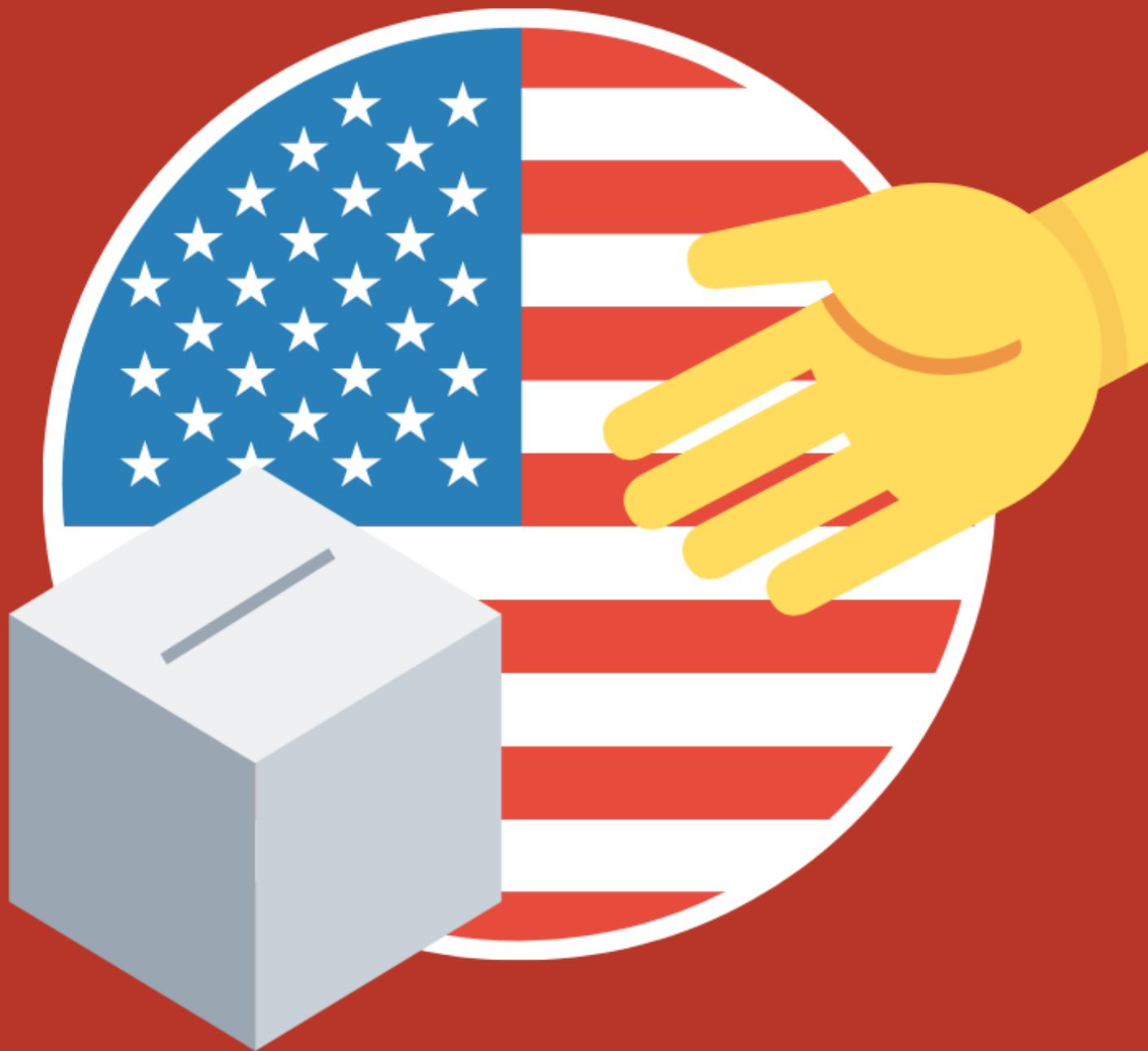


# RESTORING VOTING RIGHTS TO DISENFRANCHISED VETERANS: A POLICY PROPOSAL



THE UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW  
PUBLIC ACTION LAW SOCIETY - ALTERNATIVE SPRING BREAK 2019

## **ABOUT THE CONTRIBUTORS**

This report was prepared by Hannah Fuson, Lindsay Castellaw, Dairanetta Spain, Heather Bornstein, Reggie Eskridge, Jesse Gavin, and Karlyne Killebrew, student participants of the Public Action Law Society's Alternative Spring Break at the University of Memphis Cecil C. Humphreys School of Law. These students were supervised by Professor Amy Campbell, Associate Professor and Director of the Institute for Health Law & Policy at the University of Memphis. This report was completed in March 2019.

## **ABOUT THE UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW**

The University of Memphis Cecil C. Humphreys School of Law is an American Bar Association (ABA)-accredited institution of higher learning and a member of the Association of American Law Schools (AALS). The School is located at 1 North Front Street, Memphis, Tennessee 38103-2189.

## **ABOUT THE PUBLIC ACTION LAW SOCIETY**

The Public Action Law Society (PALS) at the University of Memphis Cecil C. Humphreys School of Law is a student-led organization that seeks to promote volunteerism, community service, and a pattern of activities that will instill in participants a desire to continue in pro bono work after becoming attorneys.

## **ABOUT ALTERNATIVE SPRING BREAK**

Memphis Law's Alternative Spring Break program, coordinated and run by PALS, seeks to help low income individuals who need legal representation, while simultaneously providing law students the opportunity to gain experience in the legal field. The University of Memphis program is the only student-led Alternative Spring Break in the country to recruit nationally, taking applicants from any American Bar Association-accredited law school. Supervised by practicing attorneys and leaders in the Memphis community, law students participate in a variety of specialized tracks throughout the week, with a special keynote address to conclude the weeks activities.

## **ACKNOWLEDGMENTS**

The authors would like to thank Professor Amy Campbell, Jan Stone, Lindsay Watson, the University of Memphis, the Public Action Law Society Executive Board, the Alternative Spring Break 2019 Veteran's Track, and the administrators at the Shelby County Veterans Court for their assistance with this proposal.

# TABLE OF CONTENTS

<b>Executive Summary</b> .....	<b>4</b>
<b>Context &amp; Scope of the Problem</b> .....	<b>5</b>
<i>History of Tennessee’s Felon Disenfranchisement Laws</i> .....	5
<i>Current State of Voting Rights in Tennessee</i> .....	7
<i>The Disenfranchisement of Tennessee Veterans</i> .....	9
<b>Alternative Solutions</b> .....	<b>11</b>
<i>National Survey</i> .....	11
<i>Florida’s Solution: Amendment 4</i> .....	13
<i>Virginia’s &amp; Washington’s Solution: Eliminating Cost Requirements</i> .	14
<i>Proposed Solution: A Restoration Plan Tailored for Veterans</i> .....	16
<b>Proposed Recommendations</b> .....	<b>17</b>
<b>Sources</b> .....	<b>18</b>

## EXECUTIVE SUMMARY

Tennessee's felon disenfranchisement laws are among the most complex and restrictive in the United States. More than 400,000 Tennesseans have lost the right to vote as a result of a felony conviction, which places Tennessee among the top four states in the country for the highest number of disenfranchised felons per voting-age population.<sup>1</sup> Ex-felons seeking to have their voting rights restored face significant financial hardships and bureaucratic hurdles under the current restoration scheme.

