crime” and “criminals” contributes to the resistance of abolishing felon disenfranchisement rights because of the biases White Americans have, and they are more typically represented in the polity during elections because African American voters have to face not only disenfranchisement as an obstacle in higher rates than Whites do, but also suffer from gerrymandering, poverty, and accessibility of the polls.

IV. Criminal Sanction Rationales

There are, in general, four goals that punishment can achieve: retribution, incapacitation, deterrence, and rehabilitation. (Ewald, p. 1005). Retribution is the ideology that the criminal needs to “suffer” in order to pay their debt to society. Incapacitation is the ideology that the criminal is a danger to society and needs to be in prison to stop any further personal and societal harm. Deterrence is the ideology that tough criminal punishments will deter those who want to commit crimes since the risk is now higher than the reward. And, finally, rehabilitation is the ideology that a criminal can be rehabilitated in prison and have the ability to successfully re-enter society.

The common rationale behind disenfranchisement through European/Roman law in the past was one of retribution and deterrence (Behrens et al., p. 562). In recent times, scholars grapple with the different sanctions that felon disenfranchisement presents. Is it deterrence? Retributive? Rehabilitative?

Alec C. Ewald expands on how disenfranchisement fits – or rather, doesn’t fit – these rationales, by taking disenfranchisement and analyzing its goals against each criminal sanction. Disenfranchisement, which is either indefinite or temporary depending on state law, doesn’t hold up for rehabilitative goals. Furthermore, disenfranchisement is added on as a hidden collateral

consequence that is sometimes entirely unknown to offenders until much later, which takes deterrence out of the possible rationales since it is not an upfront consequence, like jail or fines. For incapacitation, one can imagine that disenfranchisement would only work to incapacitate those who have broken election laws (Ewald, p. 1106). However, many electoral related offenses are misdemeanors and don't include disenfranchisement as a collateral consequence. Regarding retribution, Ewald states "Society punishes prisoners by depriving them of various rights and privileges: to assemble, enjoy privacy, and read whatever they wish, among others. But for the most part, such restrictions are necessary to incarceration, and disenfranchising them is not" (Ewald, p. 1107). The extra step to disenfranchise felons after incarceration, to essentially alienate them from society as they re-enter it, is unheard of in international disenfranchisement law. Deimleitner (2000) regards American policy as being narrowly focused on permanent punishment and isolation (Middlemass, p. 25-6). By taking away the right to vote, the United States takes away community ties and chances to avoid recidivism, further punishing the citizen who is trying to form a new life post-incarceration.

Roger Clegg puts forth a reasonable policy rationale behind felon disenfranchisement in the paper, *The Case Against Felon Disenfranchisement*, stating, "society deems felons to be less trustworthy and responsible than non-felon citizens, and those who cannot follow the law should not participate in the passing of laws that govern law-abiding citizens" (Clegg et al., p. 2) This harkens back to social contract theory, discussed *supra,* page 4. Social contract theory as applied to felon disenfranchisement laws communicates to felons that they will only ever be viewed as a criminal in society. A felon having their right to vote taken away is counterintuitive to the idea that they should attempt to reintegrate into society. If they can't take meaningful steps to change their community through their political voice, why would they care about improving their

community? Community gives people a sense of purpose, and this is crucial for a recently incarcerated person reorienting themselves into society. Taking away a sense of purpose increases their feelings of isolation and could lead to recidivism (especially since many come out of the prison system impoverished – if they weren't already – due to different legal/collateral fees).

V. Case Study – New York & Florida: The Research

As I mentioned earlier, I wanted to eliminate as many extra variables as I could from affecting my final number (the difference between White and African American votes in each election). I wanted the population sizes, both the general population and the African American population, to be comparable. I also wanted the poverty and incarceration rates to be somewhat comparable since those are also factors that affect voter turnout. New York's incarceration rate is 376 per 100,000 people, Florida's is 795 per 100,000 (Widra & Herring, 2021). New York's poverty rate is 13.9%, Florida's poverty rate is 13.1% (Census Bureau). Knowing that I wanted to use the 2008, 2012, 2016 and 2020 elections, and knowing that we only conduct a census every ten years, I used the population reports from both the 2010 and 2020 census for all population figures in these calculations. I will display my findings on a chart below, then I will go into detail about how I determined these calculations and figures.

