



OUT BEFORE THE STARTING LINE: YOUTH VOTING AND FELONY DISENFRANCHISEMENT

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INTRODUCTION

Felony disenfranchisement is a youth voting rights issue. Felony disenfranchisement—the umbrella term for the range of state policies that take away a person’s right to vote related to criminal conviction and punishment status¹—impedes young people’s ability to have their voices heard in our democracy. Youth and young adults are engaged and leading around diverse issues, including racism, policing, and the criminal legal system.² Teens and preteens below voting age participate at high levels in protest and activism around these topics and actively consume media around the issues of racism and policing.³ It is striking, and a bit ironic, that these issues motivating youth political engagement may also be preventing or dissuading many young adults from voting through felony disenfranchisement and its spillover consequences.

Felony disenfranchisement layers on top of the already-significant voting barriers that young people face. This article aims to bring two strains of research and advocacy—those around youth voter engagement on one hand, and around felony disenfranchisement on the other—into conversation. It aims to flesh out the ways that felony disenfranchisement laws particularly burden the youngest voters, sometimes even before they are old enough to cast their first votes.⁴ And it argues for advocates working on youth voting rights and felony

1. Depending on the state, formal disenfranchisement applies while a person is in prison, while serving a community sentence, or, in a number of states, even after a sentence is complete. CHRISTOPHER UGGEN ET AL., *LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION* 4–5 (2020).

2. In a survey of youth eighteen to twenty-nine years old, the Center for Information and Research on Civic Learning & Engagement (“CIRCLE”) found that racism was among the top three concerns among all youth voters and that racism and policing of communities of color were two of the top three concerns among Black youth. *Poll: Young People Believe They Can Lead Change in Unprecedented Election Cycle*, CIRCLE (June 30, 2020), <https://circle.tufts.edu/latest-research/poll-young-people-believe-they-can-lead-change-unprecedented-election-cycle>.

3. Arielle Baskin-Sommers et al., *Adolescent Civic Engagement: Lessons from Black Lives Matter*, 118 *PROC. NAT’L ACAD. SCI.* 1, 1 (2021).

4. See Michael Rocque et al., *Age and Crime*, in *ENCYCLOPEDIA OF CRIME AND PUNISHMENT* 1, 2 (Wesley G. Jennings ed., 1st ed. 2016).

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disenfranchisement to keep in mind the specific ways that these laws, policies, and practices place a heavier burden on young adult voters.⁵

The article proceeds in four parts. The first section provides background on youth voters and the criminalization of young adults. This section will introduce the concepts around the age-crime curve and the role that the period of young adulthood plays in social development related to criminal conduct and to voting. It will also provide an overview of felony disenfranchisement laws and their scope in the United States. The next three parts explore the three expanding circles within the young adult population whose electoral participation may be negatively affected by felony disenfranchisement. The second section will look at young adults who are currently legally disenfranchised, specifically examining the processes by which they may be able to restore their voting rights to participate in electoral politics as young adults. The third section looks beyond the group of young adults who are legally disenfranchised to those who are nonetheless disenfranchised in fact because of misunderstandings about their legal status, about the laws, or both. The fourth section will consider the ways in which felony disenfranchisement contributes to perceptions of unfairness and disillusionment with the electoral process and why this contribution may have a particularly strong effect on young adult engagement with electoral politics and voting.

The overlap between young adults and people with felony convictions or other criminal legal system contact is significant,⁶ and when we look at one in isolation of the other, we miss an important part of the picture. Centering the experiences and obstacles facing young adults who are barred from voting because of disenfranchisement will help advocates approaching this issue from both subject matter areas to keep in mind those who are most likely to face barriers to voting and who are least likely to overcome these barriers without changes in our laws and policies.

5. Focusing on the effects that voting restrictions have on young voters may be a proxy for figuring out how restrictions affect the most vulnerable voters more broadly—those with fewer resources, less information, and challenges related to navigating administrative obstacles. Cf. JOHN B. HOLBEIN & D. SUNSHINE HILLYGUS, MAKING YOUNG VOTERS: CONVERTING CIVIC ATTITUDES INTO CIVIC ACTION 6 (2020) (“[F]ocusing on young people can help shine light on other disparities in voter turnout.”).

6. See *infra* Section I.A.

I. YOUNG ADULT VOTERS, CRIMINALIZATION, AND DISENFRANCHISEMENT

A. *Offending and Victimization in Young Adulthood*

One of the staunchest opponents of youth suffrage was Congressman Emanuel Celler, who memorably stated, “Eighteen to twenty-one are mainly formative years, where the youth is racing forward to maturity These are rightfully the years of rebellion rather than reflection.”⁷ While Celler was on the losing side of the argument for young adult enfranchisement, he was onto something—the young adult years are ones in which both social context and brain development work together in favor of impulsivity, short-term thinking, and heightened risk-taking.⁸ We now know that these factors are unlikely to affect voting, which happens under unarousing conditions of “cold cognition,”⁹ and that teenagers’ ability to reason logically is formed earlier than other features.¹⁰ However, other young adult characteristics tied to social context and executive and emotional regulation develop well beyond the age of eighteen until at least the midtwenties, with deficits being particularly notable under emotionally arousing conditions like stress, fear, and peer pressure.¹¹ So while these qualities do not mean that young adults are irresponsible voters, they do result in significant age-related trends related to heightened involvement in the criminal legal system.

Young adults during the early years of voting eligibility are particularly likely to also be criminal legal system-involved as both victims¹² and offenders. Age is strongly associated with committing criminal offenses, with the relationship between age and offending consistently appearing as one of the most robust in all of criminology literature.¹³ The age-crime curve generally shows that rates of criminal offending increase in early adolescence beginning around the age of twelve to fourteen, peak in the early- to midtwenties, then decline.¹⁴ Peak age-crime involvement is younger than twenty-five for all offenses

7. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 226 (rev. ed. 2009).

8. Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *FORDHAM L. REV.* 641, 645–54 (2016).

9. *Id.* at 652; see Joshua A. Douglas, *In Defense of Lowering the Voting Age*, 165 *U. PA. L. REV. ONLINE* 63, 69–70 (2016).

10. Scott et al., *supra* note 8, at 648.

11. *See id.* at 652–53.

12. Rocque et al., *supra* note 4 (noting that in 2012, people ages eighteen to twenty-four made up around 41% of all victims of violent crime).

13. *Id.*

14. *Id.*

documented other than gambling.¹⁵ Being arrested is a relatively common experience in young adulthood, an experience that researchers note is “disturbingly prevalent” among American youth and particularly among young men.¹⁶ A study of reported arrests by age showed that 37.9% of white young men, 43.8% of Hispanic young men, and 48.9% of young Black men have experienced arrest by age twenty-three.¹⁷

Significantly, this early adulthood period is also one in which the vast majority of people who have committed criminal offenses also desist from offending.¹⁸ While young adults are particularly likely to commit criminal offenses during their young adult years, for many this behavior is left behind in that age period as well.¹⁹ Brain development, including improved executive functioning and emotional regulation, along with increased stability in life stage and reduced victimization, are factors contributing to the drop-off in offending during the young adulthood period.²⁰ However, since young adulthood is a “critical developmental [period],”²¹ a period in which a person’s identity and life trajectory are being developed and reified, obstacles to civic engagement and voting habits during this period connected with criminal offending are likely to have lifelong effects.

B. Young Adult Voters and General Barriers to Voting

Voting is habit forming—once a person votes, they are more likely to continue voting.²² Yet young adult voters face many barriers to casting

15. Jeffery T. Ulmer & Darrell Steffensmeier, *The Age and Crime Relationship*, in *THE NURTURE VERSUS BIOSOCIAL DEBATE IN CRIMINOLOGY: ON THE ORIGINS OF CRIMINAL BEHAVIOR AND CRIMINALITY* 377, 377 (Kevin M. Beaver et al. eds., 2014).

16. Robert Brame et al., *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23*, 60 *CRIME & DELINQ.* 471, 482 (2014).

17. *Id.* at 478.

18. Scott et al., *supra* note 8, at 645. Studies show that once young people stop being victims of crime, they often correspondingly stop offending. Carrie F. Mulford et al., *Victim Offender Overlap: Dual Trajectory Examination of Victimization and Offending Among Young Felony Offenders Over Seven Years*, 13 *VICTIMS & OFFENDERS* 1, 13, 26 (2018).