Activists and policymakers alike have recognized need to reform Tennessee's felon disenfranchisement and voting rights restoration laws. However, the contributors of this report have identified a new aspect of the problem that has thus far gone unmentioned: the disenfranchisement of men and women who served in the Armed Forces. Nationally, over half a million veterans have lost the right to vote under state felon disenfranchisement laws.<sup>2</sup> Tennessee is home to 470,000 veterans,<sup>3</sup> many of whom have felony convictions that stem directly from the physical or psychological traumas of combat. Tennessee has already demonstrated a policy preference for supporting criminal veterans by implementing veterans treatment courts, re-entry support programs, and prison housing unit reforms. However, Tennessee has thus far overlooked the fact that its current laws strip ex-felon veterans of the right to vote and then force them to navigate a convoluted restoration system without providing additional support.

The authors of this report propose that the Tennessee General Assembly amend the current laws to make the restoration process easier. Our proposal consists of three alternatives, two of which relate directly to proposed bills that are presently pending before the General Assembly.

- If the General Assembly opts to not adopt either bill, the authors recommend amending the current law to streamline the voting rights restoration certificate process for veterans that have successfully completed a Veterans Treatment Court program, prison sentence, or probation/parole. This includes waiving or amending the requirement that ex-felon veterans satisfy outstanding legal financial obligations—such as restitution, court costs, and child support payments—prior to seeking restoration.
- If the General Assembly adopts S.B. 36/H.B. 137 to extend eligibility to all ex-felons that are in compliance with a court-authorized payment plan, the authors recommend further streamlining the process for ex-felons veterans. This includes waiving the financial requirements and making the restoration process automatic for eligible individuals.
- If the General Assembly adopts S.B. 589/H.B. 547 to eliminate financial requirements and make the restoration process automatic for all eligible ex-felons, the authors only recommend that the amended laws include a provision directing Veterans Treatment Court officials to provide a voting rights restoration certificate to ex-felon veterans upon graduation from the program.

No other state has adopted a voting rights restoration scheme tailored to disenfranchised veterans. This proposal thus urges Tennessee legislators to become a trailblazer in protecting veterans' civil rights. It is time to restore the right to participate in the democratic process to the men and women who bravely and selflessly sacrificed to preserve it.

## CONTEXT & SCOPE OF THE PROBLEM

### *History of Tennessee's Felon Disenfranchisement Laws*

In 1835, Tennessee revised its constitution to limit the voting rights of individuals convicted of “infamous crimes.”<sup>4</sup> The General Assembly subsequently implemented legislation barring such individuals from voting.<sup>5</sup> Although the original definition of “infamous crimes” only included a number of enumerated crimes, the General Assembly amended Tennessee’s disenfranchisement statute in 1981 to encompass all felony convictions.<sup>6</sup> The Tennessee Supreme Court later held that the 1981 amendment did not apply retroactively to individuals convicted of unenumerated felonies prior to 1981.<sup>7</sup>

Until 2006, the only available recourse for disenfranchised felons was to file a petition in Circuit Court.<sup>8</sup> In 2006, the Tennessee General Assembly enacted a bill aimed at streamlining the voting rights restoration process.<sup>9</sup> The intent of the new legislation was essentially threefold. First, it required election administrators to register eligible ex-felons for voting if they satisfied the statutory requirements for a voting rights restoration certificate.<sup>10</sup> Additionally, the law required persons seeking restoration to pay all restitution and outstanding child support payments prior to receiving the certificate of restoration.<sup>11</sup> Further, the legislation encouraged sentencing courts, the Tennessee Department of Corrections (“TDOC”), and the Tennessee Board of Parole (“TBOP”) to require officials to explain the citizenship restoration process to released offenders convicted of nonviolent felonies.<sup>12</sup> In 2010, the General Assembly again amended the voting rights restoration statute to require otherwise eligible ex-felons to pay all court costs prior to receiving a voting rights certificate.<sup>13</sup>

## Historic Justifications for Felon Disenfranchisement

The practice of punishing offenders by stripping them of citizenship privileges harkens back to Ancient Greece: the punishment of “infamy” barred those who committed the enumerated “infamous” crimes from voting, using the court systems, speech making, and assembly attendance. The practice spread into the wider vestiges of Europe, eventually evolving into the English and Colonial American precursors to felon disenfranchisement. In the United States, as voting rights were gradually extended from white, land-owning males to broader sections of society, the option to disenfranchise felons remained supported by the notion that states have a “compelling interest” in preventing those who’ve already breached the state’s laws from participating in society and thereby putting society at risk.

Beyond validating the legality of the practice, few arguments supporting the disenfranchisement of felons exist beyond the original view that felons already broke society’s law(s) and must prove that they will not pose a threat to society if restored with rights of citizenship. Some disenfranchisement proponents insist that gradual restoration acts as an incentive against recidivism—in other words, the process of earning restoration functions as a method of rehabilitation. Others focus on the question of allowing felons to vote in prison, arguing that the primary purpose of imprisonment is to show the offender and society as a whole that criminal behavior leads to the loss of freedom and the accompanying civil rights.