I am using the population report from April 1, 2010 for both New York and Florida for both the 2008 and 2012 presidential election. Of New York's population of 19,378,102, 20.3% are not of voting age (3,933,755) (Census Bureau). Once I subtracted the under 18 population from the total population (giving me 15,444,347), I also subtracted the number of prisoners recorded on 12/31/2009 (closest recorded date to the 2008 election) – which was 58,687 (West et

al. 2010), and the number of prisoners recorded on 12/31/2013 (closest recorded date to the 2012 election) – which was 53,550 (Carson 2014). This gave me a total voting age, nonincarcerated population of 15,385,660 in 2008 and 15,390,797 in 2012. Now, to look at the racial statistics in New York, 54.2% of New York's population is White alone and 17.7% are Black/African American alone. I took the most recently calculated number and multiplied it by each race's population percentage to get the nonincarcerated, voting age population relative to each race. This gave me a White voting population of 8,339,028 in 2008 and 8,341,812 in 2012. This also gave me a Black voting population of 2,723,262 in 2008 and 2,724,171 in 2012.

Of Florida's population (as of April 1, 2010) of 18,801,310 people, 19.3% are not of voting age (3,628,653) (Census Bureau). Once I subtracted the under 18 population from the total population (giving me 15,172,657), I also subtracted the number of prisoners recorded on 12/31/2009 (closest recorded date to the 2008 election) – which was 103,915 (West et al. 2010), and the number of prisoners recorded on 12/31/2013 (closest recorded date to the 2012 election) – which was 103,028 (Carson 2014). This gave me a total voting age, nonincarcerated population of 15,068,742 in 2008 and 15,069,629 in 2012. Now, according to Census Bureau QuickFacts, 52.3% of the Florida population are White alone and 17% are African American alone. I took the most recently calculated number and multiplied it by each race's population percentage to get the nonincarcerated, voting age population relative to each race. This gave me a White voting population of 7,880,952 in 2008 and 7,881,416 in 2012. This also gave me a Black voting age population of 2,561,686 in 2008 and 2,561,837 in 2012.

Additionally, I looked at a census graph – titled Percent Registering and Voting by Race and Hispanic Origin: Presidential Elections 1980 to 2020 to look at voter turnout for all presidential elections among different races from 2008-2020. White voter turnout was about 67%

in 2008 and about 65% in 2012 (Current Population Survey 2023). Black voter turnout was about 65% in 2008 and 66% in 2012 (Current Population Survey 2023). Another important thing to remember about these two election cycles: we had our first Black President up for election and then running for a second term, which may have an impact on the number of African American voters since there was an element of representation in these two elections.

Now, we'll take each election year and find out the White voter turnout, Black voter turnout, and the difference between them. For the 2008 election in New York, I took the total White voting population (8,339,028) and multiplied it by .67, giving me a total white voter turnout of 5,587,149. Then, I took the total Black voting age population (2,723,262) and multiplied it by .65, giving me a total Black voter turnout of 1,770,120. This means that 3,817,029 fewer Black people voted in the 2008 election in New York than White people. For the 2008 election in Florida I took the total White voting population (7,880,952) and multiplied it by .67, giving me a total White voter turnout of 5,280,238. Then, I took the total Black voting age population (2,561,686) and multiplied it by .65, giving me a total Black voter turnout of 1,665,096. This means that 3,615,142 fewer Black people voted in the 2008 election in Florida than White people. So far, Florida had a smaller gap between Black and White voter turnout than New York did, disproving my hypothesis.

For the 2012 election in New York, I took the total White voting population (8,341,812) and multiplied it by .65, giving me a total White voter turnout of 5,422,178. Then, I took the Black voting age population (2,724,171) and multiplied it by .66, giving me a total Black voter turnout of 1,797,953. This means that 3,624,225 fewer Black people voted in the 2012 presidential election in New York than White people. For the 2012 election in Florida, I took the total White voting population (7,881,416) and multiplied it by .65, giving me a total White voter

turnout of 5,122,920. Then, I took the total Black voting population (2,561,837) and multiplied it by .66, giving me a total Black voter turnout of 1,690,812. This means that 3,432,108 fewer Black people voted in the 2012 election in Florida than White people. Once again, a smaller margin appears in Florida than New York, disproving my hypothesis once again.

