

IN THE SUPREME COURT OF IOWA
Supreme Ct. No. 15-1661

Kelli Jo Griffin,

Petitioner-Appellant,

vs.

Paul Pate, in his official capacity
as the Secretary of State of Iowa,

and

Denise Fraise, in her official capacity
as the County Auditor of Lee County, Iowa,

Respondents-Appellees.

Brief of Amicus Curiae, Citizens United for Rehabilitation of Errants (CURE)

In Support of Petitioner-Appellant

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INTEREST OF THE AMICUS AND CONSENT OF THE PARTIES

Citizens United for the Rehabilitation of Errants (CURE) is an Iowa nonprofit corporation, serving as an umbrella for several subsidiary non-profits, all of which are interested in reformation of specific facets of the criminal justice system. CURE pursues its objectives through advocacy for legislation, and public education. One of those subsidiaries is the Juvenile Justice Coalition whose purpose is advocacy through litigation, legislation and public education on the issue of juveniles sentenced to life without parole.

The issue of disenfranchisement of felons is crucial to the rehabilitation potential of each felon or juvenile who is released from prison. It is the position of CURE and the Coalition that disenfranchisement is unrelated to the stated purposes of such a restriction, contributes to, rather than prevents, subsequent criminal activity, and runs directly counter to rehabilitation purposes. Amicus believes that it has a “unique perspective or information that will assist this Court in assessing the ramifications” of its decision. Iowa R. App. P. 6.906(4)(a)(3)

The parties to this appeal, by counsel, have consented to the filing of this Amicus Brief. Iowa R. App.P. 6.906(1).

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Felon Disenfranchisement Is a Misguided Practice

Approximately 11.7 million ex-felons live and work in the United States. Christopher Uggen, Jeff Manza & Melissa Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 281, 281 (May 2006). As felony is “a broad categorization encompassing everything from marijuana possession to homicide”, felons represent a diverse group of criminals. Uggen, Manza & Thompson, at 302. Many of those ex-felons, and the vast majority of ex-felons living in Iowa, suffer from collateral sanctions such as disenfranchisement. Uggen, Manza & Thompson, at 281.

There has been little research conducted on the link between disenfranchisement and recidivism. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 194 (2004). The vast majority of studies related to recidivism focus on the reestablishment of family and communities ties such as marriage, employment, and education. Uggen & Manza, *Voting and Subsequent*

Crime and Arrest at 196. These same studies show that recidivism rates plummet when ex-felons are married, steadily employed, and have twelve years or more of education. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 196. This implies a negative correlation between these social factors and recidivism. Social scientists and psychologists insist that this negative correlation is due to the enhanced participation in society as a whole. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 196-97.

What all of these social factors have in common is placing the ex-felon in a position where he or she has a personal stake in the community's well-being. An ex-criminal is less likely to re-offend or violate the rules of that community, when they are personally invested in its safety and continuation. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 195-6. "[T]he desire to 'be productive and give something back to society' appears to be critical to the desistance process." Uggen & Manza, *Voting and Subsequent Crime* at 197. This connection between being part of a whole and reduced rates of re-offending can be extrapolated and applied to the civic duty of voting.

When felons are disenfranchised, particularly in a permanent manner, it is a very tangible reminder that they will never again be a full-fledged member of any legitimate society. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at

212. It is essentially their scarlet A, designed to tell them that they are no longer worthy of a freedom that wars have been fought to protect. When that reminder of their past shamefully hangs over their heads, either consciously or subconsciously, it fosters an environment of alienation. See Mark E. Thompson, *Don't Do the Crime if You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment*, 33 SETON HALL L. REV. 167, 17677 (2002). They are given no incentive to obey the laws of the society in which they once again live, when that society keeps them at arms-length and denies them a say in what laws will govern them. See Christopher Uggen, Jeff Manza & Melissa Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 281, 283 (May 2006); Mark E. Thompson, *Don't Do the Crime if You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment*, 33 SETON HALL L. REV. 167, 178 (2002).

The denial of the franchise is yet another form of imprisonment: forever locked in a world that dictates rules for you to obey, while maintaining that your thoughts on those rules are meaningless and do not matter. The fundamental civil right is denied, based upon a criterion as difficult of definition as “infamous crimes.” See Iowa Const., Art. II § 5.

To the extent that felons belong to a distinct class or status group, the problems of desistance from crime and reintegration into civil society can be interpreted as problems of mobility—moving felons from a stigmatized status as outsiders to full democratic participation as stakeholders.

Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, at 283. Voting is an integral and crucial part of democracy; voting fosters the sense of citizenship upon which democracy depends in order to thrive. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 198. Without that sense of citizenship, of belonging, there can be no representation of, and for, the ordinary citizen, which is the foundation of a democratic government. See Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, The State of Civil and Human Rights in the United States, The Leadership Conference on Civil and Human Rights, Wade Henderson, president and CEO (Dec. 9, 2014).