Fig. 1

# A TIMELINE OF FELON DISENFRANCHISEMENT PRACTICES IN TENNESSEE

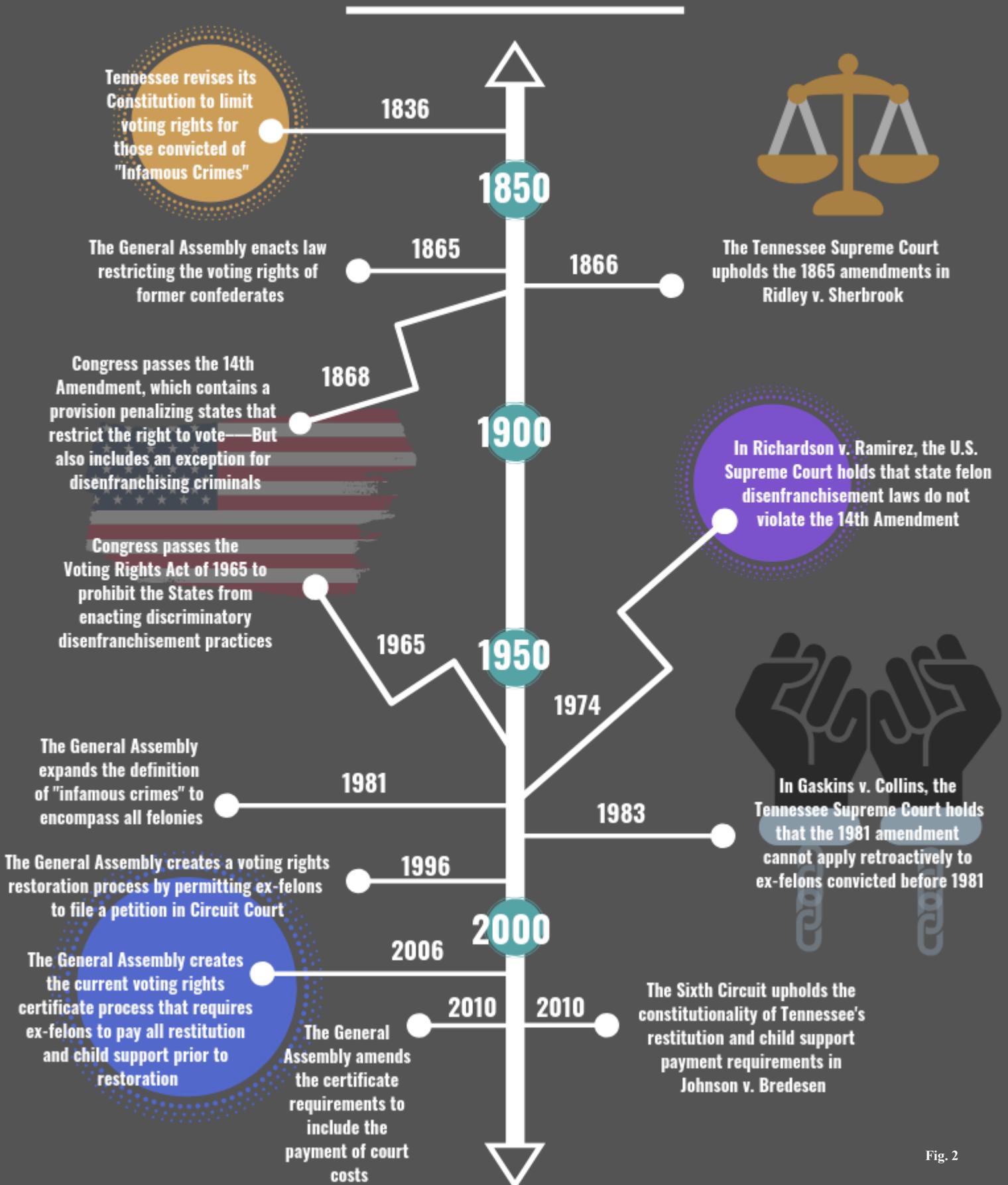


Fig. 2

# Problems for Ex-Felons Seeking Voting Rights Restoration



## Financial Barriers

- Court-ordered restitution
- Court costs
- Outstanding child support obligations



## Bureaucratic Hurdles

- Complexity of process
- Lack of access to records
- Troubles identifying authorizing authorities

## *Current State of Voting Rights Restoration in Tennessee*

As of 2016, a felony conviction bars 6.1 million Americans from voting.<sup>14</sup> In Tennessee, a past felony conviction bans 1 in 12 citizens from voting.<sup>15</sup> Although the 2006 Amendments streamlined the restoration process for disenfranchised Tennesseans, financial barriers and bureaucratic hurdles still act as obstacles. As a result, Tennessee's current voting rights restoration system stands as one of the most onerous and complicated in the country.<sup>16</sup>

Two major procedural barriers center upon the lack of access to court records necessary for proving compliance with restitution requirements and the financial hardships imposed by the requirement to pay legal financial obligations ("LFOs") prior to restoration.<sup>17</sup> In Tennessee, these LFOs consist of court costs, restitution, and outstanding child support payments.<sup>18</sup> Despite statutory provisions allowing courts to consider evidence of indigency, a comparison of poverty rates among Non-Hispanic African Americans in Tennessee (24.3%)<sup>19</sup> and the corresponding disenfranchisement rate for the same subgroup (21.27%)<sup>20</sup> suggests that the exception is sparingly applied or sets an infeasible-to-meet standard for those seeking relief from LFOs.

Perhaps the most daunting bureaucratic hurdles in Tennessee can be attributed to the complexity of the voting rights restoration process. Multiple requirements for eligibility under the current law can quickly become burdensome enough to deter otherwise eligible ex-felons from completing the restoration process altogether.<sup>21</sup> Furthermore, a 2015 survey of all 95 local election officials in Tennessee demonstrates that even those overseeing the restoration process lack fundamental knowledge and understanding of the current laws.<sup>22</sup> Individuals suffer when those in charge of implementing the law cannot comprehend its many nuances and irregularities. For this reason and many others, Tennessee's voting rights restoration scheme is in need of serious and immediate reform.

## TENNESSEE FELON DISENFRANCHISEMENT STATISTICS

- 421,227 disenfranchised Tennesseans
- 8.26% of Tennessee's total population
- In 2017, Tennessee was 4th in the nation for the highest number of disenfranchised felons per voting-age population



Fig. 3



**21.3%**  
DISENFRANCHISED  
AFRICAN  
AMERICANS IN TN



Fig. 4

**24.3%**  
AFRICAN  
AMERICANS IN  
POVERTY IN TN

## TENNESSEE LAWS

- Tennessee has the most convoluted and difficult-to-navigate voting rights restoration system in all fifty states.
- Tennessee is one of the only states to impose financial requirements for voting rights restoration.

Fig. 5



# VOTING RIGHTS RESTORATION PROCESS



### PARTICIPANT'S ROLE IN THE PROCESS:

#### STEP 1 OBTAIN FORM FROM EITHER:

1. The pardoning authority;
2. The warden or an agent or officer of the incarcerating authority; or
3. A parole officer or another agent or officer of the supervising authority.

#### Form must provide proof of participant:

1. Receiving a pardon, except where the pardon contains special conditions pertaining to the right of suffrage;
2. The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the infamous crime; or
3. Being granted a certificate of final discharge from supervision by the board of parole pursuant to § 40-28-105, or any equivalent discharge by another state, the federal government, or county correction authority.

#### Persons who obtain this form are only eligible to apply for restoration if:

1. Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and
2. Beginning September 1, 2010, notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid all court costs assessed against the person at the conclusion of the person's trial, except where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.
3. Current on all child support.

*This form shall be sufficient to show that participant is no longer ineligible to vote.*

#### STEP 2: SUBMIT FORM FROM STEP ONE TO ADMINISTRATOR OF ELECTIONS IN THE COUNTY WHERE THE PARTICIPANT IS ELIGIBLE TO VOTE.

### ADMINISTRATION'S ROLE IN THE VOTING RIGHTS RESTORATION PROCESS:

#### STEP 1

Administrator of Elections in county where participant is eligible to vote receives certificate of eligibility.

#### STEP 2

Administrator of Elections sends certificate to Coordinator of Elections.

#### STEP 3

Coordinator of Elections must verify that the certificate was issued in compliance with TN ST § 49-29-403.

#### STEP 4

Coordinator notifies Administrator of Elections in county of request that certification is valid.

#### STEP 5

Administrator of Elections determines that participant is qualified to vote using verification procedures used for any applicant.

#### STEP 6

Administrator of Elections grants application for voter registration.

#### STEP 7

Administrator of Elections shall issue a voter registration card to be mailed to the participant in the same way a new voter registration card is mailed.

### ***Problem: The Disenfranchisement of Tennessee Veterans***

As of 2017, Tennessee is home to more than 470,000 military veterans.<sup>23</sup> After recognizing the high rates of post-traumatic stress disorder (“PTSD”), suicide, depression, and substance abuse problems suffered by Tennessee veterans, the General Assembly decided to invest in a number of state-sponsored programs to help veterans that committed crimes after serving in the military. Here are some examples:

- Veterans Treatment Courts (VTCs) offer a means for qualified veterans to receive rehabilitative treatment in lieu of imprisonment. In 2012, Shelby County became the first county in the state to establish a treatment court solely aimed at offering treatment services for veterans that had committed crimes—including felony offenses—related to substance abuse, PTSD, and the failure to successfully adjust to civilian life.<sup>24</sup> Other counties soon followed suit. Today, a number of VTCs serve veterans across the state of Tennessee. Most VTCs accept veterans into the program on a case-by-case basis.<sup>25</sup>
- TDOC and TBOP established a state-wide Tennessee Reentry Collaborative (TREC) in 2004 to help formerly incarcerated inmates—including veterans—successfully reintegrated into society after imprisonment.<sup>26</sup> The state TREC agency oversees and assists nine local TREC organizations across the state to work with community providers to offer services for formerly incarcerated veterans, including housing and support services for qualified individuals.<sup>27</sup>
- More recently, the General Assembly passed legislation creating special housing units for veterans in prison.<sup>28</sup> This January 2019 bill follows a national trend to create “barracks behind bars.”<sup>29</sup> Once implemented, this program will offer various classes and PTSD counseling services to incarcerated veterans at three Tennessee prisons.<sup>30</sup>

These programs demonstrate Tennessee’s dedication to rehabilitating criminal veterans. However, Tennessee has thus far overlooked another critical aspect of the rehabilitation process: the restoration of voting rights to veterans with felony convictions. As an inadvertent consequence of Tennessee’s felon disenfranchisement scheme, men and women who served and sacrificed for the country have lost the right to vote.