Now we move to the last two election cycles: 2016 and 2020. For this, I have to go back to square one and recalculate voting populations. I am using the population report from April 1, 2020 for both New York and Florida for both the 2016 and 2020 presidential election. In New York's population of 20,201,249, 20.3% are not of voting age (4,100,854) (Census Bureau). Once I subtracted the under 18 population from the total population (giving me 16,100,395). I also subtracted the number of prisoners recorded on 12/31/2017 (closest recorded date to the 2016 election) – which was 49,461 (Bronson 2019), and the number of prisoners recorded on 12/31/2021 (closest recorded date to the 2020 election) – which was 30,338 (Carson 2022). This gave me a total voting age, nonincarcerated population of 16,050,934 in 2016 and 16,070,057 in 2020. Using the same race percentages and calculations as stated above (54.2% White; 17.7% Black), I got a White voting age population of 8,699,606 in 2016 and 8,709,971 in 2020. I also got a Black voting age population of 2,841,015 in 2016 and 2,844,400 in 2020.

In Florida's population of 21,538,187 (as of April 1, 2020), 19.3% are not of voting age (4,156,870). Once I subtracted the under 18 population from the total population (giving me 17,381,317), I also subtracted the number of prisoners recorded on 12/31/2017 (closest recorded date to the 2016 election) – which was 98,504 (Bronson 2019), and the number of prisoners recorded on 12/31/2021 (closest recorded date to the 2020 election) – which was 80,417 (Carson 2020). This gave a total voting age, nonincarcerated population of 17,282,813 in 2016 and 17,300,900 in 2020. Using the same race percentages and calculations stated above (52.3%

White; 17% Black), I got a White voting age population of 9,038,911 in 2016 and 9,048,371 in 2020. I also got a Black voting age population of 2,938,078 in 2016 and 2,941,153 in 2020.

I once again came back to the census graph to check voter turnout for the 2016 and 2020 presidential election by race. White voter turnout was about 62% in 2016 and about 71% in 2020 (Current Population Survey 2023). Black voter turnout was about 60% in 2016 and about 63% in 2020 (Current Population Survey 2023). Both election cycles here involved a run-off between two white candidates: Donald Trump and Hillary Clinton in 2016; Donald Trump and Joe Biden in 2020.

Now, we'll go individually by election year to determine White voter turnout, Black voter turnout, and the difference between them. For the 2016 election in New York, I took the total White voting population (8,699,606) and multiplied it by .62, giving me a total White voter turnout of 5,393,756. Then, I took the Black voting population (2,841,015) and multiplied it by .60, giving me a total Black voter turnout of 1,704,609. This means that 3,689,147 fewer Black people voted in the 2016 election in New York. For the 2016 election in Florida, I took the total White voting population (9,038,911) and multiplied it by .62, giving me a total White Voter turnout of 5,604,125. Then, I took the Black voting age population (2,938,078) and multiplied it by .60, giving me a total Black voter turnout of 1,762,847. This means that 3,841,278 fewer Black people voted in the 2016 Florida presidential election than White people. This supports my hypothesis since the Florida gap is bigger than the New York gap (therefore, less African Americans are able to vote in elections when there are more stringent felon disenfranchisement laws).

Now, to our last data point. For the 2020 election in New York, I took the total White voting population (8,709,971) and multiplied it by .71, giving me a total White voter turnout of

6,184,079. Then, I took the Black voting population (2,844,400) and multiplied it by .63, giving me a total Black voter turnout of 1,791,972. This means that 4,392,107 fewer African Americans voted than Whites in the 2020 election in New York. For the 2020 election in Florida, I took the total White voting population (9,048,371) and multiplied it by .71, giving me a total White voter turnout of 6,424,343. Then, I took the Black voting population (2,941,153) and multiplied it by .63, giving me a total Black voter turnout of 1,852,926. This means that 4,571,417 fewer African Americans voted in the 2020 presidential election in Florida than White people. This also supports my hypothesis, with Florida having a greater voting gap between Black and White citizens than New York. Below are the graphs representing this data.