One of the hallmarks of a productive and engaged citizen, other than paying taxes, is voting. It produces a sense of efficacy and the assurance that a personal stake in the political system, and society as a whole, exists. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 198. The ability to participate in government through voting, to have a voice in determining what laws will govern, is at the heart of what it means to be a citizen in a democracy. The Founders

recognized the importance of having a personal stake in the outcome, and the ability to vote, to protect it. The two indicia of adherence to government were intertwined: ‘no taxation without representation’ It is a reflection of the idea that “the greater an individual’s participation in the political process, the more fair the individual is likely to consider the system.” Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 198. Individuals are generally more likely to obey laws they believe to be fair. It may well be the case that voting will lead exfelons to that perception, and thus less likely to violate those laws in the future. See Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 198.

Felons have a Unique Perspective of the Criminal Justice System

Felons have stated that they mourn the loss of their right to vote and “care deeply about disenfranchisement.” Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 212-13. While those interviewed were unsure that voting, in and of itself, would deter someone from committing a subsequent crime, the nearly universal perception was that it was integral to the larger package of social participation, or rather the lack of it: a part that felt “as additional ‘salt in the wound’”. Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 212-13. Assuming one of the goals of incarceration is rehabilitation, disenfranchisement

remains a perpetual reminder to each felon that they are not, nor will they be, completely rehabilitated and integrated back into society, despite having paid their ‘debt to society’. *See* Henderson, Hearing Before the Senate Judiciary Subcommittee, Dec. 9, 2014.

Disenfranchisement serves to keep them inferior to others around them, and consciously or subconsciously, perpetuates the “us against them” mentality. It is that sense of exile that can lead to re-offending. In contrast, voting encourages feelings of participation and equality. It is that feeling of positive association with society and government that discourages criminal behavior. *See* Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, at 296-97 (May 2006).

In addition to restricting ex-felons to a lower status, disenfranchisement silences the voices of those individuals with the best insight into the successes, and failures, of the criminal justice system. Those who have been exposed to the justice system have a unique and well-versed knowledge of its workings. Those insights, and observations could prove invaluable, to better reflect the goals and ideals of American democracy.

Disenfranchisement disproportionately affects minorities.

Ex-felons make up an estimated “7.5 percent of the adult population, 22.3 percent of the black adult population, and an astounding 33.4 percent of the black adult male population.” Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, at 283. Using the demographic statistics for both prison and parole populations: blacks make up approximately half of the all felons, whites make up roughly one-third, and Hispanics and other minorities constitute the rest. See Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders* at 291. In sum, the black population is 12 percent of the general population, one-third of the felony probation population, and half of both the felony prison and parole populations. Uggen, Manza & Thompson, at 291. (2006)

Historically, minorities suffer the most from poor education, underemployment, and relative poverty. Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, at 295.

Disenfranchisement then, as part of collateral sanctions, “operate[s] as an interconnected system of disadvantage that amplifies disparities in economic and social well-being.” Uggen, Manza & Thompson, at 296. See also, Henderson, Hearing Before the Senate Judiciary (Dec. 9, 2014). This disproportionate disenfranchisement of the minority population has doubtless, affected the outcome of several elections. See Uggen, Manza & Thompson, at 297-98. Given that the

greater number of felons are minorities, and statistically and historically, minorities have tended to vote democratic, “disenfranchisement laws tend to take votes away from Democratic candidates.” “Although estimated turnout among felons is well below that of non-felons, our National Election Study analysis strongly suggests that felon disenfranchisement played a decisive role in the 2000 U.S. presidential election, and in several U.S. Senate elections since 1978.” Uggen, Manza & Thompson, at 298.

The effects of such minority disenfranchisement is significant and potentially disastrous as the major political parties need not address the problems of the approximately five million disenfranchised felons, comprised mostly of poor people and people of color. Uggen, Manza & Thompson, at 298. *See also* Henderson, Haring Before the Senate Judiciary Dec. 9, 2014. The authors argue, (despite evidence to the contrary), that now, after elimination of most, if not all, of the voting restrictions/requirements that served to keep poor people and people of color from voting, felon disenfranchisement laws are the “*only* real ballot restriction imposed on American citizens” today. Uggen, Manza & Thompson, at 299 (emphasis in original). Laws and judicial decisions removing voting restrictions are based on the belief that such restrictive statutes undermine a society based on democratic principles. Mark E. Thompson, *Don't Do the Crime if You*

Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment, 33 SETON HALL L. REV. 167, 168 (2002); *see also*, Henderson, Hearing Before the Senate Judiciary Subcommittee. Felon disenfranchisement is the last remnant of voting restrictions based on a voter's characteristic. Uggan, Manza & Thompson, at 299.