19. *See* Scott et al., *supra* note 8, at 645–46.

20. Mulford et al., *supra* note 18, at 24; *see also* Scott et al., *supra* note 8, at 645–46.

21. *See id.* at 643 (alteration in original) (citing INST. OF MED. & NAT’L RES. COUNCIL, *INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS* (Richard J. Bonnie et al. eds., 2015)).

22. *Teens and Elections*, CIRCLE (Jan. 23, 2018), <https://circle.tufts.edu/latest-research/teens-and-elections> (“Voting is like any other habit: it must be taught, facilitated, and nurtured through concrete opportunities and through a culture that encourages and celebrates political participation. And like most habits, the earlier one develops it, the easier it is to keep at it later in life. Research has shown that young people who cast a ballot earlier in life are more likely to continue voting in the years and decades to come.”); *see also* Thomas Fujiwara et al., *Habit Formation in Voting: Evidence from Rainy Elections*, 8 AM.

that first vote, with restrictive electoral laws inhibiting youth turnout significantly more than they inhibit voter turnout generally.²³ Voting barriers are particularly difficult for young voters to surmount.²⁴ Many of the brain and social development issues flagged above, including skills related to self-regulation, planning, and executive functioning, make the administrative costs of voting particularly challenging for young adults.²⁵ While there is a 4% difference in turnout for young voters and older voters in states with permissive electoral laws, there is a 13% difference between older and younger voters in states with more restrictive electoral laws.²⁶

Even in states with relatively flexible electoral policies, the costs of voting for young adults are likely to be higher because of their life stage and experience. Issues like inconsistent schedules,²⁷ working hourly wage jobs with little job protection or flexibility,²⁸ and fewer financial resources generally²⁹ are factors that each raise the costs of taking time to figure out and execute registration and voting.³⁰ Youth are more likely to need to go through the costliest aspects of registering and voting multiple times because of disproportionately high rates of mobility.³¹

ECON. J.: APPLIED ECON., 160, 160–88 (2016) (discussing age and habit formation around voting, using precipitation on election day as a variable).

23. For example, one study shows that costly voting policies reduce older voter turnout likelihood by nine percentage points, while it decreases young voters' turnout likelihood by more than sixteen percentage points. Courtney L. Juelich & Joseph A. Coll, *Rock the Vote or Block the Vote? How the Cost of Voting Affects the Voting Behavior of American Youth*, 48 AM. POL. RSCH. 719, 722 (2020) (discussing Figure 1 on the impact of costs of voting on youth voter turnout).

24. *Id.* (“[R]estrictive electoral environments hinder youth voter to a greater extent than older voting, all else held equal.”); HOLBEIN & HILLYGUS, *supra* note 5, at 14 (“Our perspective starts from the well-established premise that the costs of voting are high, and especially so for young people.”).

25. HOLBEIN & HILLYGUS, *supra* note 5, at 50–60, 65–70 (explaining what the authors mean by noncognitive skills, which they hypothesize is at the root of the gap between young voters' intentions to vote and actual voting rates).

26. Juelich & Coll, *supra* note 23, at 722.

27. See Charlotte Hill, *Young People Face Higher Voting Costs and Are Less Informed About State Voting Laws* 5 (Aug. 8, 2020) (unpublished working paper), http://youngamericans.berkeley.edu/wp-content/uploads/2020/08/Hill_BIFYA_Working_Paper_08_08_2020.pdf.

28. *See id.* at 5, 32.

29. *See id.* at 5.

30. *See id.* at 4–6.

31. *Id.* at 5–6 (citing *Geographical Mobility: 2015 to 2016*, U.S. CENSUS BUREAU (Nov. 2016), <https://www.census.gov/data/tables/2016/demo/geographic-mobility/cps-2016.html>) (noting that young people between eighteen and twenty-nine change addresses more than twice as frequently as those over the age of thirty and noting the range of costs associated with voting after moving jurisdictions).

Young adult voters have significantly lower levels of voting-related information than older voters. Adjusting for race, education, and family income, young voters ages eighteen to twenty-four are twenty-four percentage points less likely to know the steps they need to take to register and vote.³² These effects by age are larger than those of race, education, or family income.³³

Even controlling for race, education, and family income, we see that the young people facing the same voting landscape will find it harder to navigate than their older counterparts.³⁴ However, in addition, the category of young voters is more likely to include overlapping identities and experiences related to race, education, and family income that add another layer of voting-related costs.³⁵ Young people today are disproportionately members of minority racial and ethnic groups,³⁶ have fewer years of education than older potential voters,³⁷ and typically have less wealth and job flexibility or security than older voters.³⁸ These intersecting identities and life experiences make clear that the population of young adults already faces daunting barriers—particularly, though not exclusively, around misinformation.³⁹ The heightened costs for young voters along with reduced access to resources is the backdrop against which felony disenfranchisement and its related barriers and costs enter the picture and create further obstacles for many young voters.

C. Felony Disenfranchisement and Criminal Legal System-Related Barriers for Young Adult Voters

One of the factors that can create a barrier to voting generally, and young adult voting specifically, is contact with the criminal legal system. The focus of this article is on disenfranchisement, but formal disenfranchisement is just one piece of the larger criminalization puzzle that affects voting and civic participation in many ways. Even relatively minor contact with the criminal legal system, like a misdemeanor

32. *Id.* at 13.

33. *Id.*

34. *Id.* at 1, 6–7, 13.

35. *Id.* at 7, 27.

36. *Id.* at 7 (citation omitted) (“The current cohort of young Americans is the most diverse in our country’s history.”).

37. *Id.* at 6.

38. Alexandria Symonds, *Why Don’t Young People Vote, and What Can Be Done About It?*, N.Y. TIMES (Oct. 8, 2020), <https://www.nytimes.com/2020/10/08/upshot/youth-voting-2020-election.html>.

39. *See id.*

charge⁴⁰ or the fear of a warrant, and the way that these can affect a person's access to resources like a job, stable housing, and benefits,⁴¹ can keep someone away from the polls. The effects of so-called minor contact is an area that would benefit from more research. This article focuses on disenfranchisement but considers its effects beyond de jure disenfranchisement to include misinformation about voting rights and criminal legal system contact as well as spillover effects on families and communities.

Felony disenfranchisement has deep roots, stemming from the traditions of civil death in Roman and English law.⁴² Disenfranchisement has taken on its own racialized character in the United States—specifically around the period of the Civil War and Emancipation as well as in the current era of mass incarceration and criminalization. While disenfranchisement previously was used only for people convicted of high crimes, in the time since the Civil War many of these laws have expanded to apply to all felonies or broad swaths of felonies.⁴³ Some states specifically expanded criminalization following Emancipation to re-enslave freed Black people through “Black Codes” that resulted in convict leasing for labor.⁴⁴ As the scope and scale of criminal legal system enforcement, felony charges, and imprisonment have expanded over time, particularly during the current era of mass incarceration, felony disenfranchisement has ballooned as well.⁴⁵

The general historical trend around voting has been toward expanding access to the franchise, marked by the achievements of the Fifteenth, Nineteenth, and Twenty-Sixth Amendments, along with the Voting Rights Act and other civil rights measures. However, felony disenfranchisement has been at least a partial outlier.⁴⁶ It presents a more complex story, with stops and starts, as well as reversals.

40. See Ariel White, *Misdemeanor Disenfranchisement? The Demobilizing Effects of Brief Jail Spells on Potential Voters*, 113 AM. POL. SCI. REV. 311, 311–18 (2019) (finding a 13% decrease in voting among Black people who were incarcerated for misdemeanor charges compared to those who were not).

41. *Id.* at 311–12.

42. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 50 (2000).

43. JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 8 (2006).

44. ERIN KELLEY, *RACISM & FELONY DISENFRANCHISEMENT: AN INTERTWINED HISTORY* 1–2 (2017), <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>. Some states, like Mississippi, tailored disenfranchisement to offenses they associated with Black rather than white people. *Id.*; see also MANZA & UGGEN, *supra* note 43, at 42.

45. *Id.* at 10, 97 (showing growth in disenfranchisement from 1960 to 2020 and incarceration rates by population since 1925, respectively).