VI. Case Study – The Graphs & Discussion

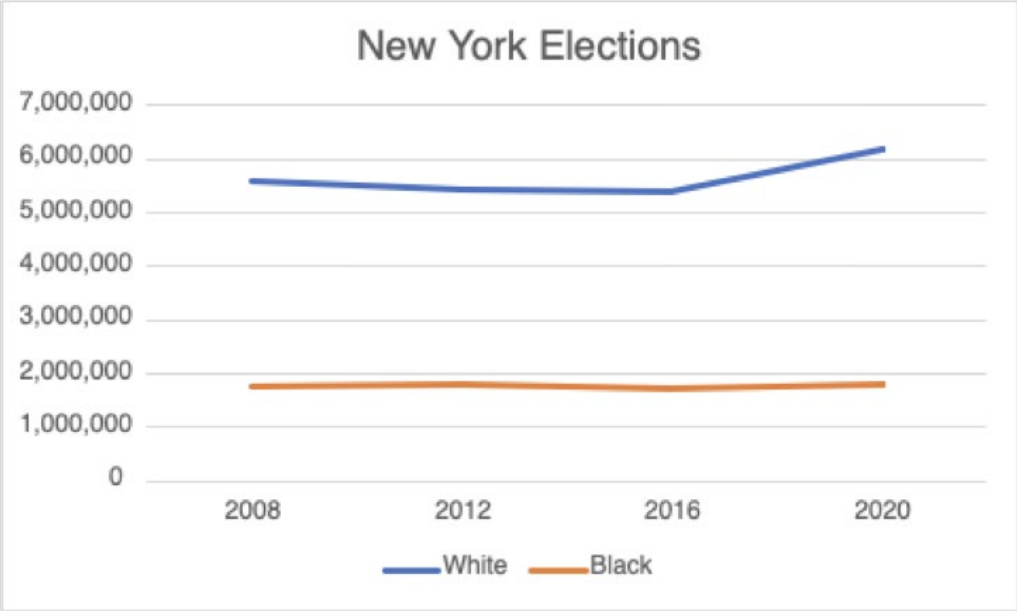

Figure 1. Difference between White and Black voter turnout from the 2008 to 2020 presidential elections in New York.

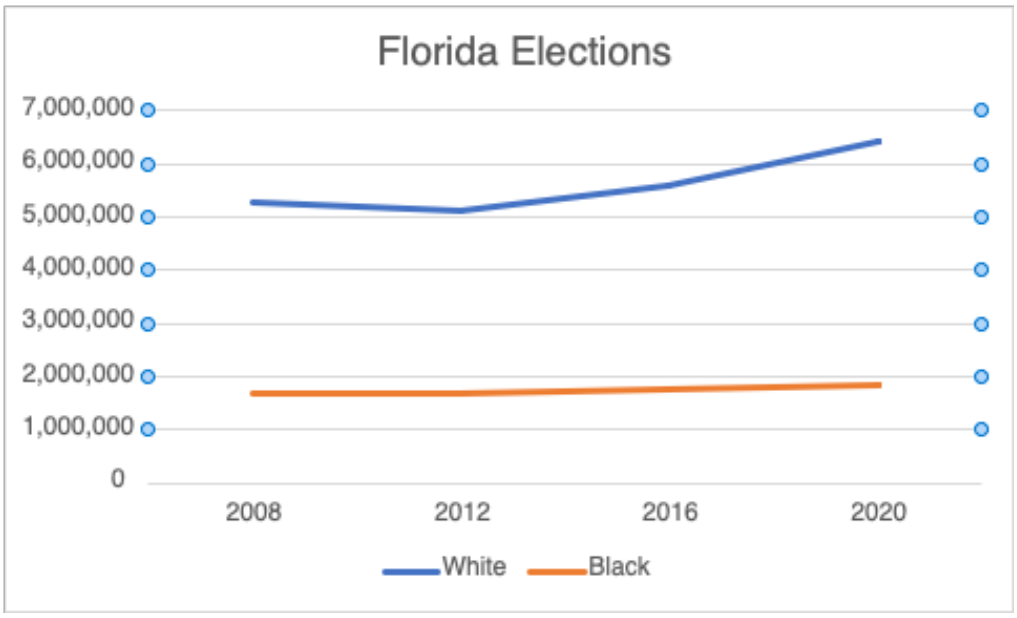

Figure 2. Difference between White and Black voter turnout from the 2008 to 2020 presidential elections in Florida.