The felony disenfranchisement laws were expanded after the Civil War to include crimes that were viewed as “black crimes” with the purpose of excluding blacks from voting without violating the Fifteenth Amendment. See Thompson, at 177-78. These laws have continued to discriminate against blacks and minorities. “Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40 percent of whom have completed the terms of their sentences.” Henderson, Hearing (Dec. 9, 2014). Since the majority of felons come from a life of disadvantage with little opportunity to succeed, removing the right to vote only ensures that the problems creating that disadvantage will not be resolved in the political sphere. *See* Henderson, Hearing.

Statistical relationships

The best study available to examine the link between disenfranchisement and recidivism is the Youth Development Study (YDS). That is a survey of 1,000 people, begun in 1988 when the participants were in ninth-grade in St. Paul,

Minnesota. While it does not look specifically at convicted felons, it is one of the only data sets to include both criminal behavior and voting. The first election tracked was in 1996. Uggen & Manza, *Voting and Subsequent Crime and Arrest*: at 204-05 (2004).

When looking at the difference between those who voted and those who did not, there are three categories of interest; self-reported criminal behavior, arrests and incarcerations, and recidivists. The difference is visible in all three categories. In self-reported criminal behavior, eleven percent of voters reported a property crime and twenty-seven percent reported being violent or threatening violence. Compare this to eighteen percent of non-voters reporting a property crime, and forty-two percent reporting being violent or threatening violence. This points to a negative correlation between voting and law violations. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 207 (2004).

In the category of arrests and incarceration, five percent of voters were arrested, with less than five percent being incarcerated, compared to sixteen percent of non-voters arrested, with approximately twelve percent being incarcerated. That is a statistically significant difference between voters and nonvoters. *See* Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime*

and Arrest: Evidence from a Community Sample, 36 COLUM. HUM. RTS. L. REV. 193, 204-05 (2004). Voting appears to decrease the likelihood of arrest/incarceration. This negative correlation continues when considering recidivism.

“Among former arrestees, about [twenty-seven percent] of non-voters were rearrested, relative to [twelve percent] of the voters.” This suggests a correlation between voting and recidivism. This correlation can be studied in Minnesota as convicted felons regain the right to vote after all prison, parole, or probation has been completed. This correlation indicates that civic participation is related to desistance from crime. See Uggen & Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205-07 (2004).

Based on this study, “[t]hose who vote are less likely to be arrested and incarcerated, and less likely to report committing a range of property and violent offenses. Moreover, . . . , this relationship cannot be solely attributed to prior criminal history; voting is negatively correlated with subsequent crime among those with, and those without, a prior criminal history.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*: at 207. Voting decreases both the likelihood of

a first arrest and/or incarceration as well as the likelihood of re-offending. While many factors such as education, family life, and socio-economic status affect recidivism rates, the correlation between voting and recidivism “is not rendered spurious by the inclusion of these background characteristics.” Uggen & Manza, *Voting and Subsequent Crime and Arrest* at 209-10. The effect of political participation on crime and recidivism “is not entirely attributable to preexisting differences between voters and non-voters in criminal history, class, race, or gender.” Uggen & Manza, at 213.

While further investigation is needed to determine just how much of a role voting plays in recidivism, it can be seen that it does have an effect. It should be one of the considerations in rehabilitating felons alongside continued education, employment, and a stable home environment. As part of the ongoing correctional efforts to reintegrate felons, “a general education program working in concert with citizenship education and political participation may be especially effective in facilitating desistance from crime.” Uggen & Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, at 214 (2004).

Failure to Achieve the Purpose of Disenfranchisement

Historically, those pronounced guilty of “infamy” in Greece or Rome were stripped of their citizenship as punishment for their crimes. Mark E. Thompson, *Don't Do the Crime if You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment*, 33 SETON HALL L. REV. 167, 172 (2002). In England, crimes were considered a declaration of war on society and merited death. Mark E. Thompson, at 172 (2002). Those who escaped death were still considered “attainted” or “civilly dead” and had all civil and property rights stripped away. These laws were based on the theories of retribution and deterrence rather than any form of rehabilitation. They evolved as a clear distinction and barrier between “civilized society” and those convicted of crimes.

Modern English law has evolved to automatically restore voting rights once a felon has completed their sentence. Mark E. Thompson, at 175. As the Constitution was being ratified, twenty-nine states had disenfranchisement laws on the books designed to punish criminals for violating the norms of society. Henderson, Hearing, (Dec. 9, 2014). Today, the United States is unique among democratic nations in that it disenfranchises more felons than any other. Mark E.

