

Felony Disenfranchisement

Patrick Berry

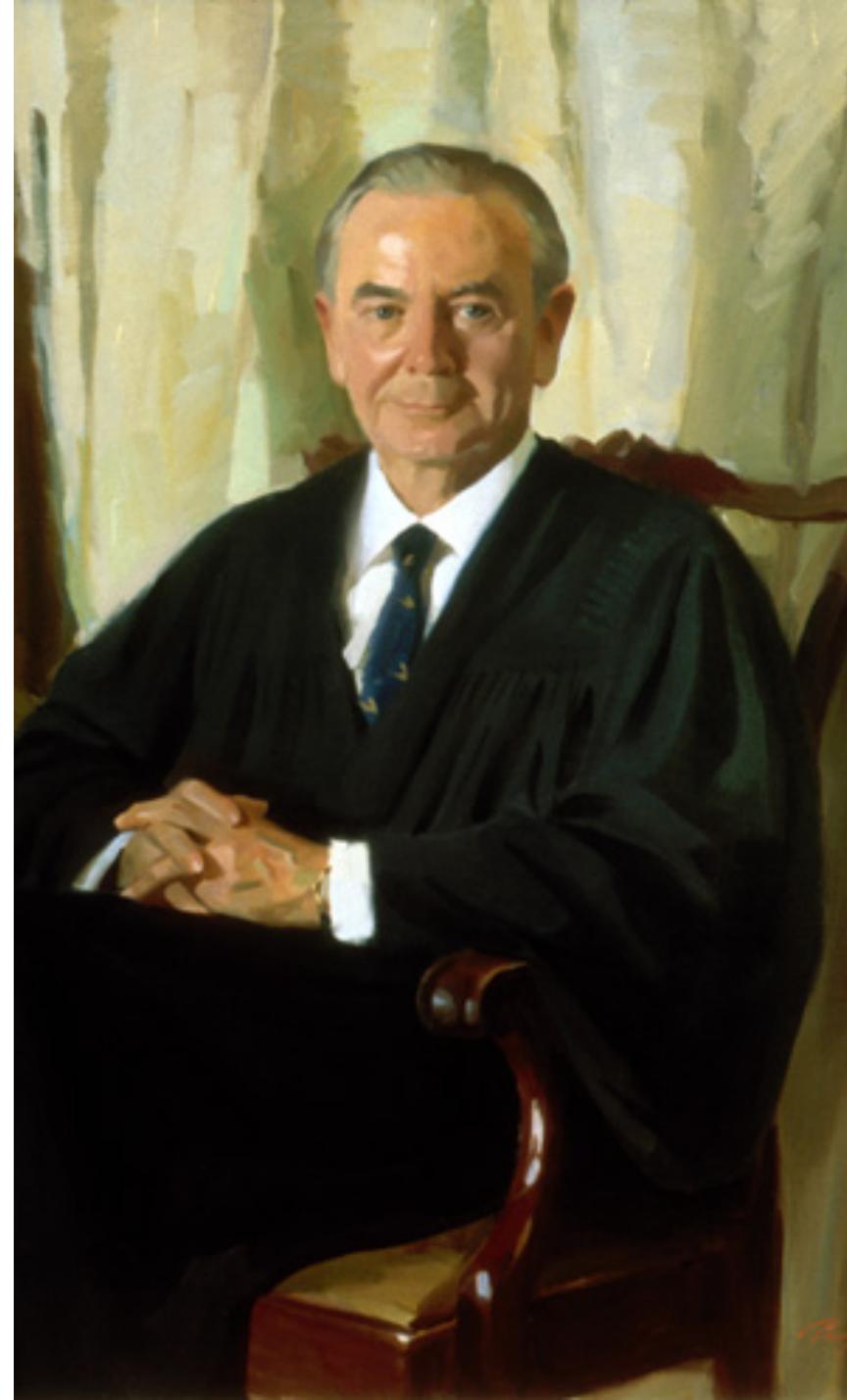
Southwestern Law School

Widening the Lens of Justice: Unmasking the Layers of Racial and Social Inequality

February 5, 2021

Who We Are

- Democracy and Justice
- Our Model:
 - Think Tank
 - Advocacy Group
 - Public Interest Law Firm
 - Communications Hub



Felony Disenfranchisement

- Over **5 million** Americans barred from voting
- The **vast majority** live in our communities; **less than 25%** are incarcerated
- Nationwide, **one in 16** Black adults are disenfranchised as a result of felonies
- Latino Americans are also disproportionately impacted