46. See KELLEY, *supra* note 44, at 2–3.

Challenges to felony disenfranchisement began in the courts in the 1960s, with a first wave of cases centered on challenges rooted in the Equal Protection Clause of the Fourteenth Amendment. During this period, some state and federal courts held that state disenfranchisement laws were unconstitutional,⁴⁷ while others upheld them.⁴⁸ There was a brief period during which these arguments seemed to be bearing fruit, particularly after the Supreme Court clarified in *Dunn v. Blumstein* that all statutes limiting voting rights are subject to strict scrutiny.⁴⁹ However, in *Richardson v. Ramirez*, the Supreme Court put an end to the budding equal protection jurisprudence in this area.⁵⁰ The Court found that the “affirmative sanction” of disenfranchisement in the language of Section 2 that references denying the franchise for “participation in rebellion, or other crime” had the effect of removing conviction-related disenfranchisement from the oversight of strict scrutiny.⁵¹

Richardson v. Ramirez largely shut the door on equal protection arguments, but it did not completely close it. In *Hunger v. Underwood*, the Supreme Court used the Fourteenth Amendment to invalidate Alabama’s criminal disenfranchisement statute as being intentionally and explicitly designed to discriminate against Black people in the state.⁵² Some subsequent challenges in this vein have failed, as courts have required a very high level of explicit intentional racism in order to fall askance of the Fourteenth Amendment.⁵³ The strength of this theory is still in limbo, as a current legal battle in North Carolina on this same theory is working its way through appeals after a lower court invalidated the state’s disenfranchisement law.⁵⁴ Additional arguments focusing on the racial disproportionality and bias within the criminal legal system were advanced under the Voting Rights Act since the 1980s—with these

47. *Otsuka v. Hite*, 414 P.2d 412, 425 (Cal. 1966), *abrogated by* *Ramirez v. Brown*, 507 P.2d 1345 (Cal. 1973); *Dillenburg v. Kramer*, 469 F.2d 1222, 1226 (9th Cir. 1972).

48. *Green v. Bd. of Elections*, 380 F.2d 445, 452 (2d Cir. 1967); *Beacham v. Braterman*, 300 F. Supp. 182, 183 (S.D. Fla. 1969).

49. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

50. *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974). The meaning of Section 2 was hotly debated at the time. KEYSSAR, *supra* note 7, at 249, at 42.

51. Section 2 referenced that representation in Congress would be reduced for any state denying the franchise to adult male citizens “[e]xcept for participation in rebellion, or other crime.” *Richardson*, 418 U.S. at 42.

52. 471 U.S. 222, 225 (1985).

53. *See id.* A challenge to Mississippi’s felony disenfranchisement statute, for example, failed despite acknowledgment that the original version was adopted with discriminatory intent, because when it was later amended and reenacted, the “discriminatory taint” was removed from the disenfranchisement law. *Cotton v. Fordice*, 157 F.3d 388, 392 (5th Cir. 1998).

54. *See* Order at 1–2, *Cmty. Success Initiative v. Moore*, No. 19CVS15941 (N.C. Ct. App. Apr. 5, 2022).

arguments gaining force as mass incarceration and its attendant racial disproportionalities took on sharper focus.⁵⁵ However, the Voting Rights Act has not been used successfully to overturn state disenfranchisement laws.⁵⁶

Despite the lack of success in the courts, legislatures have made significant steps toward reversing some of the most draconian disenfranchisement provisions. If felony disenfranchisement laws had stayed the same as they were in 1960, rates of disenfranchisement would be more than double what they are in contemporary times.⁵⁷ The vast majority of reforms since the 1970s have expanded voting rights.⁵⁸ There have been at least forty-eight⁵⁹ disenfranchisement-related reforms to significantly expand voting rights since the mid-1970s, compared with at least ten⁶⁰ significant reforms that constrained voting rights, with some of these changes happening in the same state.⁶¹ Federal efforts to address felony disenfranchisement have not been successful, with failed attempts in 2002, 2005, 2008,⁶² and most recently with stalled voting reform bills including the 2021 Democracy Restoration Act.⁶³ Although there has

55. See *Wesley v. Collins*, 791 F.2d 1255, 1261 (6th Cir. 1986).

56. *Id.* (holding that Tennessee's statute did not violate the Voting Rights Act given the "totality of the circumstances"); *but see, e.g., Baker v. Pataki*, 85 F.3d 919, 940 n.10 (2d Cir. 1996); *Farrakhan v. Locke*, 987 F. Supp. 1304, 1311 (E.D. Wash. 1997) (holding that the VRA *could* apply to disenfranchisement laws).

57. MANZA & UGGEN, *supra* note 43, at 223 (comparing liberalizing trends that happened versus laws in place in 1960).

58. *Id.* at 238.

59. *Id.* at 238–29 tbl.A2.1 (cross-referencing and then adding together the nineteen instances of states expanded voting rights from 1975–2005); JEAN CHUNG, VOTING RIGHTS IN THE ERA OF MASS INCARCERATION: A PRIMER 5–6 tbl.2 (2021), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (listing instances of expanded voting rights in Arizona (2019), California (2016, 2020), Colorado (2019), Connecticut (2006, 2021), Delaware (2013, 2016), District of Columbia (2020), Florida (2018), Hawaii (2006), Iowa (2020), Kentucky (2008, 2015, 2019), Louisiana (2018), Maryland (2007, 2016), Nevada (2019), New York (2018, 2021), Rhode Island (2006), Virginia (2013, 2016, 2021), Washington (2009, 2021), and Wyoming (2003, 2017)).

60. MANZA & UGGEN, *supra* note 43, at 238 tbl.A2.1 (cross-referencing and then adding together the six states that moved to restrict voting rights from 1975–2005); CHUNG, *supra* note 59, at 5 tbl.2 (listing instances of voting restrictions in Florida (2019), Kentucky (2004, amended 2008, 2015), and South Dakota (2012)).

61. For example, Florida has passed at least six laws affecting disenfranchisement in the past twenty years, with efforts to simplify voting rights in 2004 and 2007 undone in 2011 and a referendum and legislation restoring voting rights to most residents in 2018 largely undone by 2019 legislation requiring payment of legal financial obligations. CHUNG, *supra* note 59, at 5 tbl.2.

62. KEYSSAR, *supra* note 7, at 276.

63. The Democracy Restoration Act was most recently part of the For the People Act, H.R. 1, 117th Cong. (2021), and also introduced as a standalone bill. See Democracy

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been significant progress, the path toward removing felony disenfranchisement laws around the country has faced a much rougher and bumpier path than other efforts to expand the franchise.

Despite the generally improving legislative landscape over the past decades, the number of people who are legally disenfranchised has nonetheless grown significantly in the past decades because of the tremendous increase in criminalization and imprisonment. Approximately 1.17 million people were disenfranchised in 1976, and today an estimated 5.17 million people are.⁶⁴ This increase is one of more than 440%.⁶⁵ However, the number of people legally disenfranchised today represents a nearly 15% decrease since 2016, which accounts for recent liberalizing changes in disenfranchisement laws in some states.⁶⁶ This decrease is the first time since the mid-1970s that the overall numbers of people disenfranchised have gone down.⁶⁷

D. Disenfranchisement Trends Today

Overall, 5.2 million people are disenfranchised by felony disenfranchisement laws in the United States today.⁶⁸ This number amounts to 2.3% of the voting-age population, or one out of forty-four adults.⁶⁹ However, the scale and scope of felony disenfranchisement is not well captured by national numbers given the dramatic regional and state-by-state variation.⁷⁰ Only two states, Maine and Vermont, along with the recent addition of the District of Columbia, do not disenfranchise any potential voters due to criminal legal system contact.⁷¹ In some states, disenfranchisement is restricted only to people who are currently imprisoned.⁷² In California, disenfranchisement extends to people who

Restoration Act, S. 481, 117th Cong. (2021). It has also been filed in previous years as a stand-alone bill. *See* Democracy Restoration Act, H.R. 196, 116th Cong. (2019).

64. UGGEN ET AL., *supra* note 1, at 4.

65. *See id.* at 4.

66. *Id.*

67. *Id.* at 10.

68. *Id.* at 4.

69. *Id.*

70. *Id.*

71. *Id.* at 5–6.