Nationally, around 7% of the 2.3 million people (i.e., around 160,000 individuals) within state and federal prison systems are veterans of the Armed Services.<sup>31</sup> An estimated 77% of these individuals were honorably discharged, but were unable to successfully transition into civilian life due to combat-related traumas.<sup>32</sup> Under the current system, Tennessee veterans with felony convictions that are released from prison or successfully complete a VTC program still must face financial obstacles and bureaucratic hurdles to regain the right to vote. For the estimated 7.9% of Tennessee’s veterans who live below the poverty line,<sup>33</sup> the inability to pay restitution, court costs, and outstanding child support payments may render the restoration of voting rights unachievable. Furthermore, the restoration process itself is complex, and veterans—like all disenfranchised Tennessee felons—may struggle to access records needed to prove compliance with the restoration statute’s financial requirements or to identify the appropriate agency for authorizing a voting rights restoration certificate.

## ABOUT VETERANS TREATMENT COURTS

Problem-solving courts—including Veterans Treatment Courts (VTCs)—attempt to solve social and legal problems through alternative procedures and methods focused more on diagnosis and treatment of underlying causes of criminal activity than on punishment of offenders; thus, the focus of these courts is rehabilitative in nature. VTCs in the United States are a product of the post-9/11 era and the resultant influx of veterans following the Iraqi War. While there were many state-level efforts in the mid-2000s to try to help veterans suffering from PTSD, substance abuse, and other mental health disorders, no bills or pilot programs were passed until the Honorable Robert Russell of Buffalo City Court in New York recognized that there were a number of veterans passing through Buffalo’s problem-solving courts that exhibited similar behavior. In 2008, Judge Russell independently established the country’s first VTC. By November 2014, over 184 active VTCs had been established across the country. In 2012, Shelby County became the first county in Tennessee to introduce a VTC program.

## ABOUT THE TENNESSEE REENTRY COLLABORATIVE

The Tennessee Reentry Collaborative (TREC) was established in October 2004 after the Tennessee Department of Correction (TDOC) and the Tennessee Board of Parole (TBOP) recognized the need to help offenders successfully reenter society. The TDOC and TBOP also recognized the need for collaboration between state, local, and private agencies to provide these services in the interest of public safety. Currently, there are nine local TREC organizations around the state of Tennessee that work together with the state-sponsored TREC to coordinate reentry and rehabilitation programs for released offenders.

Fig. 6

## NATIONAL VETERANS STATISTICS

- 19,997,799 veterans in US as of 2017
- Over 160,000 Federal and State prisoners are veterans
- 7% of total estimated 2.3 million prisoners
- 77% of veterans in prison were honorably discharged
- 11–20% of vets from Operation Iraqi Freedom and Operation Enduring Freedom suffer from PTSD
- 12% of Gulf War vets suffer from PTSD
- 15–30% of Vietnam War vets suffer from PTSD

Fig. 7

Nationally, at least

**585,355 Veterans**

have lost the right to vote under state felon disenfranchisement laws.

Fig. 8

**470,390**  
Veterans in TN  
as of 2017

**11**  
VTCs  
in TN

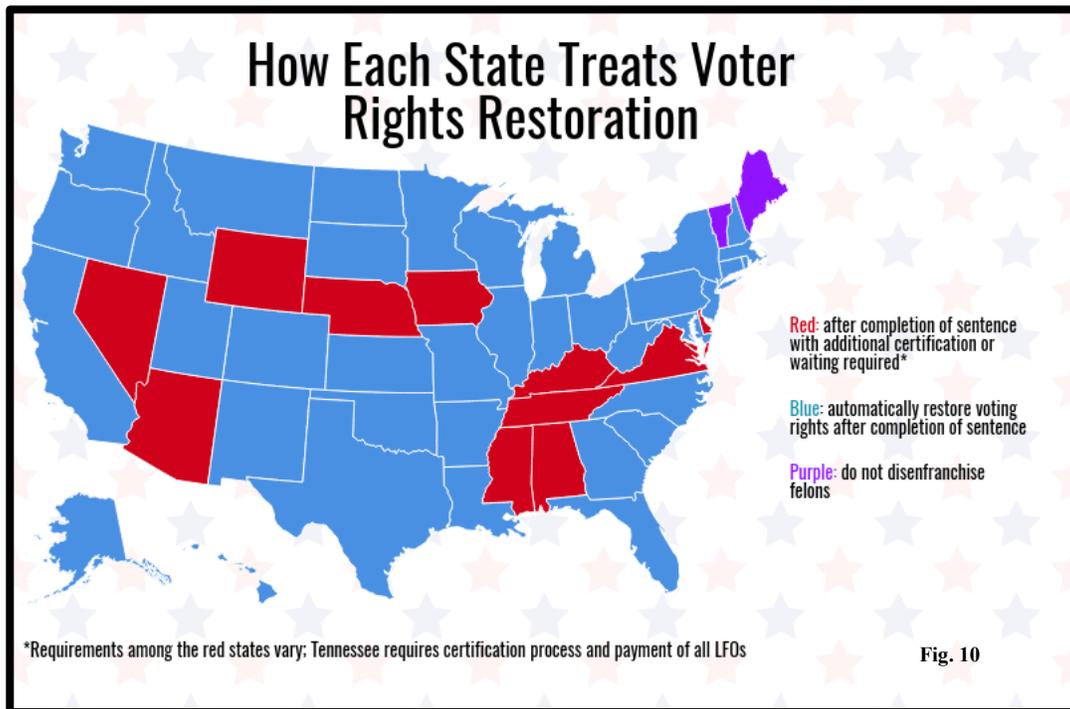
**TENNESSEE  
VETERANS  
STATISTICS**

**9**  
Local TREC  
Chapters

**31**  
VA Regional and  
TDVA Field Offices

Fig. 9

## ALTERNATIVE SOLUTIONS



### *National Survey*

As shown in the map above, disenfranchisement is common across the United States.<sup>34</sup> All states, except for Maine and Vermont, rescind the right to vote for convicted felons. However, states differ in whether the person remains disenfranchised after completion of her sentence. Even if a person is eligible to restore her right to vote, the state might impose additional payment, certification, or waiting requirements. The most restrictive states, like Iowa<sup>35</sup> and Kentucky,<sup>36</sup> will only restore voting rights after the person applies for clemency from the governor.

The general trend across the states is to amend or repeal laws that lead to long-term disenfranchisement.<sup>37</sup> Notably, disenfranchisement reforms tend to have support that transcends the traditional political divisions. Even traditionally conservative states, such as Texas,<sup>38</sup> have adopted less restrictive policies incrementally. Since 1997, 17 states have streamlined or simplified the restoration process for those that have completed their sentence.<sup>39</sup> These reforms are typically directed at removing the economic barriers or bureaucratic hurdles to the restoration of voting rights. Two common reforms, discussed in greater detail here, are (1) repealing LFO payment requirements, and (2) simplifying the administrative process of restoration.