LOCKED OUT

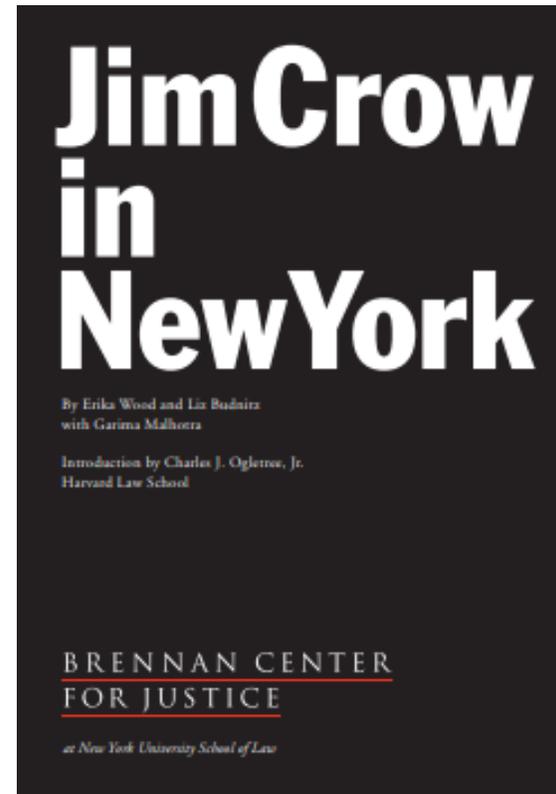
★ ★ ★ **2020** ★ ★ ★

**ESTIMATES OF PEOPLE
DENIED VOTING RIGHTS DUE
TO A FELONY CONVICTION**

Jim Crow Origins

- *“If we should have white supremacy, we must establish it by law — not by force or fraud.”*
 - Convention President John B. Knox, Alabama Constitutional Convention of 1901
- *“This plan will eliminate the darkey as a political factor in this state in less than five years.”*
 - Future Treasury Secretary Carter Glass, Virginia Constitutional Convention of 1902

Racism & Felony Disenfranchisement: An Intertwined History



is stripping voting rights from millions of citizens, states impose varying felony disenfranchisement laws casting ballots.² To give a sense of scope — this law Jersey.³ And of this total, nearly 4.7 million are and raising families, all while barred from joining

six people of color.⁴ One in every 15 voting-age more than four times greater than that of all other is are denied their right to vote.⁵ Although the data study of ten states ranging in size from California to . Latino community at rates greater than the general

to early colonial law in North America, and even by applied only in individual cases for particularly

portion of suffrage to black men that felony is losses.⁶ At that point, two interconnected trends only disfranchised black voters. First, lawmakers — laws designed to target black citizens. And nearly were laws that revoked voting rights from anyone or for the form of mass disenfranchisement seen in

