

Breaking Barriers to the Ballot



Assessing the impact of Arizona's voting ban on people with past felony convictions

Executive Summary

ACLU

The American Civil Liberties Union of Arizona is the state's premier guardian of liberty, working daily in the courts, legislature and communities to defend and preserve individual rights and freedoms guaranteed by the Constitution and the laws of the United States and Arizona. The ACLU of Arizona is an affiliate of the ACLU, the largest civil liberties organization in the country, with more than 600,000 members.

The ACLU of Arizona, in partnership with the Arizona Rights Restoration Coalition, seeks to end Arizona's ban on voting by people with felony convictions through research, public education, legislative advocacy and litigation. The campaign seeks to promote felon re-enfranchisement statewide in an attempt to give formerly incarcerated people a political voice in their communities.

Acknowledgements

This report was written by Raymond Bryant and Mark Felix under the supervision of Professors Roger Hartley of the University of Arizona Eller College of Management and Jack Chin of the University of Arizona James E. Rogers College of Law.

Special thanks to assistant researcher Sonja Stupel, who conducted the county election survey.

Finally, we also would like to thank Laleh Ispahani, former Senior Policy Counsel at the Racial Justice Program of the American Civil Liberties Union, and Rachel Bloom, Advocacy Coordinator at the Racial Justice Program of the American Civil Liberties Union, for their critical assistance in editing the report.

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Published November 2008

Made possible by a grant from the Racial Justice Program of the American Civil Liberties Union

Foreword

Felony disenfranchisement laws remain the most significant means of preventing formerly incarcerated individuals from having a voice in the political process. In Arizona, an estimated 176,103 persons – most of whom have fully served their felony sentences – are barred from the polls. Given the over 45,000 felony convictions in 2007, this is unsurprising. The state maintains one of the strictest voting bans in the country; it is one of only eight states that permanently bars individuals with certain felonies from voting unless they submit to an onerous, intimidating and discretionary judicial process to get their right to vote restored. In Arizona, a felony is a crime punishable by a year or more in prison.

As a result of Arizona’s especially complex scheme to withhold the vote from people with felony convictions, one of every 23 Arizona residents is unable to vote. Nationally, the vast majority of states (40) allow people with felony convictions to vote once they have fully completed their sentences. Although Arizona statutes prescribe a procedure for restoration of civil rights, this survey reveals that counties do not uniformly implement these procedures. The patchwork of methods employed by county election agencies across the state leads to confusion and second-guessing as to who can and cannot vote.

Of those individuals who have completed their sentences and are eligible, only a small number apply to have their civil rights restored. In 2006, for example, roughly 1,212 people applied to have their civil rights restored in Maricopa, Pima and Pinal counties.¹ Thus, felony disenfranchisement adds to the already heavy burden imposed upon individuals with felony convictions in Arizona, even after they have fully served their sentences. (Individuals with felony convictions are already barred from some public housing and are unable to obtain certain occupational licenses.) The current system also impedes the rehabilitation of people who have served their time. Research has shown that people who vote are half as likely to be rearrested as non-voters.

The ACLU of Arizona recruited University of Arizona law students Raymond Bryant and Sonja Stupel and University of Arizona business student Mark Felix to analyze how the civil rights restoration process works in Arizona. They conducted two separate surveys: one to assess how well elections officials understand and apply the complex Arizona voting ban, and one to assess how the voting rights restoration process works.

This report is the result of those efforts. It is intended to provide a more comprehensive picture of the voting rights removal and restoration processes to demonstrate the need to bring Arizona’s policies in line with most other states that automatically restore voting rights for people with felony convictions upon completion of their sentences.

We ask that you – as community members, faith leaders and elected officials – use this report as a tool to help restore the voting rights of formerly incarcerated Arizonans, so that they, like all Americans, may be heard.

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Joint Executive Summary

I. The Impact of Arizona’s Disfranchisement and Restoration Policies on People with Past Felony Convictions

Arizona’s felony disenfranchisement policies are among the most complicated in the country. For individuals with first-time, single felony convictions, whether convicted of state or federal felonies, voting rights are automatically restored upon completion of probation, or upon unconditional discharge from imprisonment, provided full repayment of any fines or restitution has been made. Arizona’s policy for individuals with multiple felony convictions is different, complex, burdensome and discretionary. Individuals with multiple felony convictions, including those with federal felony convictions, must apply to a court to seek restoration of their voting rights. Specifically, individuals with multiple state felony convictions must apply to the sentencing judge two years after their unconditional discharge from imprisonment, or if completing a term of probation, to the discharging court. Individuals with multiple federal felony convictions who served time in prison must apply through the Superior Court where they reside. They also must wait two years before applying. Prosecutors may oppose the application, and if they do, a hearing is held. Judges have ultimate discretion to grant or deny restoration. For out-of-state convictions, state law currently provides no mechanism for rights restoration at all. This convoluted and inadequate scheme bars from the polls an estimated 176,103 persons, nearly half of whom have fully served their sentences and are living and working in our communities, but remain without a say in public affairs.

Arizona’s disenfranchisement and restoration policies are far out of line with the majority of other states, as these facts demonstrate:

- ★ Arizona is one of only eight states to bar individuals with certain felonies from ever voting again unless they are willing and able to successfully navigate what is an onerous, intimidating and ultimately discretionary judicial restoration process.
- ★ Arizona has the 11th highest rate of disenfranchisement, with one of every 23 citizens unable to vote, and the 4th highest rate of African American disenfranchisement in the country, with one out of every five voting age African Americans disenfranchised.
- ★ Arizona has more restrictive felony disenfranchisement laws than 40 other states, including neighboring New Mexico, Colorado, Utah, Texas and California.