72. These states include Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, New York, and Connecticut. *Id.* at 5; *Restoration of Voting and Other Civil Rights in 2021*, COLLATERAL CONSEQUENCES RES. CTR. (July 8, 2021), <https://ccresourcecenter.org/2021/07/08/restoration-of-voting-and-other-civil-rights-in-2021/>.

are in prison or on parole.⁷³ A large number of states disenfranchise people who are serving any sentence, whether in prison, on parole, or on probation.⁷⁴ The final category, and the one that contributes most to ballooning disenfranchisement numbers, are states that extend disenfranchisement past the end of a person's sentence. This final group, which is made up of Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming, account for an estimated more than three million disenfranchised voters.⁷⁵ These eleven states that disenfranchise people past the end of their sentence account for over 58% of the total number of people disenfranchised in the country.⁷⁶

The more extended the period of disenfranchisement and the more restrictive the eligibility and process to restore voting rights, the higher and more disproportionate the numbers are. The states that disenfranchise more than 5% of their total voting-age population are Alabama (8.94%), Florida (7.69%), Kentucky (5.92%), Mississippi (10.55%), Tennessee (9.09%), and Virginia (6.0%).⁷⁷ These are all part of the group of states that disenfranchise beyond the end of a sentence.⁷⁸ These same states disenfranchise Black citizens at disproportionately high rates as well—Alabama (15.55%), Florida (15.42%), Kentucky (15.10%), Mississippi (15.96%), Tennessee (21.48%), and Virginia (15.94%).⁷⁹ The regional features of disenfranchisement are unmistakable; while state policies around the country vary, the policies that are the most extreme and reach the largest number and percentage of people—with the numbers and percentages being even more extreme for Black people—are in the southeastern United States.

How many youth and young adults are legally disenfranchised? There is currently no count. We know that young adults, however, are overrepresented among people with recent felony convictions.⁸⁰ In 2000,

73. UGGEN ET AL., *supra* note 1, at 5. California permits voting by people serving a felony jail sentence rather than a prison sentence. *Id.*

74. These states include Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin. *Id.*

75. *Id.* at 16.

76. *Id.*

77. *Id.*

78. *Id.* at 15.

79. *Id.* at 17. The only state not on the first list but has a disenfranchisement rate for Black citizens that is higher than 15% is Wyoming, with a general disenfranchisement rate of 2.64% but a shocking 36.22% disenfranchisement rate of its Black population. *Id.* at 16, 17.

80. See MATTHEW R. DUROSE & PATRICK A. LANGAN, FELONY SENTENCES IN STATE COURTS, 2000 6 (2003), <https://bjs.ojp.gov/content/pub/pdf/fssc00.pdf>.

people in their twenties made up 18% of the adult population, but 39% of convicted felons.⁸¹ While in most if not all states, the average age of people in prison and serving sentences has risen because of long sentences, it is still the case that a disproportionate number of people are in their young adult years at the time they are imprisoned on felony sentences. Nationally, 22.6% of the people in federal prison are under twenty-nine,⁸² with 23.9% of people in state prisons under twenty-nine,⁸³ while the U.S. adult population under twenty-nine is 15.8%.⁸⁴ The bigger disparities arise when considering the age at the time of prison sentencing or admission, which is a better indicator of the time of conviction and lost voting rights. For example, in Massachusetts (which disenfranchises people only while imprisoned), 42% of people in prison were twenty-nine or younger at the time of sentencing,⁸⁵ though only 16% of the current corrections population in state prisons is in that age range.⁸⁶ In Georgia, 23.24% of people in state prisons are in their late teens or twenties,⁸⁷ but 28.28% of admissions to the prison system happen among people ages eighteen to twenty-five, with 42.57% being twenty-nine or younger.⁸⁸ While we are missing national data, it is clear that the early adult years are often the years during which voting rights are lost.

Putting together the information about youth voters and disenfranchisement, we see a troubling confluence of barriers that stand in the way of all young adults being able to vote. Young adulthood is the period during which a person is most likely to have contacts with the criminal legal system. This pattern means that it is a period that comes with a heightened likelihood of being legally disenfranchised and at the same time, as discussed below, is the period in which youth are least likely to be able to get voting rights that were lost restored and most likely to find misinformation around voting eligibility to be an insurmountable barrier. The heightened costs related to registration and

81. *Id.*

82. E. ANN CARSON, PRISONERS IN 2020 – STATISTICAL TABLES 22 (2021), <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf> (adding together categories for twenty-nine and under whose percentage applied to the overall imprisonment rate of 1,182,166 people—not including local jails and community supervision—is approximately 267,169 people).

83. *Id.* at 12 tbl.4.

84. *So How Many Millennials Are There in the US, Anyway?*, MKTG. CHARTS (May 25, 2022), <https://www.marketingcharts.com/featured-30401>.

85. MASS. DEP'T OF CORR., PRISON POPULATION TRENDS 2020 19 (2021), <https://www.mass.gov/doc/prison-population-trends-2020/download>.

86. *Id.* at 19.

87. *See* GA. DEP'T OF CORR., INMATE STATISTICAL PROFILE 4 (2022), https://gdc.ga.gov/sites/default/files/pdf/Profile_all_inmates_2022_06.pdf.

88. *Id.* at 15 (adding up percentages for relevant ages).

voting that exist for young adults combined with criminal legal contact and disenfranchisement-related barriers make it even less likely that young adults will be able to vote.

II. DISENFRANCHISEMENT AND RIGHTS RESTORATION BARRIERS FOR YOUNG ADULTS

The relatively high rates of disenfranchisement for young voters is only the first part of the youth disenfranchisement puzzle. All states have a mechanism for restoring at least some voting rights. These rights restoration processes themselves, while they provide the possibility of a path for getting voting rights back, present yet another barrier that is often costly or even impossible for young voters to surmount. The process of restoring voting rights varies significantly from state to state as well as within states and is based on factors like the type of conviction or whether the conviction is an in-state conviction or a federal or out-of-state conviction.⁸⁹ For some offenses in a number of states, restoration is a legal impossibility.⁹⁰ In some states, the restoration process is so burdensome, costly, and inaccessible that very few people make it through those hoops.⁹¹

Restoration barriers exist even in states with automated and streamlined processes for getting people's voting rights and registrations restored but are exponentially higher in states that require potential voters to affirmatively apply to get their voting rights back. The barriers of re-enfranchisement include both substantive eligibility barriers—things like conviction eligibility, waiting periods, and requirements to pay legal financial obligations—as well as administrative barriers, including learning costs, compliance costs, and psychological costs.⁹² This section will take a close look at some of the re-enfranchisement barriers that exist, with a particular focus on how they play out for young people. While these barriers are not explicitly targeted at youth and young

89. MANZA & UGGEN, *supra* note 43, at 84 (describing the process of attempting to learn the procedure for restoration as “daunting” and “confusing” after the authors called multiple administrative offices to determine the proper steps that would be required, concluding that “the rules governing reenfranchisement are complex enough to require individualized legal assistance in many cases”).

90. See, e.g., *Restoration of Voting Rights*, TENN. DEP'T OF STATE, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights> (last visited Sept. 23, 2022) (detailing the list of felonies with permanent exclusion in Tennessee).

91. UGGEN ET AL., *supra* note 1, at 14.

92. PAMELA HERD & DONALD P. MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS* 15 (2018).

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adults, their burdens are likely to be felt unevenly by age and be heavier for youth and young adults.⁹³

A. *Substantive Eligibility Barriers*

1. Sentence Completion and Waiting Periods

The longer a state makes a young person wait to be eligible for voting rights restoration, the more costly the policy is in terms of both years of voting lost and of how accessible the restoration process ultimately will be. While waiting periods and sentence completion requirements apply evenly across people of all age groups, they will be felt in a particularly extreme way by young people. First, age is of course a time-limited status—a person is only a young adult for a certain number of years. For people concerned about young adults being able to vote, any requirements that lead young people to age out of their young adult status before being able to vote will reduce young adult voting. Young people who are imprisoned during their young adult years are unable to vote as young adults in forty-eight states. An eighteen-year-old young man who is put on seven years of probation, for example, will be at least twenty-five before his sentence is completed and he is permitted to vote in states that disenfranchise probationers. Given how young adult voting is connected to a pattern of life-long civic engagement, having a black-out period during this time has significant costs not just for young adult voting but for the life course of people with felony convictions in states that disenfranchise them.