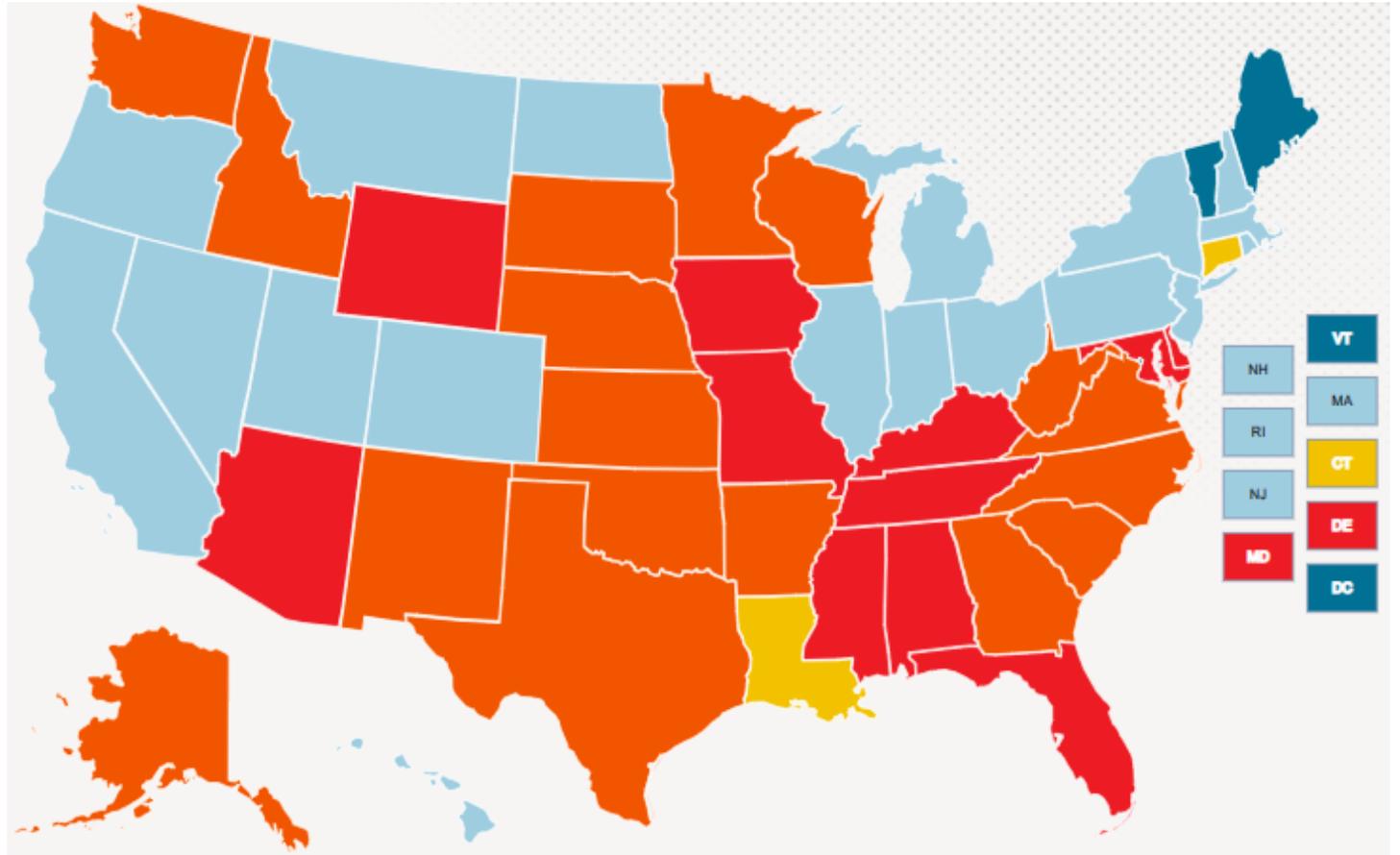
Criminal Justice System

ing African Americans at a higher rate than whites,¹¹ or well-documented in the South.¹²

it carved out an exception allowing states to impose s.¹³ Seeing an opportunity to sustain their crumbling of new criminal laws that were “essentially intended Douglas Blackness.”¹⁴ These ostensibly race-neutral

State Felony Disenfranchisement Laws

- Permanent disenfranchisement for all people with felony convictions, unless government approves individual rights restoration
- Permanent disenfranchisement for at least some people with criminal convictions, unless government approves restoration
- Voting rights restored automatically after release from prison and discharge from parole (people on probation may vote)
- Voting rights restored upon completion of sentence, including prison, parole, and probation
- Voting rights restored automatically after release from prison
- No disenfranchisement for people with criminal convictions



Impact of Felony Disenfranchisement

- De Facto Disenfranchisement
- “Spillover Effects”