# THE VOTING RIGHTS RESTORATION MOVEMENT: A NATIONAL LOOK

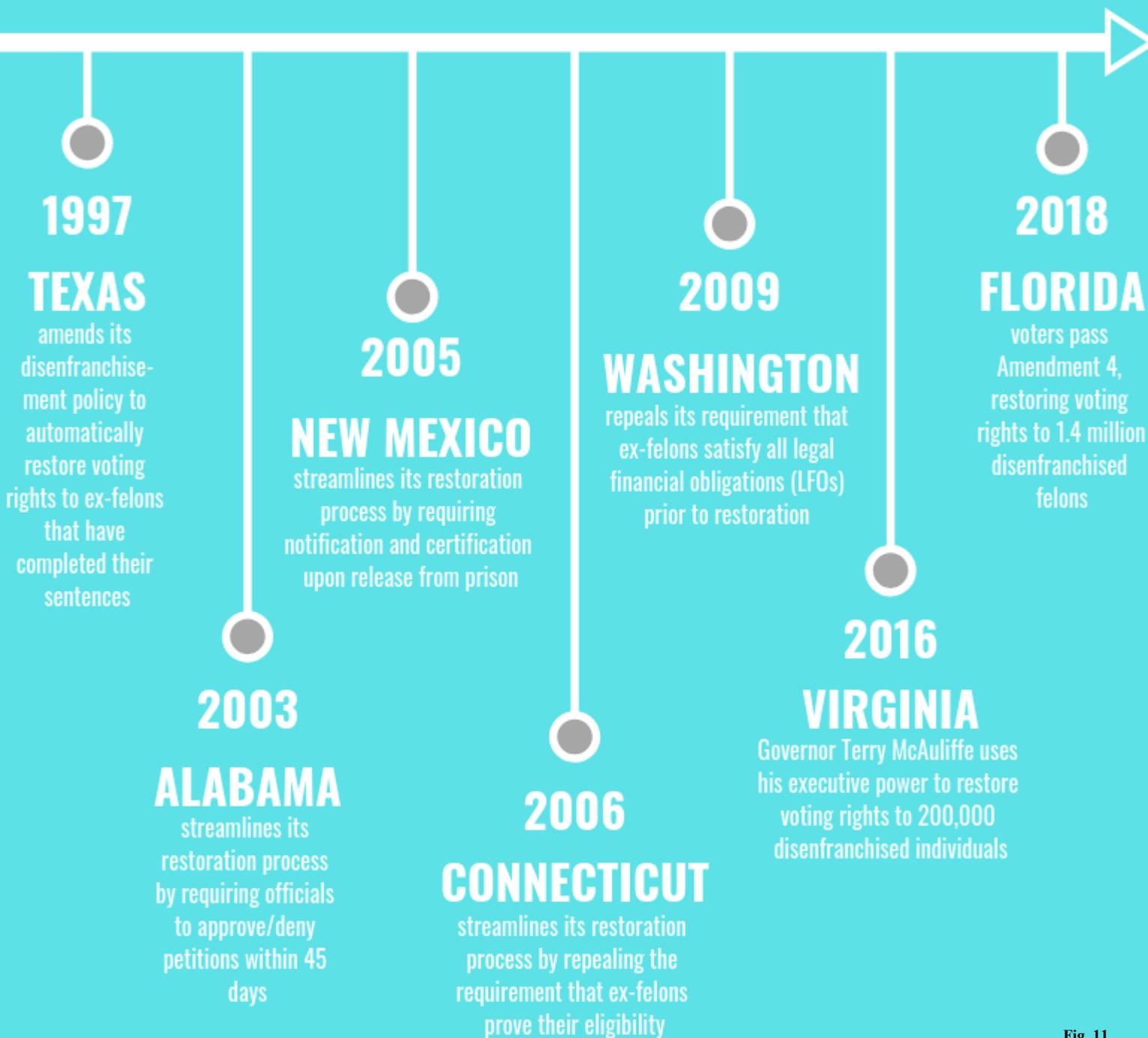


Fig. 11

## National Voting Restoration Laws At a Glipse

2

States never disenfranchise convicted felons

15

States require felons to complete prison sentences prior to restoration

4

States require felons to complete prison or parole prior to restoration

18

States require felons to complete prison, parole, or probation prior to restoration

12

States impose post-sentence requirements for restoration

### *Florida's Solution: Amendment 4*

In 2018, Florida voted on a ballot initiative aimed at reforming the restoration process for ex-felons.<sup>40</sup> Prior to this vote, Florida permanently disenfranchised all felons unless the person was granted clemency by the governor.<sup>41</sup> To restore voting rights, a person would have to complete her full sentence, including probation and parole, then apply to the Executive Board of Clemency for restoration. This process could take up to 15 years for some offenses, and ex-felons could still be denied voting rights by the governor or the board.

Amendment 4, the ballot initiative, was designed to remove the long waiting period and to change the uncertain and costly restoration process. Under this change, voting rights are automatically restored once the person completes her sentence, including probation, parole, and payment of LFOs.<sup>42</sup>

Amendment 4 succeeded despite fears that the amendment would not receive support in a purple state.<sup>43</sup> Groups like Second Chances and Floridians for a Fair Democracy campaigned throughout 2017-2018 to raise awareness of Florida's restrictive restoration process.<sup>44</sup> In the months before the November vote, these groups emphasized the impact of Florida's restoration process on veterans. Local newspapers and grassroots groups shared personal stories and statistics showing the impact of disenfranchisement laws on Florida veterans with mental health issues.<sup>45</sup> These articles were directed at pointing out the inherent injustice in denying voting rights to those that have risked their lives for this country. By November, the amendment had endorsements from groups like the ACLU and the more conservative Freedom Partners.<sup>46</sup> Republican legislators voiced approval, and various statewide polls showed public support of the amendment at about 75%.<sup>47</sup> On November 6, 2018, 65% Florida voters approved Amendment 4, and the right to vote was restored for nearly 1.4 million ex-felons in the state.<sup>48</sup>

**1.4 MILLION PEOPLE**

**Have regained the right to vote since  
Amendment 4's passage in Florida**

Fig. 12

# ECONOMIC IMPACTS

## HOW DOES VOTING RIGHTS RESTORATION SAVE TAXPAYER DOLLARS?

### ECONOMIC IMPACT STUDY

The Washington Economics Group, Inc. (“WEG”) conducted a study regarding the economic results of the passing of Amendment 4 in Florida. The study stated that the total economic impact of restoring felon voting rights would be approximately \$365 million per year. WEG found that Florida taxpayers would benefit from the passing of Amendment 4 due to two major sources, specifically the reduced court and prison costs through a decline in recidivism as well as the increased earning power of felons after release.



### REDUCED RECIDIVISM

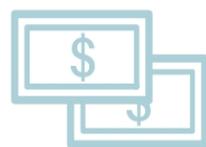
A decrease in recidivism due to the restoration of voting rights correlates to a decrease in felons that are readmitted to prison; therefore, administrative and court costs are correspondingly reduced.

Multiple sources indicate that felons with restored voting rights are less likely to reoffend. Thus, WEG asserted, “As it costs Florida taxpayers over \$20,000 per year to incarcerate each prison inmate, this is the most significant component of quantifiable benefits to Florida taxpayers.”

In Tennessee, it costs taxpayers closer to \$30,000 per year to incarcerate each prison inmate.

### INCREASED EARNING POWER

The study also provides research evidencing that felons earn less than average wages, and felons who do not have their voting rights restored earn 12 percent less than that.



## *Virginia’s & Washington’s Solution: Eliminating Cost Requirements*

Though Florida’s approval of Amendment 4 represents a step towards justice for veterans, the amendment does not remove the economic barriers to restoration of voting rights.<sup>49</sup> The state still requires payment of LFOs before restoration, and that requirement can prevent poor veterans from restoring their rights. Many other states have removed payment requirements from disenfranchisement laws because of the inability of poor ex-felons to ever fully repay court costs.<sup>50</sup>

For example, Virginia and Washington have both removed the payment requirements for restoration through different mechanisms.<sup>51</sup> Virginia has a similar restoration process as Florida’s; a person must apply for clemency to the governor. In 2015, Gov. Terry McAuliffe discontinued the practice of requiring payment of LFOs to restore voting rights.<sup>52</sup> By 2017, the governor had individually restored voting rights to nearly 173,000 citizens.<sup>53</sup>

Washington made a similar change to its disenfranchisement laws in 2009 through its legislature.<sup>54</sup> Under the new law, the state only disenfranchises people that are in prison, on probation, or on parole. After completion of the sentence, the person’s voting rights are automatically restored. In Washington, legal system debts compound by 12% annually.<sup>55</sup> The legislature decided to remove the payment requirement because of many indigent ex-felons were unable to pay off court costs.