Concerns about length of sentence being a black-out period are supplemented in states with additional waiting requirements. For example, in 2005, Nebraska added a two-year waiting period after completion of a person's full sentence (including probation and parole) before a person is able to seek re-enfranchisement.⁹⁴ A person must then

93. These barriers to access are also likely to be disproportionately hard for other relatively disadvantaged groups, along with factors such as race, income, education, etc., many of which often overlap with youth. For example, a review of who gets rights restored in Florida under the old regime that required individual applications found that the typical applicant is a married white male in his forties, with Black people, women, and younger people "significantly underrepresented" among clemency applicants. MANZA & UGGEN, *supra* note 43, at 92. Notably, non-Black applicants in this review were particularly likely to be applying for reasons other than voting, such as attempting to get or restore an occupational license. *Id.* The motivation of voting was a more salient motivator for Black applicants. *Id.* at 92–93.

94. *Felony Disenfranchisement in Nebraska*, CIVIC NEB., <https://www.civicebraska.org/voting-rights/felony-disenfranchise/> (last visited Sept. 23, 2022).

submit a new voter registration before they can vote.⁹⁵ Notably, there is no process in place for people to be given official notification that their waiting period has successfully expired and that they can re-register—a person would have to track the end of their sentence and the passage of time themselves and then attest under the risk of a new felony charge that they are eligible.⁹⁶ Similarly, Louisiana changed its law in 2019, shifting from permanent disenfranchisement to a regime in which a person must wait five years after the end of their full sentence, including probation and parole, to seek restoration of voting rights.⁹⁷

Even if waiting periods for sentence completion and beyond are technically uniform across ages, years of disenfranchisement in young adulthood may have outsized influence on the electorate and in individual voters' lives. Young adults experience time differently than older adults. In part, this is due to simple math—a year in the life of a twenty-year-old is a larger proportion of one's life than for a forty-year-old. At least one study assessed participants' experiences of being disenfranchised using a calculation of disenfranchisement as a proportion of their adult lives.⁹⁸ This calculation of "percent of voting life lost to felony disenfranchisement" varied across the populations, with one out of six of their participants (16.8%) being disenfranchised for half of their adult lives or more, even in the relatively lax states of the study: New York, Connecticut, and Ohio.⁹⁹ This impact is most strikingly illustrated if we consider a person charged with a felony on their eighteenth birthday and convicted soon after—they will have never been able to vote in their lives, while someone older would be more likely to have had periods of time when they were eligible to vote. Lost voting years earlier in life may well have outsized importance on people's civic identities in part because of the greater significance of young adulthood

95. *Felon Voting Rights, How Are My Voting Rights Restored?*, NEB. SEC'Y OF STATE, <https://sos.nebraska.gov/elections/felon-voting-rights> (last visited Sept. 23, 2022) (stating that once a person's rights are restored, they must submit a new voter registration).

96. *Id.*

97. Elizabeth Crisp, *Thousands of Felons in Louisiana Will Regain Voting Rights When This Law Takes Effect March 1*, *ADVOC.* (Feb. 15, 2019, 12:59 PM), https://www.theadvocate.com/baton_rouge/news/politics/article_8a73810c-3153-11e9-81bd-97a9537e8c8b.html ("All we're trying to do is give them the right to vote – most of them say – before they die.") (quoting Representative Pat Smith).

98. ERNEST DRUCKER & RICARDO BARRERAS, *STUDIES OF VOTING BEHAVIOR AND FELONY DISENFRANCHISEMENT AMONG INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM IN NEW YORK, CONNECTICUT, AND OHIO* 2 (2005), https://www.prisonpolicy.org/scans/sp/ff_studiesvotingbehavior.pdf.

99. *Id.* at 5–6.

years compared to later ones, both in terms of our perceptions of time¹⁰⁰ and foundation-laying for future engagement during the critical developmental period of young adulthood.¹⁰¹

The significance of sentence completion and waiting periods in connection with rights restoration also intersects with some of the administrative barrier issues fleshed out below. The longer a waiting period is, the less likely a young person is to easily be able to navigate learning, compliance, and psychological barriers, and they are less likely to be in contact with people (e.g., corrections officials, lawyers, and court personnel) who may be able to provide information about restoring voting rights. Getting access to the people and resources needed to finish the restoration process (e.g., a form filled out by court or a probation officer) is harder when one is no longer in regular touch with them, and the psychological costs of needing to revisit the conviction and everything that went along with it may feel weightier once someone has worked hard to get to a different place.

2. Criminal Legal Financial Obligations

Many disenfranchising states require, in one way or another, that a person pay court debt and other criminal legal financial obligations (“LFOs”) before they are permitted to regain their right to vote, a practice that has been criticized widely as a “poll tax” for people with felony convictions,¹⁰² and for reducing electoral participation for people with felony convictions.¹⁰³ However, courts have largely upheld this practice,

100. Time is typically perceived as being slower in childhood and young adulthood than in later adulthood, which would suggest that a year of lost voting in young adulthood would seem more significant than a year lost later in life. See, e.g., Clifford N. Lazarus, *Why Time Goes by Faster as We Age*, PSYCH. TODAY (Nov. 29, 2020), <https://www.psychologytoday.com/us/blog/think-well/202011/why-time-goes-faster-we-age>; James M. Broadway & Brittiney Sandoval, *Why Does Time Seem to Speed Up with Age?*, SCI. AM. (July 1, 2016), <https://www.scientificamerican.com/article/why-does-time-seem-to-speed-up-with-age/>.

101. Scott et al., *supra* note 8, at 653.

102. See, e.g., *Johnson v. Bredesen*, 624 F.3d 742, 750–51 (6th Cir. 2010) (discussing whether LFO requirements violate the Twenty-Fourth Amendment as a poll tax); see also Brief for Brennan Center for Justice at NYU School of Law as Amicus Curiae Supporting Plaintiffs-Appellants and Reversal, *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010) (No. 08-6377), <https://www.brennancenter.org/sites/default/files/analysis/TN%201%20amicus%20brief.pdf> (addressing the arguments about LFOs as poll taxes).

103. See Neel U. Sukhatme et al., *Felony Financial Disenfranchisement*, 75 VAND. L. REV. (forthcoming 2023) (manuscript at 38) (on file with Social Science Research Network) (finding that a non-profit’s payment of LFOs prompted a 26% increase in voting participation compared to a control group).

building on *Richardson v. Ramirez*¹⁰⁴ and the argument that restrictions on voting by people with felonies is subject only to rational basis review, finding that states have a rational interest in ensuring payment of various LFOs and other obligations.¹⁰⁵

Outstanding LFOs can be an obstacle to restoring voting rights in a number of different ways,¹⁰⁶ though states could easily structure their restoration laws and related policies so that they are not. In twenty states, non-payment of LFOs is not an explicit obstacle to a person with a felony having the right to vote. This list includes the states that do not disenfranchise,¹⁰⁷ those that re-enfranchise after a period of incarceration without regard for LFOs,¹⁰⁸ and ones that do not modify the fixed time for restoration based on LFOs.¹⁰⁹ A recent study, however, found that in forty-eight states, LFOs related to a felony conviction can be a barrier to a person's ability to get their voting rights restored, including at least some cases in the states where LFOs play no formal role.¹¹⁰ LFOs are sometimes considered part of a person's sentence, even if not separately listed as an independent obligation related to voting

104. 418 U.S. 24, 55 (1974).

105. See *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) ("We have little trouble concluding that [a State] has a rational basis for restoring voting rights only to those felons who have completed the terms of their sentences, which includes the payment of any fines or restitution orders."); *Hayden v. Paterson*, 594 F.3d 150, 170 (2d Cir. 2010); *Johnson*, 624 F.3d at 749–50; *Jones v. Florida*, 975 F.3d 1016, 1029 (11th Cir. 2020); *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983).