DE FACTO
DISENFRANCHISEMENT

Erika Wood and Rachel Bloom



Original Manuscript

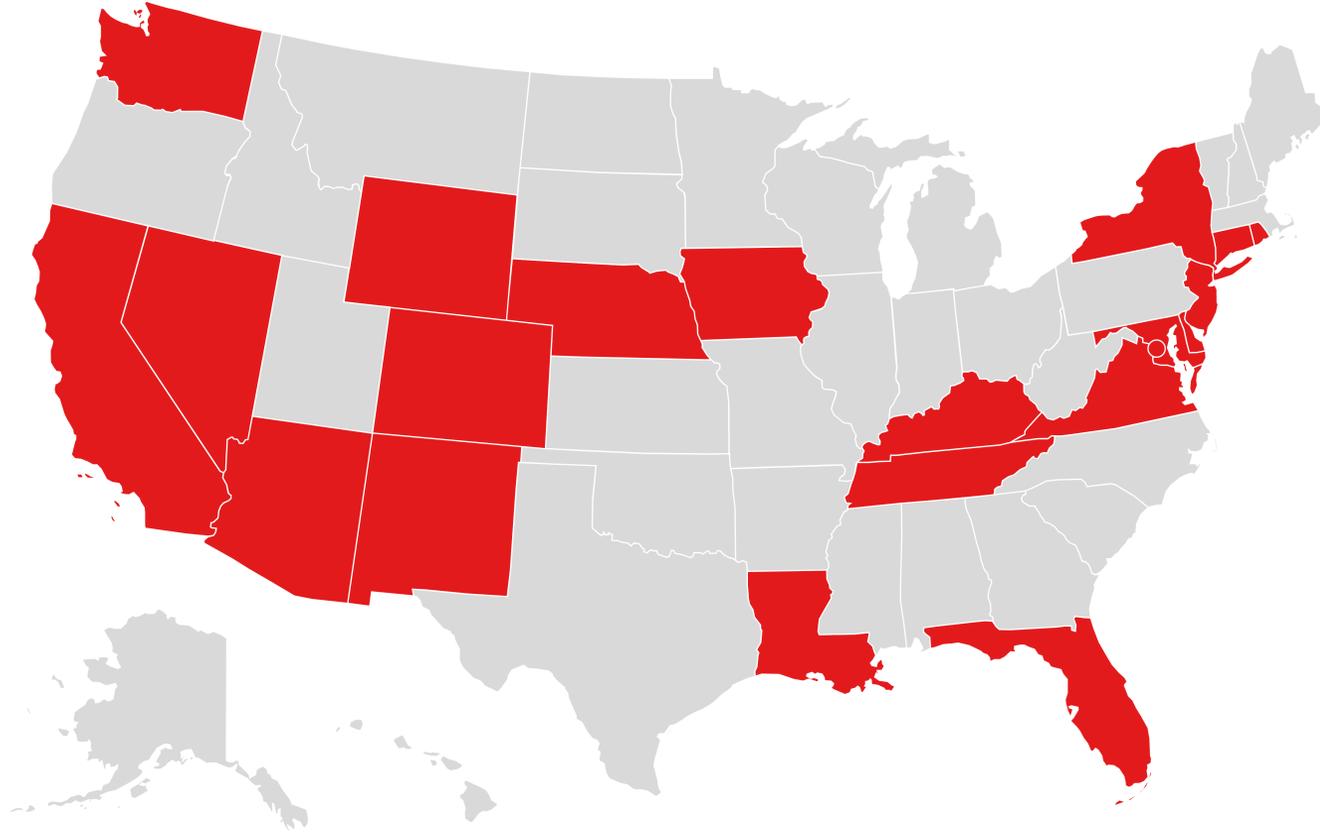
**Neighborhoods
and Felony
Disenfranchisement:
The Case of
New York City**

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Legal Challenges

- Fourteenth Amendment
 - *Richardson v. Ramirez*, 418 U.S. 24 (1974)
- Eighth Amendment
 - *Thiess v. State Admin. Bd. of Election Laws, State of Md.*, 387 F. Supp. 1038 (D. Md. 1974)
- Twenty-Fourth Amendment
 - *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010)
 - *Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010)
- Section 2 of the VRA
 - *Johnson v. Bush*, 405 F.3d 1214 (11th Cir. 2005)
 - *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010)
- State Constitutions
 - *Schroeder v. Minnesota Secretary of State*, 62-CV-19-7440 (Ramsey Cty. Dist. Ct. Aug. 11, 2020)
 - *Community Success Initiative v. Moore*, 19CVS15941 (Wake Cty. Super. Ct. Sept. 4, 2020)

Momentum for Reform



Over the past two decades, **20 states and Washington, D.C.** have made their felony disenfranchisement laws more just, less discriminatory, and easier to administer

Spotlight: California

- In 2020, Prop 17 restored voting rights to **50,000 Californians**
- **Nearly 60%** of Californians voted in favor
- Prop 17 got more “Yes” votes than the 11 other initiatives on the ballot



Spotlight: Florida

- In 2018, Amendment 4 restored voting rights to **1.4 million** Floridians
- **64% of Floridians** voted in favor
- Amendment 4 received **a million votes more** than any candidate
- Prior to Amendment 4, **more than one in five** of Florida's Black voting-age population was disenfranchised