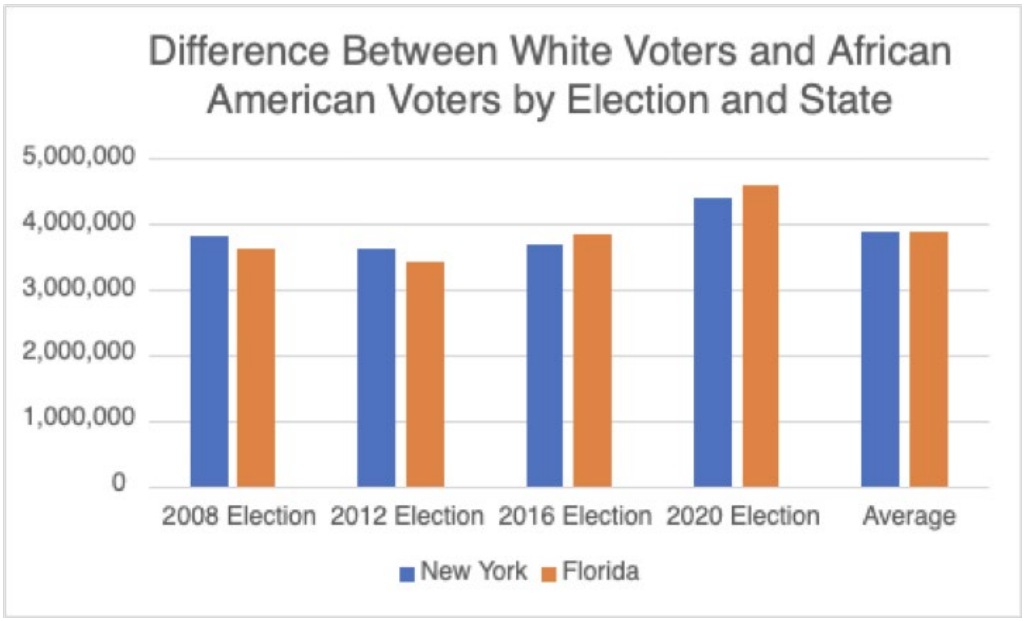

Figure 3. Difference between White and Black voter turnout in the 2008-2020 presidential elections divided by state, along with the average at the end.

Out of the four election cycles I researched (2008, 2012, 2016, and 2020) – half of them supported my hypothesis that states with more restrictive felon disenfranchisement laws greatly impact African American voter turnout. I wasn't sure why the samples from 2008 and 2012 didn't support my hypothesis, besides the obvious factors of research error and lack of further census data, but I assume it's because of the nature of Florida's unique electoral significance. Florida has become more red in the last few elections, but it used to be a battleground state and was the center of highly contested elections, such as the 2000 presidential election between Al Gore and George W. Bush. My goal in conducting the case study between New York and Florida was to highlight how felon disenfranchisement laws negatively affect African American voter turnout. I hypothesized that Florida would, on average, have a wider gap between White voter turnout and African American turnout because their felon disenfranchisement laws are more restrictive than New York's. Though my specific hypothesis was wrong and the data from the 2008 and 2012 elections have a higher African American voting population, the 2016 and 2020 elections did prove my hypothesis correct in that there was a wider gap in Florida in those years. This case study provides a quantifiable way to imagine and understand the impact felon disenfranchisement laws have on minority populations, specifically African American populations since they are overrepresented in the prison population.

VII. Proposed Legislation

Now comes the second aspect of this project: my proposed legislation. As I discussed in the modern disenfranchisement laws section, the way felon disenfranchisement laws are applied will always be biased because of the embedded racist origins of this law. I believe the only fair way to apply "felon" disenfranchisement laws is to disenfranchise those convicted of election-related

crimes. This can include voter or ballot fraud, but it also pertains to campaign finance crimes and civil rights violations. This would also implicate white collar criminals who pour dark money into elections, or civil rights violations such as voter intimidation or suppression. Felonies would no longer be the bright-line for disenfranchisement sanctions, but rather they would be doled out just to the election-related offenders, barring them from interfering with future elections. This approach is consistent with other laws. For example, drunk drivers lose their driving privileges, armed robbers lose the right to possess guns. By tailoring disenfranchisement to only apply to election-related crimes, the idea is to stop repeat election-offenders who have specific political motivations from using illegal methods to achieve their goals.

This legislation could be adapted federally or state-by-state, but the language I would use is as follows: "Disenfranchisement as punishment is permitted for crimes relating to political elections. This includes but is not limited to voter fraud, fraud by an elections/campaign official or other individual, campaign finance crimes, participation in the creation of illegal campaigning contributions, and civil rights violations (voter intimidation, voter suppression, etc.). Once free from state supervision, offender must be given information regarding re-enfranchisement processes in their jurisdiction in a physical and/or digital copy procured by the offender" (influenced by "Election Crimes and Security," FBI.gov)