106. Sixteen states (Alaska, California, Delaware, Idaho, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, South Carolina, Washington, West Virginia, Wisconsin, and Wyoming) permit outstanding LFOs to delay the restoration of voting rights through mechanisms related to the length of the sentence. MARGARET LOVE & DAVID SCHLUSSEL, WHO MUST PAY TO REGAIN THE VOTE? A 50-STATE SURVEY 4 (2020), <https://ccresourcecenter.org/wp-content/uploads/2020/07/Who-Must-Pay-to-Regain-the-Vote-A-50-State-Survey.pdf>. In three states, Alabama, Arkansas, and Florida (plus South Dakota for convictions after 2012), a person's voting rights are denied indefinitely for any unpaid LFOs related to a disqualifying conviction. *Id.* Five more deny the vote indefinitely for some portion of unpaid LFO related to a disqualifying conviction: Arizona (restitution), Georgia (fines), Kansas (certain restitution), Tennessee (restitution), and Texas (fines). *Id.* Notably, Tennessee is the only state that also requires full payment of all child support before a person is eligible to restore their voting rights. See Act effective July 1, 2006, sec. 1, § 40-29-20(b), 2006 Tenn. Pub. Acts 1, 2.

107. These states include Maine, Vermont, and the District of Columbia. LOVE & SCHLUSSEL, *supra* note 106, at 4.

108. These states include Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. *Id.*

109. The only state in this category is Oklahoma. *Id.*

110. See Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55, 65–70 (2019).

rights restoration.¹¹¹ Ability-to-pay determinations are rarely an effective solution or safety valve for people who cannot pay LFOs because of both high and inconsistent standards, as well as significant administrative barriers.¹¹² In many states, failure to pay outstanding LFOs during a sentence could result in re-incarceration, though typically courts would need to conduct an ability-to-pay determination to do so. If that were to happen, then even in the seventeen states that re-enfranchise people after they finish serving a term of imprisonment, non-payment could lead again to loss of voting rights.¹¹³

The negative effects of LFOs are felt most heavily by those with the most difficulty in paying them. Wealth-based disparities in the criminal legal system are closely tied to race-based ones,¹¹⁴ given current and historic wealth accumulation,¹¹⁵ employment discrimination, differences in resources and opportunities based on race and geographic location associated with race, and more.¹¹⁶ The criminal legal system is marked by wealth-based disparities at every stage of the process, from over-policing poor communities, setting cash bail, fines and fees, and other costs and collateral consequences related to LFOs and non-payment.¹¹⁷

LFOs are also particularly likely to be a challenge for young adults. Data from U.S. Department of Labor surveys show that income-earning young adults under twenty-five on average have a negative annual

111. *Id.* at 66 (explaining the difference between LFOs as an independent payment requirement and LFOs as a necessary part of rights restoration generally).

112. *See, e.g.*, Mandy Pellegrin, *How Tennessee Judges Look at Defendants' Ability to Pay Fees and Fines*, THE SYCAMORE INST. (Dec. 20, 2021), <https://www.sycamoreinstituten.org/how-tennessee-judges-look-at-defendants-ability-to-pay-fees-and-fines/>.

113. *See* LOVE & SCHLUSSEL, *supra* note 106, at 4.

114. Khaing Zaw et al., *Race, Wealth and Incarceration: Results from the National Longitudinal Survey of Youth*, 8 RACE & SOC. PROBS. 103, 104 (2016).

115. Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

116. *See id.*

117. *See* REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE 1 (2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> (“The United States in effect operates two distinct criminal justice systems: one for wealthy people and another for poor people and people of color.”); John Mathews II & Felipe Curiel, *Criminal Justice Debt Problems*, ABA (Nov. 30, 2019), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/.

\$3,750 change in their assets and liabilities.¹¹⁸ The same data shows that young adults ages twenty-five to thirty-four have an even larger deficit on average, with liabilities outweighing assets by \$11,967 on average over the course of a year.¹¹⁹ Wealth numbers are no more promising. For Gen Z-led households, generally referring in 2022 to youth under twenty-four or so, nearly 29.4% have zero or negative net worth, with another 28.3% having a net worth under \$5,000.¹²⁰

A recent study reviewed the likelihood of defaulting on LFOs tied to probation and found that younger people were more likely to default on LFOs related to probation than were older people on probation.¹²¹ This was the case even when controlling for race, ethnicity, income, homeowner/renter status, sex, education, and marital status.¹²² In reality, the greater racial diversity of young adults compared to older adults, combined with reduced likelihood of high educational attainment, more limited work experience, and lower overall wealth and incomes, would lead to the conclusion that young adults in the fullness of their experience are particularly likely to struggle with paying LFOs.

3. Other Administrative Barriers

Beyond the substantive barriers of timing and LFOs discussed above, the actual logistics and process of filing for restoration of voting rights comes with a wide range of administrative barriers. These barriers fit into three categories of costs—learning, compliance, and psychological.¹²³ Learning costs include the time and effort it takes to learn about restoration, to determine eligibility, to assess expected benefits, and to figure out the steps to take next.¹²⁴ Compliance costs include the financial, logistical, and other efforts needed to meet administrative demands.¹²⁵ Finally, there are psychological costs to going through the

118. U.S. BUREAU OF LAB. STAT., TABLE 1300, CONSUMER EXPENDITURE SURVEYS, 2020 (2021), <https://www.bls.gov/cex/tables/calendar-year/mean-item-share-average-standard-error/reference-person-age-ranges-2020.pdf>.

119. *Id.*

120. *Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2019*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2019/demo/wealth/wealth-asset-ownership.html> (Feb. 22, 2022).

121. Marshall L. White & William J. Sabol, *Legal Financial Obligations and Probation: Findings from the 1995 Survey of Adults on Probation*, 10 SOC. SCIS. 450, 465 (2021).

122. *Id.*

123. HERD & MOYNIHAN, *supra* note 92, at 23.

124. *Id.*

125. *Id.*

re-enfranchisement process including those related to stigma, trauma, and stress.¹²⁶

Even in states where a person's voting rights are automatically restored, many of these administrative barriers exist. Learning costs include knowing that one's rights are restored.¹²⁷ Given the high rates of misinformation about felony disenfranchisement, particularly among young adults,¹²⁸ we know that these learning costs are high. A study looking at disenfranchisement in New York, Connecticut, and Ohio, each of which permits restoration of rights even during some types of sentences, found very high rates of misinformation about when one's voting rights are taken away.¹²⁹ More than a quarter of respondents stated that they did not think they would ever be eligible to vote even though nearly every participant in the study was currently eligible or would be in the future.¹³⁰ In order to actually be able to vote again, a person must not only know that they are eligible to vote but must also know what steps they need to take. In some states, the availability of automatic restoration has varied significantly over time, adding to the learning costs. In Kentucky, in 2015, Governor Steven Beshear issued an executive order automatically restoring voting rights to most people who completed sentences for non-violent felonies.¹³¹ Soon after, a newly elected governor, Governor Matthew Bevin, issued a new executive order revoking the earlier one.¹³² Four years later, newly elected Governor Andy Beshear signed a new executive order again making restoration automatic.¹³³ Shifting policies and political landscapes add significantly to learning costs.

Most if not all of the automatic restoration states restore eligibility to register but do not automatically re-register people once they are eligible again.¹³⁴ Even Massachusetts, with a relatively liberal disenfranchisement law that applies only to people while they are in prison, has a regime that requires a person to re-register after they are released in order to vote again.¹³⁵ Many states have regular voter roll

126. *Id.*

127. *Id.*

128. *See infra* Section III.

129. DRUCKER & BARRERAS, *supra* note 98, at 7–8.

130. *Id.*

131. Ky. Exec. Order No. 2015-871 (Nov. 24, 2015).

132. Ky. Exec. Order No. 2015-052 (Dec. 22, 2015).

133. Ky. Exec. Order No. 2019-033 (Dec. 12, 2019).

134. *See* JONATHAN BRATER ET AL., PURGES: A GROWING THREAT TO THE RIGHT TO VOTE 11 (2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>.