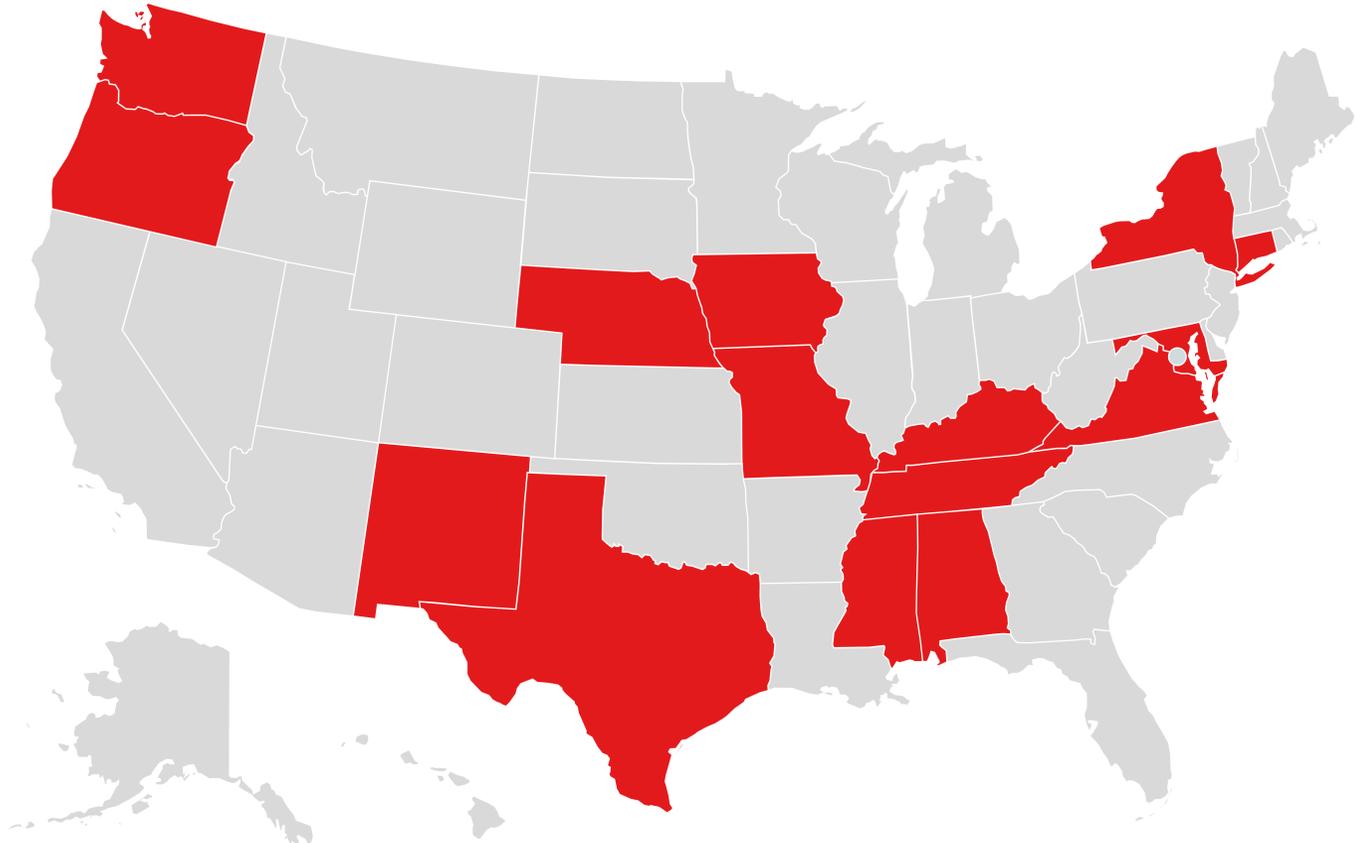


Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020)

- In 2019, Florida's legislature enacted **Senate Bill 7066**
- The law requires people to pay off all **finances, fees, court costs, and restitution** before they can vote
 - At least **900,000 Floridians** can't vote solely because they cannot afford to pay what they owe
 - The law has a **disproportionate impact** on Black Floridians
 - Florida has **no reliable, centralized database** for tracking outstanding court debt



Continued Momentum for Reform



As of January 2021, at least **15 states** are considering measures to **expand or restore voting rights** for Americans with felony convictions

The Democracy Restoration Act

- Federal legislation to allow all Americans who aren't in prison to vote in federal elections
 - Part of *The For the People Act*, introduced as H.R. 1 in the House and S. 1 in the Senate



Questions?

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