# Disenfranchisement vs. Restoration

The Ways Felons Are  
Affected By These  
Approaches

## Why Should We Care?

A majority of Americans have the opportunity to seek ways improve their lives, protect themselves, and are given a voice to speak at the table through the democratic process we treasure and respect. Unfortunately, Americans that have been convicted of felony at some point in their lives, having served their time are denied many of those opportunities that we often times take for granted.



- Lack of Political Influence
- Increases Barriers to Social Mobility
- Increase in Negative Self Esteem
- Increases Apathy In Local Communities
- Decreases Overall Voter Turnout
- Increases Barriers For People of Color
- Increases Barriers to Overall Productivity

## The Effects of Disenfranchisement

Nearly two-thirds of ex-felons will be unemployed for up to three years upon being released

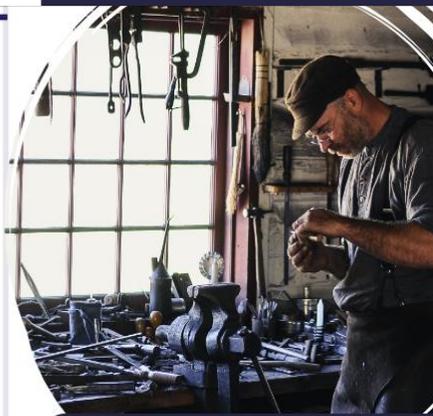
an estimated **13%** of adult black males cannot vote because of a current or prior felony conviction

If current criminal justice trends continue, we can expect that **30-40%** of black males born today will lose the right to vote for at least part of their adult lives



"...Former felons risk losing not only the right to vote but also are subject to other acts of civil death that push them further to the political, social, and economic margins. Many former felons forfeit their right to serve on a jury and are ineligible to receive pensions, disability benefits, veterans' benefits, public housing, student loans, or food stamps...(Legal Action Center 2004)."

- Increased Overall Voter Turnout
- Increased Community Engagement
- Increased Engagement With Politics
- Increased Productivity
- Unique Perspectives of Social and Political Issues
- Increases Self Esteem



## The Effects of Voter Restoration Reform



"...It is necessary for opportunity making for formerly incarcerated persons...Its successes, if sustained and multiplied, will improve the lives of formerly incarcerated people and their families. It will also prove that developing citizenship for carceral reforms is worthwhile political work..."

Fig. 14

***Proposed Solution:  
A Restoration Plan Tailored for Veterans***

Tennessee laws should be amended to change the voting rights restoration process for veterans that complete their prison sentence. Under current law, a veteran with a felony charge must follow the standard statewide procedure for restoration of voting rights. Thus, a veteran must pay all outstanding LFOs before restoring voting rights, and the burden of proving compliance lies with the veteran.

Tennessee legislators should amend the restoration process so that the veteran's voting rights are automatically restored with a certificate of restoration from VTC courts or the releasing TDOC or TBOP official. Under this proposal, ex-felon veterans would not be forced to bear the financial burden of repaying restitution, court costs, and child support prior to restoration. Furthermore, this proposal would shift the burden of initiating the restoration process from the individual veteran to state officials.

The unique situation of ex-felon veterans justifies this change. Many men and women who served in the Armed Forces have sacrificed their physical and psychological well-being to protect American democracy. Tennessee has recognized the impact of trauma on its veteran population and has demonstrated a preference for supportive, rehabilitative policies when it comes to criminal veterans. However, Tennessee has overlooked a manifest injustice within its restrictive voting rights scheme: ex-felon veterans are presumptively deprived the right to vote and must suffer through a complex, burdensome restoration process.

No other state has enacted a restoration process specifically tailored for veterans. The authors of this report urge Tennessee legislators to take historic action in protecting the basic civil rights of disenfranchised veterans. On the following page, we have identified three ways that the General Assembly can provide trailblazing changes to the voting rights restoration system.

# PENDING LEGISLATION

## THE GENERAL ASSEMBLY IS CURRENTLY CONSIDERING THE FOLLOWING REFORMS TO TENNESSEE'S CURRENT VOTING RIGHTS RESTORATION SCHEME:

### SENATE BILL 36 & HOUSE BILL 137 (INTRODUCED JANUARY 2019)

These bills seek to amend the language in § 40-2-202(b)-(c) to extend eligibility for voting rights restoration to felons that are making restitution, court cost, and/or child support payments in accordance with a court-authorized payment plan.

### HOUSE BILL 547 & SENATE BILL 589 (INTRODUCED FEBRUARY 2019)

These bills seek to amend § 40-2-202 and related statutory provisions to automatically provide those who have completed their sentence with a certificate of voting rights restoration by the prison warden or parole officer, or at the time of pardon. This bill would also remove the provision requiring the payment of court fines and child support and would require the state Department of Corrections to regularly update the Secretary of State's office a list of felons newly eligible to vote.

# Proposed Recommendations

## Three Alternative Solutions for Restoring Voting Rights to Disenfranchised Veterans

### Alternative #1: How to Fix the Current Law

If the General Assembly does not adopt any of the pending bills . . .

Amend § 40-29-202 to provide the following provisions applicable to ex-felon veterans that have successfully completed a VTC program or have finished serving a prison or probation sentence:

▶ Make the restoration process more automatic by requiring VTC, TDOC, & TBOP, officials to issue voting rights restoration certificates to eligible ex-felon veterans upon completion of their VTC program or sentence.

▶ Create an exception to existing LFO requirements for otherwise eligible ex-felon veterans, which could be formulated in two different ways:

Extend eligibility to veterans in compliance with a court-authorized payment plan

Waive LFOs altogether for disenfranchised veterans seeking restoration

OR

### Alternative #2: How to Provide Extra Support for Veterans if S.B. 36/H.B. 137 is Enacted

If the General Assembly adopts S.B. 36/H.B. 137 . . .

Ex-felons that are in compliance with a court-authorized payment plan for LFOs will be eligible to receive a voting restoration certificate.

H  
O  
W  
E  
V  
E  
R

Tennessee should do more for the men and women that served our country. We recommend that the General Assembly:

Waive LFO requirements for ex-felon veterans

Implement an automatic restoration process for ex-felon veterans

### Alternative #3: How to Provide Extra Support for Veterans if S.B. 589/H.B. 547 is Enacted

If the General Assembly adopts S.B. 589/H.B. 547 . . .

Ex-felons that have completed their sentence will have their voting rights automatically restored!

The contributors of this report support this solution. We only recommend that the General Assembly include a provision directing VTC officials to supply ex-felon veterans with a voting rights restoration certificate upon graduation.