135. *Compare* E-mail from Elections Div., Sec'y of the Commonwealth of Mass., to Cara Suvall, Assoc. Clinical Prof. of L., Youth Opportunity Clinic, Vanderbilt Univ. L. Sch. (Feb.

purges, including of people temporarily ineligible to vote.¹³⁶ Re-registering after a criminal conviction comes with learning costs (knowing about the automatic restoration, as well as the re-registration requirement and what steps to take), compliance costs (going to a government office or getting the form and mailing it), and psychological costs (the doubt, stress, and uncertainty of navigating this process with a felony conviction). These costs are higher for young people than for older people.¹³⁷

States with an application or petition process or that require a clemency petition to restore rights have much higher levels of administrative burdens. The learning costs include the general misinformation discussed above as well as a need to learn about what the process is for restoring rights, which varies by state. For example, in Mississippi, a person who is disenfranchised for a felony conviction of one of twenty-three disenfranchising crimes has to either apply for and get a pardon from the governor or they must attempt to have both houses of the state legislature pass a bill restoring their voting rights by a two-thirds majority.¹³⁸ This process is a very complex and daunting one that few people attempt and even fewer succeed with. Between 2007 and 2017, 128 of these legislative bills were filed and only forty-five were granted in those ten years.¹³⁹ For 2022, thirty-one of these bills were filed and only five were passed and became law.¹⁴⁰ The learning, compliance, and psychological costs of this process are high, such as needing to learn about the process and figuring out how to navigate it, including which legislator to contact and how, what information to provide, how to encourage public support of your bill, and more. The public nature of this proceeding adds to the already-high psychological costs.¹⁴¹

11, 2022, 07:52 ET) (on file with author), *with* CONN. GEN. STAT. § 9-46(a)(b)(1)(c) (2021) (restoring registration if a person in Connecticut had an active registration before imprisonment and returns to the same community).

136. *See generally* BRATER ET AL., *supra* note 134.

137. *See* Hill, *supra* note 27, at 1 and accompanying text.

138. MISS. CONST. art. 12, § 253.

139. *See* THE SENT'G PROJECT, FELONY DISENFRANCHISEMENT IN MISSISSIPPI 2 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/02/Felony-Disenfranchisement-in-Mississippi.pdf>.

140. *MS Legislative Search about "Restore the Right of Suffrage to"*, LEGISCAN, <https://legiscan.com/gaits/search?state=MS&keyword=%22restore+the+right+of+suffrage+to%22> (last visited Sept. 20, 2022).

141. *Id.* (showing how these are publicly filed pieces of legislation with identifying information).

The details of administrative burdens vary from state to state, and even within states,¹⁴² but the learning, compliance, and psychological costs of registering and voting as a person with a felony conviction show up as a barrier whether in the most permissive or the most restrictive states. As with all barriers to voting, these burdens are likely to be felt as significantly heavier for younger voters than for older ones.¹⁴³ The next section considers more closely at the disenfranchisement and rights restoration process in Tennessee, providing a more detailed look at one state's disenfranchisement and re-enfranchisement regime with a focus on its effects on young adults.

4. Tennessee Disenfranchisement and Rights Restoration Case Study and "Audit"

This close look at disenfranchisement and re-enfranchisement in one state, Tennessee, serves as a case study in the barriers that young adults face in losing their voting rights and then attempting to restore those voting rights after they are lost. The data on restoration comes from a public record request made by the author to the Tennessee Department of Elections in January 2022.

In Tennessee, as in many other states, disenfranchisement related to conviction is tied to racism and the changes brought by the Fifteenth Amendment to the United States Constitution after the Civil War. The 1870 Tennessee Constitution denied the right to vote to people convicted of "some infamous crime."¹⁴⁴ Tennessee's disenfranchisement laws have long been recognized as having a disproportionately negative impact on Black Tennesseans. In *Wesley v. Collins*,¹⁴⁵ the District Court for the Middle District of Tennessee rejected a challenge to Tennessee's felony disenfranchisement law but acknowledged its disproportionate impact on the Black vote.¹⁴⁶

142. ALEC EWALD, A 'CRAZY-QUILT' OF TINY PIECES: STATE AND LOCAL ADMINISTRATION OF AMERICAN CRIMINAL DISENFRANCHISEMENT LAW 3-6 (2005), <https://www.sentencingproject.org/wp-content/uploads/2016/01/A-Crazy-Quilt-of-Tiny-Pieces-State-and-Local-Administration-of-American-Criminal-Disenfranchisement-Laws.pdf>.

143. See Juelich & Coll, *supra* note 23, at 720-22; Hill, *supra* note 27, at 1.

144. TENN. CONST. art. I, § 5.

145. *Wesley v. Collins*, 605 F. Supp. 802 (M.D. Tenn. 1985), *aff'd*, 791 F.2d 1255 (6th Cir. 1986).

146. *Wesley*, 605 F. Supp. at 810. The court rejected the nexus that the petitioners sought to establish between the disproportionate disenfranchisement of Black Tennesseans and the felony disenfranchisement laws themselves, instead pointing to the social and historical factors leading to higher rates of felony convictions in the Black community as a separate social phenomenon. *Id.* at 812-13.

The uneven trajectory of felony disenfranchisement since then in Tennessee illustrates the ways that states' policies in this area might evolve over time, sometimes in ways that are unintuitive. The original disenfranchisement provisions only disenfranchised people convicted of one of twenty offenses along with a judgment declaring the crime "infamous."¹⁴⁷ Then, for a period in the 1970s and early 1980s, Tennessee had no felony disenfranchisement at all, even for the most serious offenses. In May 1981, however, Tennessee swung hard in the other direction, with a new law going into effect that all felony convictions disqualify a person from being able to vote.¹⁴⁸ The current statute reflects legislative changes in 1986, 1996, and 2006 that grew the list of felonies resulting in lifelong disenfranchisement without possibility of restoration.¹⁴⁹ Today, the list of convictions that result in absolute inability to ever vote again in Tennessee includes serious offenses like murder, rape, and treason, as well as less serious offenses like the series of offenses related to "interference with government operations."¹⁵⁰

a. Scale and Scope of Disenfranchisement in Tennessee

The latest estimates of 451,227 Tennesseans currently disenfranchised are from around the 2020 election.¹⁵¹ This number includes 21,713 that are currently in prison, 9,937 that are currently on parole, 56,687 that are on felony probation, 2,787 that are in jail, with the vast majority, 360,103, having fully completed their sentences.¹⁵² These numbers amount to 9.09% of the overall voting-age population in the state.¹⁵³ These numbers and percentages are even more stark when broken down by race and ethnicity. An estimated 174,997 Black

147. *Written Testimony of Campaign Legal Center Before the U.S. House of Representatives Committee on Judiciary, Subcommittee on Constitution, Civil Rights and Civil Liberties, Hearing on "Discriminatory Barriers to Voting", Memphis, Tennessee*, CAMPAIGN LEGAL CTR. 2 (Sept. 5, 2018), <https://campaignlegal.org/sites/default/files/2019-10/Testimony%20of%20Restore%20Your%20Vote%20Tennessee%20to%20Judiciary.pdf> [hereinafter *Written Testimony of Campaign Legal Center*].

148. Act effective May 18, 1981, sec. 1, 2, §§ 40-2712, 2-2-102, 1981 Tenn. Pub. Acts 459, 459-60.

149. The initial list of convictions ineligible for re-enfranchisement was created in 1986. It was expanded again in 1996 and 2006. TENN. CODE ANN. § 40-29-204 (2022).

150. TENN. CODE ANN. § 39-16-503 (2022). As just one example, a person who attempts to flush drugs down the toilet during a search may well wind up with a Class C felony of destroying evidence and be permanently barred from voting. *See id.*; *State v. Williams*, No. W202000281CCAR3CD, 2021 WL 5143823, at *11-12 (Tenn. Crim. App. Nov. 4, 2021) (discussing circumstances leading to conviction for evidence tampering).

151. UGGEN ET AL., *supra* note 1, at 16.

152. *Id.*

153. *Id.*

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Tennesseans are currently disenfranchised in the state, amounting to 21.48% of the voting-age Black population.¹⁵⁴ Seventeen percent of the state's population is Black, yet Black people make up 42% of people in prisons and 36% of people on felony probation and parole.¹⁵⁵ This is the second-highest rate of Black disenfranchisement in the country.¹⁵⁶ An estimated 11,754 Latinx Tennesseans are disenfranchised, amounting to 10.57% of the voting-age Latinx population.¹⁵⁷ This rate of disenfranchisement is the highest for Latinx Americans in the country.¹⁵⁸

How many youth and young adults are disenfranchised today in Tennessee? We do not have a good idea of the overall number. We know that more than 81,000 young adults in Tennessee are currently in prison and under community supervision¹⁵⁹ and therefore ineligible for re-enfranchisement. Tennessee also sends a significant number of under-eighteen youth to adult court, between 170 and 200 per year.¹⁶⁰ These youth lose their right to vote even before they become eligible for the franchise. We do not know how many young adults have completed sentences but remain disenfranchised.

b. Tennessee Process for Restoring Voting Rights

There are two pathways a person might follow to get voting rights restored in Tennessee. Until 1986, the only way a person could restore voting rights was through a petition to the court.¹⁶¹ For this path, a person can draft and file a petition before a circuit court for restoration of the full rights of citizenship.¹⁶² This rights restoration process includes voting alongside other rights of citizenship, like jury service and the right

154. *Id.* at 17.