Thompson, *Don't Do the Crime if You Ever Intend to Vote Again* at 175. The reality is that most ex-felons do not know how to obtain their rights to vote, or have the resources to do so. Thompson, at 179.

Disenfranchisement can and should be classified as a punishment.

Challenging such laws under Equal Protection has failed despite dicta by Courts that this “totally irrational and inconsistent classification”, though rationally related to securing the “purity of the election process”, was not the least burdensome way to achieve such goals. There are much more targeted statutes to address voter fraud. Others argue such laws should be found to be cruel and unusual punishment under the Eighth Amendment due to its pervasiveness and longevity. See Mark E. Thompson, *Don't Do the Crime if You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment*, 33 SETON HALL L. REV. 167, 182-85 (2002) (citing Stephens v. Yeomans; Green v. Board of Elections; Kronlund v. Honstein; and Richardson v. Ramirez)

Proponents of disenfranchisement maintain that these laws are necessary to protect against both voter fraud and irresponsible voting. There are already several more tailored laws addressing voter fraud, making disenfranchisement a redundant and ill-fitting way to address the issue. Mark E. Thompson, at 190-98. As for irresponsible voting, that is the same ill-fated, misogynistic argument used to keep

people of color, women, and illiterate citizens from voting, and which were later declared unconstitutional. Even so, it should be every citizen's right to vote, according to their beliefs, -----irresponsible, or otherwise.

Such laws are both over and under-inclusive. Thompson, at 191. Felon disenfranchisement laws do not distinguish based on felonies related to fraud or dishonesty. These laws are thus over-inclusive for the purpose of preventing voter fraud. There is no evidence that ex-felons have or would abuse the electoral process anymore than ordinary citizens. Thompson, at 192.

Iowa's "infamous crimes" disenfranchisement provision, as now defined by the legislature, is similarly unnecessary to protect any legitimate state interest. It has the same over broad and under-inclusive qualities. The state could not declare that all felons register their name and address with the state as "sex offenders", merely because convicted of a felony, unrelated to sex offenses. The crime of burglary has no rational relation to the commission of any sex offenses. So too should the practice of disenfranchisement be limited, if maintained at all, to crimes that bear some relation to voter fraud, instead of all felonies. Thompson, *Don't Do the Crime if You Ever Intend to Vote Again* at 193.

Thompson argues there are four concrete ways in which felon disenfranchisement violates society's definition of decency under the 8th

Amendment. Thompson at 200-01. First, similar to denaturalization, disenfranchisement violates human dignity by permanently denying an individual's existence as a member of the human community. Second, the arbitrary selection of all felonies further violates society's standards of decency, as there is no true distinction between the nature of the crimes. 'Felonies' include a wide range of differing crimes dependent in general, on the severity, or financial cost, of such crime rather than the type of crime committed. Third, disenfranchisement is excessive and is not necessary to achieve any legitimate state interest. Fourth and finally, the modern society's view holds voting as a fundamental right that preserves all other rights.

Other State's Policies

In 1967, forty-two states regularly disenfranchised felons. Mark E. Thompson, at 202. As of 2002, two states permit felons to vote while imprisoned, only four states disenfranchised all felons after completion of their sentence, and eight states "disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Wyoming, and two years in Nebraska)." Felony

Disenfranchisement Laws in the United States, The Sentencing Project. This change is indicative of the evolution of society away from restrictions on the right to vote and towards a more rehabilitative and inclusive process.

Research has shown that formerly incarcerated individuals who vote are less likely to be rearrested. In Florida, where former Governor Charlie Crist briefly made it easier for people with felony convictions to get their voting rights restored, a parole commission found that reenfranchised people with felony convictions were far less likely to reoffend than those who hadn't gotten their rights back. According to the report, the overall three-year recidivism rate of all formerly incarcerated people was 33.1 percent, while the rate for formerly incarcerated people who were given their voting rights back was 11 percent.

See Henderson, Hearing (Dec. 9, 2014).

While disenfranchisement has a non-existent impact on ordinary citizens, reenfranchisement has a positive effect on ex-felons.

Conclusion

Long-term studies of crimes rates suggest that the vast majority of offenders will desist from criminal activity eventually. Uggen, Manza & Thompson, *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 281, 304-05 Stated another way, criminals 'age out'. Desistance from crime is for the most part, inexorable. Even the most hardened criminals can become productive members of society.

Disenfranchisement laws continue to impose an inferior status upon felons. The problem of recidivism and desistance from crime is a problem of reintegration into society and the restoration of full citizenship rights must be an important piece of that reintegration. *See Uggen, Manza & Thompson*, at 305.

Certificate of Compliance

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/s/ Gordon E. Allen