## SOURCES

---

### Main Text Sources

- <sup>1</sup> THINK TENNESSEE, STATE OF OUR STATE: RIGHTS RESTORATION 1 (2019), [https://thinktennessee.org/wp-content/uploads/2019/02/State-of-Our-State-Policy-Brief\\_-Rights-Restoration\\_FINAL.pdf](https://thinktennessee.org/wp-content/uploads/2019/02/State-of-Our-State-Policy-Brief_-Rights-Restoration_FINAL.pdf).
- <sup>2</sup> SENT’G PROJECT, DISENFRANCHISED VETERANS IN THE UNITED STATES (2003), <https://static.prisonpolicy.org/scans/sp/1023.pdf>.
- <sup>3</sup> U.S. DEP’T OF VETERANS AFF., STATE SUMMARIES: TENNESSEE 2 (2017), [https://www.va.gov/vetdata/docs/SpecialReports/State\\_Summaries\\_Tennessee.pdf](https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Tennessee.pdf).
- <sup>4</sup> TENN. CONST. art. I, § 5; TENN. ADVISORY COMM. TO THE U.S. COMM’N ON CIVIL RIGHTS, THE RIGHT TO VOTE AND FELON DISENFRANCHISEMENT IN TENNESSEE 6 (2014), [https://www.usccr.gov/pubs/docs/TN\\_SAC\\_Ex-Felon-Report.pdf](https://www.usccr.gov/pubs/docs/TN_SAC_Ex-Felon-Report.pdf).
- <sup>5</sup> See TENN. CODE ANN. § 40-20-112 (2018).
- <sup>6</sup> See TENN. CODE ANN. § 40-20-112 code commission’s note to 1981 amendment (listing the enumerated infamous crimes as “abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will.”).
- <sup>7</sup> Gaskin v. Collins, 661 S.W.2d 865, 868 (Tenn. 1983).
- <sup>8</sup> *Voting Rights Restoration Efforts in Tennessee*, BRENNAN CTR. FOR JUSTICE (Feb. 9, 2018), <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-tennessee>.
- <sup>9</sup> 2006 Tenn. Pub. Acts 860, *codified at* TENN. CODE ANN. § 40-29-202 (2018).
- <sup>10</sup> See TENN. CODE ANN. § 40-29-202(a).
- <sup>11</sup> See TENN. CODE ANN. § 40-29-202(b)(1), (c).
- <sup>12</sup> TENN. ADVISORY COMM., *supra* note 4, at 8.
- <sup>13</sup> See TENN. CODE ANN. § 40-29-202(b)(2).
- <sup>14</sup> CHRISTOPHER UGGEN ET AL., SENT’G PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT 3 (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.
- <sup>15</sup> THINK TENNESSEE, *supra* note 1, at 1.
- <sup>16</sup> AM. CIV. LIBERTIES UNION OF TENN., ACLU-TN VOTING RIGHTS TOOLKIT 2 (2017), <http://www.aclu-tn.org/wp-content/uploads/2017/08/TN-Voting-Rights-Toolkit-FINAL.pdf>.
- <sup>17</sup> See *generally* AM. CIV. LIBERTIES UNION OF TENN., ADDRESSING BARRIERS TO THE BALLOT BOX (2008) <http://www.aclu-tn.org/wp-content/uploads/2015/01/FinalRTVSurvey1.pdf>; THINK TENNESSEE, *supra* note 1.
- <sup>18</sup> See TENN. CODE ANN. § 40-29-202(b)–(c) (2018).
- <sup>19</sup> ELENA DELAVEGA, MEMPHIS POVERTY FACT SHEET 2018 UPDATE 1 tbl. 1 (2018).
- <sup>20</sup> UGGEN ET AL., *supra* note 14, at 16.
- <sup>21</sup> See TENN. ADVISORY COMM., *supra* note 4, at 9–11.
- <sup>22</sup> See AM. CIV. LIBERTIES UNION OF TENN., *supra* note 17, at 4.

## ***Main Text Sources, Cont'd***

<sup>23</sup> U.S. DEP'T OF VETERANS AFF., *supra* note 3, at 2.

<sup>24</sup> TENN. ADMIN. OFF. OF THE CTS., VETERANS TREATMENT COURTS LEGISLATIVE REPORT 8–9 (2012), [http://www.tncourts.gov/sites/default/files/docs/vtc\\_report\\_-\\_final.pdf](http://www.tncourts.gov/sites/default/files/docs/vtc_report_-_final.pdf); *About Us*, SHELBY COUNTY VETERANS COURT, <https://veterancourt.shelbycountyttn.gov/about-us> (last visited Mar. 7, 2019).

<sup>25</sup> *See, e.g., Eligibility*, WILLIAMSON COUNTY VETERANS COURT, <https://www.williamsoncounty-tn.gov/1817/Eligibility> (last visited Mar. 7, 2019).

<sup>26</sup> TENN. ADMIN. OFF. OF THE CTS., *supra* note 24, at 76.

<sup>27</sup> *Id.* at 77.

<sup>28</sup> *See* Yihyun Jeong, *Tennessee Will Open First Prison Housing Units for Military Veterans*, TENNESSEAN (Jan. 25, 2019, 12:34 PM), <https://www.tennessean.com/story/news/politics/2019/01/25/tennessee-open-its-first-housing-units-military-veteran-inmates/2677829002/>.

<sup>29</sup> *Id.*; *see generally* BERNARD EDELMAN & DEANNE BENOS, NAT'L INST. OF CORR., BARRACKS BEHIND BARS: IN VETERAN-SPECIFIC HOUSING, VETERANS HELP VETERANS HELP THEMSELVES (2018), <https://info.nicic.gov/jiv/sites/info.nicic.gov/jiv/files/Barracks-Behind-Bars-508.pdf>.

<sup>30</sup> Jeong, *supra* note 28.

<sup>31</sup> EDELMAN & BENOS, *supra* note 29, at 1.

<sup>32</sup> *Id.*

<sup>33</sup> HOUS. ASSISTANCE COUNCIL, SUPPORTING VETERANS IN TENNESSEE (2018), <http://www.veteransdata.info/states/2470000/TENNESSEE.pdf>.

<sup>34</sup> *Restoration of Voting Rights for Felons*, NAT'L CONF. OF ST. LEGISLATURES (Dec. 21, 2018), <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>35</sup> *See* IOWA CODE ANN. § 914.2 (2018).

<sup>36</sup> *See* KY. CONST. § 145.

<sup>37</sup> SENT'G PROJECT, EXPANDING THE VOTE: TWO DECADES OF FELONY DISENFRANCHISEMENT REFORM 3 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf#page=15>.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Amendment 4: Voting Rights Restoration for Felons Initiative*, FLA. ASS'N OF COUNTIES, <https://www.fl-counties.com/amendment-4> (last visited Mar. 7, 2019).

<sup>41</sup> SENT'G PROJECT, *supra* note 37, at 3–4.

<sup>42</sup> FLA. ASS'N OF COUNTIES, *supra* note 40.

<sup>43</sup> Steve Bousquet, *A Long Hot Summer of Building Support to Grant Felons the Right to Vote*, TAMPA BAY TIMES (Jul. 19, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/07/19/a-long-hot-summer-of-building-support-to-grant-felons-the-right-to-vote/>.

<sup>44</sup> German Lopez, *Ex-Felons Can Now Sign Up to Vote in Florida*, VOX (Jan. 8, 2019), <https://www.vox.com/policy-and-politics/2019/1/8/18173651/florida-amendment-4-felon-voting-rights-effect>.