To see if Arizona’s disenfranchisement and restoration policies nevertheless operate satisfactorily in practice, we conducted two surveys. One survey assessed county elections officials’ knowledge and application of the state’s voting ban. The second survey examined the administration of the judicial restoration processes for people with multiple felony convictions.

¹This is an estimated figure based on results from the three counties surveyed in the time period from January 1, 2006 - December 31, 2006.



II. Key findings of county surveys

Survey 1: County elections officials’ knowledge and application of state voting ban

Many responsible officials are unfamiliar with and misapply the voting ban²:

- Fifty-four percent of county election officials surveyed responded incorrectly to basic questions as to which people with felony convictions are eligible to vote.
- Half of the officials surveyed were confused about the distinction in treatment of people with first-time, single felony convictions as opposed to those with multiple felony convictions.
- More than half of the officials surveyed either responded incorrectly or did not know that an individual with two or more felony convictions could seek to have his or her rights restored.
- When asked if there was a waiting period before an individual with felony convictions could apply for restoration, only one county official correctly responded that there is a two-year waiting period for formerly incarcerated persons who were convicted of multiple felonies. An overwhelming majority said no or that they did not know.
- Half of the officials surveyed did not know or responded incorrectly when asked whether payment of fines and restitution was a pre-condition to rights restoration.

Survey 2: Administration of the judicial restoration processes for people with multiple felony convictions

Counties process rights restoration applications unevenly, rendering the right to vote dependent on where a person lives:

- County officials give applicants inconsistent reasons when denying their applications for restoration, and sometimes give them no reason at all, in violation of the law requiring them to do so.
- Restoration applications are often reviewed by judge-appointed commissioners rather than by sentencing/discharging judges themselves, as required by law.
- Some counties close hearings on applications to the public and even to the applicants, so the process both lacks transparency and prevents applicants from being able to correct deficiencies that may lead to denial.
- Only one major county sends notices of rights restoration from its Superior Court to the county recorder to advise the recorder who may be added back to the voter rolls, so the rolls do not always reflect those re-eligible to vote.
- One major county required anyone convicted of a felony to apply to have rights restored, despite a statutory exemption for people with first-time, single felony convictions.

² Fourteen out of 15 counties were surveyed.

III. Recommendations

Based on these two surveys, we recommend that the state make the following changes:

★ Follow the lead of other states and streamline the restoration process by returning the right to vote to all people with felony convictions automatically once they have fully completed their sentences.

This simple, clear and equitable change will eliminate distinctions between certain types of felonies. It is a rule based on whether someone is under state supervision or not, and will thus be easier for county elections officials to administer. It will also eliminate what is an inconsistent and subjective restoration process. Finally, it will be more accessible to voters with past felony convictions and allow more of them to get back onto the voter rolls, and thus expand the state’s democracy, and simultaneously help to rehabilitate these individuals by allowing them to participate in the political process. It follows that the state must: (a) repeal laws mandating judicial restoration for people with multiple felony convictions; and (b) eliminate the two-year post-prison waiting period for individuals with multiple felony convictions. Waiting periods only confuse both elections officials and impacted individuals.

★ Rescind the requirement that fines and restitution be paid as a precondition to voting rights restoration.

Requiring payment of fines and restitution as a precondition to voting rights restoration is unfair since one’s right to vote should not be contingent on payment of monies. It is also impractical, since rights restoration helps people secure many of the state’s occupational licenses, which in turn helps them repay such debts.

★ Mandate education and training of county elections officials on Arizona disfranchisement and restoration policies for individuals with felony convictions.

Fifty-four percent of election officials were unable to answer elementary eligibility questions concerning individuals with felony convictions. It is evident that election officials are confused as to what the law is in Arizona and are dispensing incorrect information, disfranchising eligible voters and confusing rights restoration applicants. An annual training would help to clarify the law and help to ensure that the correct information is being disseminated. It could also streamline officials’ handling of the restoration process.

★ Provide notice to all eligible individuals of their right to vote and institute a formal, statewide system to notify counties when an individual’s voting rights have been restored.

Currently, the state only notifies those completing probation of the opportunity to have their rights restored. The state must also enact legislation that would provide notice of the opportunity to have civil rights restored to all eligible persons, including people fully discharged from prison. Additionally, counties find it difficult to determine when and how to reinstate to the voter rolls individuals who have had their rights restored, automatically or by application. Only one county surveyed currently restores voters to the rolls. A streamlined, statewide notification system would ensure that information is delivered in a timely and accurate manner to counties and individuals.

The state’s complex disfranchisement and restoration processes are unfair, unwieldy, and inconsistently and subjectively applied. The system is broken, and to fix it, the legislature and Secretary of State should heed the advice above. Nationwide, there is growing momentum and support for reform of state disfranchisement policies, with 18 states adopting progressive felon enfranchisement reforms in the past ten years. Support for this reform has come from the corrections, faith, and politically and socially conservative communities, who have recognized that voting is a fundamental democratic right and that encouraging civic participation is in the interest of public safety. In light of these developments, Arizona should reconsider its policies and revise them in favor of an expanded democracy.



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