I believe this legislation balances the interests relevant to both sides, weighing them appropriately. By punishing those who interfere with elections, it now is localized to specifically those who are morally corrupt regarding *political elections*. It still preserves the ballot box from the morally corrupt, but now the definition of "morally corrupt" is narrowed to only pertain to those who wrongfully interfere in elections. This is also not a crime that would see disproportionate charging of minorities, which is one of my biggest goals with my proposed

legislation. Now, I want to put my legislation to the test in regards to how it holds up under the different criminal sanction rationales. Between the four options of retribution, incapacitation, deterrence, and rehabilitation; this legislation is focused on incapacitation and retribution. By disenfranchising election-motivated offenders, you incapacitate them from voting and influence future elections since they have proven untrustworthy in election-related contexts. Retribution is the other rationale I picked because it's an election-related response to an election-related crime, so if someone is inclined to commit voter fraud in order for their preferred candidate or policy to win, then they won't get to cast a vote in the next election. Deterrence is a possibility as well, but as I mentioned before, deterrence doesn't work if disenfranchisement is treated as a collateral consequence. In my legislation, disenfranchisement could be more of a deterrent than it is currently since it's only being applied to election-related crimes which would, if nothing else, deter repeat electoral offenders if they don't want to be disenfranchised again – especially if there's a tiered system in which the disenfranchisement punishment becomes more severe the more times you reoffend. Rehabilitation processes could also be put in place for those convicted of election-related crimes but the process of pulling them away from elections for a period of time could also accomplish that goal, under deterrence rationales.

In terms of addressing re-enfranchisement, the method isn't one I'm particularly concerned with – whether it's an in-person process, staggered a year or two after release from supervision, automatic, or paperwork – but I think the key is to give every electoral offender who has been given disenfranchisement a packet regarding information on re-enfranchisement in their jurisdiction. Each state can handle the actual process of re-enfranchisement as their infrastructure allows them to, but the only requirement they all must comply with is providing information about re-enfranchisement to those who have been disenfranchised. This can't be just orally given

as they are leaving the police station or jail, it must be given in a physical copy and/or sent a digital copy to their email address. This gives the state a responsibility to educate the criminals about the re-enfranchisement process while also simultaneously transferring the rest of the responsibility to the criminal. If they were on the fence, this extra information and support might push them towards re-enfranchising themselves. This could lead to a greater feeling of accomplishment among their community and a small, but important step into re-integrating back into society. A vote is small but it's the most powerful thing us citizens have, and earning it back after losing it can feel symbolic and reinvigorating.

VIII. Conclusion

When I first conceptualized this project, I was 19 years old and taking an introductory criminal law class for undergraduates interested in a career in the law. I knew I wanted this to be the topic for my undergraduate Honors College thesis as a political science major, but when I was made aware I could use this project to also fulfill the law school's writing requirement, I knew I could dig deeper. It started with just the case study, then slowly morphed into a discussion of how racism can underscore the law even when the policymakers had the best intentions passing it. I wanted to not only provide facts and figures to back up my claims that felon disenfranchisement laws were hurting African American voting statistics, but dive deeper into the collective cloud that felon disenfranchisement has cast over poor and minority communities.

Despite what I attempt in this project, there is no clear solution for what the best remedy would be. Clearly, state-lead legislative decisions seem reasonable because every city is aware of what their particular criminal system needs are, but a somewhat uniform understanding of felon

disenfranchisement as a moral guide for lawmakers should be in place, whether that's in a treatise, a federal code, or just case law. The Supreme Court, during my time of research, has eroded as a disciplined authority on constitutional law and also failed as an anti-democratic body selected with the intention of keeping neutrality in one hand and the law in the other. I would trust the Supreme Court around the time of *Roe v. Wade to* pass some judgment on felon disenfranchisement law that would greatly limit state authority in legislative action, but I would not trust today's court to do this. Most of the literature I read regarding felon disenfranchisement law specifically regarded the 2000 election of George W. Bush. There's a need to continue this research and keep pushing for restorative justice for those at the hands of an unfair system full of biased laws and penalties. With the January 6th insurrection and the current indictments of our former President Trump, who was elected in 2016 and highly contested the 2020 election's results, we need to remain vigilant in order to protect our voting rights. Felon disenfranchisement laws provide a thin line of reassurance for the non-incarcerated members of the public and a slippery slope for those with more frequent encounters with the legal system. Your right to vote is protected, but only to an extent. All it takes is for the government to keep reclassifying which offenses result in disenfranchisement for any citizen to lose their vote. The ever-changing, elusive, and subjective moral standards in our society can lead to systems of disenfranchisement so entrenched, biased, and covert that the loss of liberty becomes permanent.

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