### ***Main Text Sources, Cont'd***

<sup>45</sup> Col. Mike Pheneger, *Thousands of Military Veterans Barred From Voting*, AM. CIV. LIBERTIES UNION OF FLA (Nov. 7, 2017), <https://www.aclufla.org/en/news/thousands-military-veterans-barred-voting>; Col. Mike Pheneger, *Opinion: Thousands of Military Veterans Barred from Voting. You Can Help*, TALLAHASSEE DEMOCRAT (Nov. 9, 2017, 3:00 PM), <https://www.tallahassee.com/story/opinion/2017/11/09/opinion-thousands-military-veterans-barred-voting-you-can-help/847626001/>; Meg O'Conner, *Thousands of Veterans Have Lost the Right to Vote in Florida*, MIAMI NEW TIMES (Sep. 19, 2018, 9:28 AM), <https://www.miaminewtimes.com/news/thousands-of-veterans-have-lost-the-right-to-vote-in-florida-10747202>; Rob Williger, *Yes on Amendment 4: Give All Florida Veterans the Right to Vote*, ORLANDO SENTINEL (Oct. 19 2018, 9:10 AM) <https://www.orlandosentinel.com/opinion/os-op-amendment-4-veteran-of-afghan-war-20181017-story.html>.

<sup>46</sup> German Lopez, *supra* note 44.

<sup>47</sup> Steve Bousquet, *supra* note 43.

<sup>48</sup> FLA. ASS'N OF COUNTIES, *supra* note 40.

<sup>49</sup> *Id.*

<sup>50</sup> SENT'G PROJECT, *supra* note 37, at 4.

<sup>51</sup> *Id.*

<sup>52</sup> *Voting Rights Restoration Efforts in Virginia*, BRENNAN CTR. FOR JUSTICE (Apr. 20, 2018), <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>.

<sup>53</sup> *Id.*

<sup>54</sup> SENT'G PROJECT, *supra* note 37, at 12.

<sup>55</sup> *Id.*

### **Fig. 1 Sources**

Johnathan Aitken, *Prisoners Don't Care About Their Right to Vote*, THE TELEGRAPH (Dec. 14, 2006, 12:08 AM), <https://www.telegraph.co.uk/news/uknews/1536945/Prisoners-dont-care-about-their-right-to-vote.html>.

Neil P. Cohen, *Tennessee Civil Disabilities: A Systemic Approach*, 41 TENN. L. REV. 253 (1974).

Green v. Bd. of Electors of the City of New York, 380 F.2d 445, 450 (2d Cir. 1967).

Richardson v. Ramirez, 418 U.S. 24 (1974).

Jason Schall, *The Consistency of Felon Disenfranchisement With Citizenship Theory*, 22 HARV. BLACKLETTER J. 53, 54–59 (2006).

*Should Felons Who Have Completed Their Sentence (Incarceration, Probation, and Parole) Be Allowed to Vote?*, PROCON.ORG (Mar. 12, 2014, 1:37 PM), <https://felonvoting.procon.org/view.resource.php?resourceID=000283>.

Hans von Spakovsky, *Felons Should Prove They Deserve Restoration of Rights*, HERITAGE FOUND. (Mar. 29, 2013), <https://www.heritage.org/election-integrity/commentary/felons-should-prove-they-deserve-restoration-rights>.

### **Fig. 2 Sources**

Vanessa M. Cross, Note, *Revisiting Wesley v. Collins and Tennessee's Disenfranchisement Statute*, 36 U. MEM. L. REV. 543, 547–65 (2006).

### ***Fig. 2 Sources, Cont'd***

Gaskin v. Collins, 661 S.W.2d 865, 868 (Tenn. 1983).

*Historical Timeline: U.S. History of Felon Voting/Disenfranchisement*, PROCON.ORG (May 25, 2013, 1:42 PM), <https://felonvoting.procon.org/view.timeline.php?timelineID=000016>.

Johnson v. Bredeesen, 624 F.3d 742 (6th Cir. 2010).

National Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (*codified as amended at 52 U.S.C. § 10301 et seq.* (2018)).

Richardson v. Ramirez, 418 U.S. 24, 33 (1974).

Ridley v. Sherbrook, 43 Tenn. 569, 577–78 (1866).

John Benjamin Schrader, Note, *Reawakening “Privileges or Immunities”*: An Originalist Blueprint for Invalidating State Felon Disenfranchisement Laws, 62 VAND. L. REV. 1285, 1285–92 (2009).

TENN. ADVISORY COMM., *supra* note 4, at 6–7.

TENN. CODE ANN. § 40-20-112 (2018).

TENN. CODE ANN. § 40-29-105(c) (2018).

TENN. CODE ANN. § 40-29-202 (2018).

TENN. CONST. art. I, § 5; art. IV, § 2.

U.S. Const. amend. XIV, § 2.

### **Fig. 3 Sources**

THINK TENNESSEE, *supra* note 1, at 1.

UGGEN ET AL., *supra* note 14, at 3, 15 tbl. 3.

### **Fig. 4 Sources**

DELAVEGA, *supra* note 19, at 1 tbl. 1.

UGGEN ET AL., *supra* note 14, at 16 tbl. 4.

### **Fig. 5 Sources**

AM. CIV. LIBERTIES UNION OF TENN., *supra* note 16, at 4.

THINK TENNESSEE, *supra* note 1, at 1.

### **Fig. 6 Sources**

TENN. ADMIN. OFF. OF THE CTS., *supra* note 24, at 8–9, 76–77.

**Fig. 7 Sources**

*How Common is PTSD in Veterans?*, U.S. DEP'T OF VETERANS AFF., [https://www.ptsd.va.gov/understand/common/common\\_veterans.asp](https://www.ptsd.va.gov/understand/common/common_veterans.asp) (last visited Mar. 9, 2019).

EDELMAN & BENOS, *supra* note 29, at 1.

TENN. ADMIN. OFF. OF THE CTS., *supra* note 24, at 10–18.

U.S. DEP'T OF VETERANS AFF., *supra* note 3, at 2.

**Fig. 8 Sources**

SENT'G PROJECT, *supra* note 2.

**Fig. 9 Sources**

TENN. ADMIN. OFF. OF THE CTS., *supra* note 24, at 61–63, 76–77.

U.S. DEP'T OF VETERANS AFF., *supra* note 3, at 2.

**Fig. 10 Sources**

NAT'L CONF. OF ST. LEGISLATURES, SUPRA NOTE 34

SENT'G PROJECT, *supra* note 37, at 14 tbl. 1.

**Fig. 11 Sources**

NAT'L CONF. OF ST. LEGISLATURES, SUPRA NOTE 34.

SENT'G PROJECT, *supra* note 37, at 5–13, 14 tbl. 1.

**Fig. 12 Sources**

FLA. ASS'N OF COUNTIES, *supra* note 40.

NAT'L CONF. OF ST. LEGISLATURES, SUPRA NOTE 34.

**Fig. 13 Sources**

*Tennessee*, COALITION FOR PUBLIC SAFETY, <https://www.coalitionforpublicsafety.org/reform-in-action/state-work/post/tennessee> (last visited Mar. 9, 2019).

WASH. ECON. GROUP, INC., ECONOMIC IMPACTS OF RESTORING THE ELIGIBILITY TO VOTE FOR FLORIDIANS WITH FELONY CONVICTIONS AS A RESULT OF THE PASSAGE OF AMENDMENT 4 (2018).

**Fig. 14 Sources**

Marie Gottschalk, *The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad*, 34 L. & SOC. INQUIRY 439, 445 (2009).

Marc Mauer, *Felon Voting Disenfranchisement: A Growing Collateral Consequence of Mass Incarceration*, 12 FED. SENT'G REP., no. 5, 2001, at 248, 249.

Michael Leo Owens, *Ex-Felons' Organization-Based Political Work for Carceral Reforms*, 651 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 256, 257 (2014).

Elena Saxonhouse, *Unequal Protection: Comparing Former Felons' Challenges to Disenfranchisement and Employment Discrimination*, 56 STAN. L. REV. 1597, 1610 (2004).

*My First Vote*, BRENNAN CTR. FOR JUST.: RIGHT TO VOTE PROJECT (July 5, 2009), <https://www.brennancenter.org/publication/my-first-vote#testimonies>.