155. EMMA STAMMEN & NAZGOL GHANDNOOSH, TENNESSEE DENIES VOTING RIGHTS TO 450,000 CITIZENS 1 (2022), <https://www.sentencingproject.org/wp-content/uploads/2022/01/Tennessee-Denies-Voting-Rights-to-450000-Citizens.pdf>.

156. *Id.*

157. MANZA & UGGEN, *supra* note 43, at 18.

158. *Id.*

159. See TENN. DEPT OF CORR., ANNUAL REPORT 2021 7, 9 (2021), <https://www.tn.gov/content/dam/tn/correction/documents/AnnualReport2021.pdf> (aggregating percentages and applying them to the relevant numbers, noting that 22% of people under community supervision are under thirty, as are 21.6% of imprisoned Tennesseans).

160. In 2017, 183 minor youth were transferred to adult court. In 2018, 174 were transferred. In 2019, 200 were transferred. Data from 2020 only includes twelve of the ninety-five counties but documented 121 youth transfers. This information is from a data request from the administrative office of the Tennessee courts, on file with the author.

161. TENN. CODE ANN. §§ 40-29-101, 40-29-102 (2022).

162. *Id.* §§ 40-29-101, 40-29-102.

to run for office.¹⁶³ A person must make a showing both of eligibility (completion of sentence), as well as that “the petitioner has sustained the character of a person of honesty, respectability and veracity, and is generally esteemed as such by the petitioner’s neighbors.”¹⁶⁴ The petitioner must pay the costs associated with the petition.¹⁶⁵ This broad and subjective standard gives little practical guidance and typically involves hiring an attorney.¹⁶⁶

In 1986, the court created a second pathway for restoring voting rights, a simplified approach called a Certificate of Restoration (“COR”),¹⁶⁷ which is the most common way of restoring voting rights today.¹⁶⁸ While the COR was initially supposed to be issued automatically, three years later Tennessee amended the law to put the onus of requesting and ensuring completion of a COR on the person seeking re-enfranchisement.¹⁶⁹ Later added requirements—including in 2006 that restitution be paid and applicants be current on child support¹⁷⁰ and in 2010 that all court costs be paid¹⁷¹—made the COR further out of reach.

For this process, a person must get a copy of the COR form from a government website, a probation or parole office, or a court clerk.¹⁷² One COR form is required for each disenfranchising felony conviction, and the form cannot be filled out by the applicant but must be completed by officials from multiple government offices.¹⁷³ A probation or parole officer must complete one portion of the COR application certifying that the sentence has been completed.¹⁷⁴ A separate portion of the COR must be

163. *Id.* §§ 40-29-101, 40-29-102.

164. *Id.* § 40-29-102.

165. *Id.* § 40-29-104.

166. The author has identified one county, Hamilton County, that makes available a form for the petition that would facilitate pro se applicants’ filing this petition on their own. The form includes room for references but does not include a space for information supporting the allegations around their reputations. See *Court Petition Form, Restoration of Rights*, HAMILTON CNTY. ELECTION COMM’N, <https://elect.hamiltontn.gov/Portals/12/FelonRights/Circuit%20Court%20Petition.pdf> (last visited Sept. 23, 2022).

167. Act effective July 1, 1986, sec. 1, § 40-29-101(c), 1986 Tenn. Pub. Acts 1147, 1147.

168. TENN. CODE ANN. § 40-29-203 (2022).

169. Act of May 2, 1989, sec. 51, § 40-29-105(b)(3), 1989 Tenn. Pub. Acts 326, 333.

170. Act effective July 1, 2006, sec. 1, §§ 40-29-202(b)–(c), 2006 Tenn. Pub. Acts 1, 2.

171. Act effective June 29, 2010, sec. 1, § 40-29-20(b)(2), 2010 Tenn. Pub. Acts 1, 1. While this law contains an indigency exception as to court costs, that indigency determination is rarely made. See Pellegrin, *supra* note 112.

172. DIV. OF ELECTIONS, STATE OF TENN., CERTIFICATE OF RESTORATION OF VOTING RIGHTS FOR PERSONS CONVICTED OF A FELONY ON OR AFTER MAY 18, 1981, <https://sos-prod.tnsosgovfiles.com/s3fs-public/document/SS-3041.pdf> (last visited Sept. 23, 2022).

173. *Id.*

174. *Id.*

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filled out by a court clerk, affirming that all restitution and court costs are paid, though the probation and parole office should be able to access this information as well.¹⁷⁵

Since a person is not eligible for restoration during the period that they are under supervision by probation or parole, it is often difficult for an applicant to find someone to fill this out. Probation and parole officials as well as court clerks in various parts of the state disagree about who should fill out which portions of the forms.¹⁷⁶ Delays and understaffing in the court clerks' office or probation and parole offices often lead to long delays or a lack of responsiveness that can derail a person's efforts to get a COR.¹⁷⁷ The process is exponentially more difficult for people with multiple convictions across Tennessee jurisdictions who must navigate this process in multiple counties and for people with out-of-state convictions.¹⁷⁸

c. Restoration Audit

Who actually gets their voting rights restored in Tennessee? *Not a lot of people overall.* Between 2016 and 2020, 3,415 people got their voting rights restored in the state,¹⁷⁹ or less than 1% of the population of Tennesseans who were potentially eligible to restore their rights.¹⁸⁰ Other periods have much lower numbers—only 12,773 people total have had rights restored between 2000-2021.¹⁸¹ Meanwhile, estimates of the number of disenfranchised people grew by 30,000 between 2016 and 2020.¹⁸² Restorations are not only failing to make a dent in the overall

175. *Id.*

176. Nicole Lewis, *Tennessee's Voter Restoration Gauntlet*, THE MARSHALL PROJECT (Sept. 19, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/09/19/tennessee-s-voter-restoration-gauntlet>.

177. *Id.*

178. *Id.*

179. UGGEN ET AL., *supra* note 1, at 14.

180. *Id.* at 14, 16 (comparing Tennessee restorations to total Tennessee numbers of people disenfranchised post-sentence).

181. The data on restoration comes from a public record request made by the author to the Tennessee Department of Elections in January 2022. Restoration of Voting Rights after Felony Conviction Restorations from 01/01/2000 to 12/20/2021, attached to Letter from Mark Goins, Coordinator of Elections, State of Tenn., to Cara Suvall, Assistant Clinical Prof. of L., Vanderbilt L. Sch. (Dec. 21, 2021) (on file with author).

182. Compare CHRISTOPHER UGGEN ET AL., 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT, 2016 15–16 tbl.4 (2016), <https://www.sentencingproject.org/app/uploads/2022/08/6-Million-Lost-Voters.pdf>, with UGGEN ET AL., *supra* note 1, at 16 tbl.3.

disenfranchised population but are far from even keeping pace with the continued growth in disenfranchisement.¹⁸³

Even among the small number of people who are able to navigate getting the COR signed by all the correct government officials and submit it to the Department of Elections, a significant number are denied. These denials occur after a person went through the process of getting various government officials to review and fill out the COR form.¹⁸⁴ In 2021, for example, there were 299 restorations and 163 denials, with 64.4% of the denials having to do with missing information or incorrectly-filled-out forms and 25.1% concerning denial for non-payment of LFOs.¹⁸⁵

Not a lot of people without financial resources. The Campaign Legal Center's Restore Your Vote project, in partnership with grassroots organizations like Free Hearts, made a powerful push before the 2020 election to help people with felony convictions in Tennessee restore their voting rights, funding local organizers throughout the state to support restoration efforts.¹⁸⁶ In their work, they found that outstanding LFOs were the biggest barrier for people in getting their rights restored; 54% could not restore their rights because of outstanding LFOs, with numbers higher in other parts of the state (for example, 68% in Nashville).¹⁸⁷ This percentage does not include people who are ultimately denied because of outstanding child support obligations, another financial obligation that the Department of Elections is required by law to treat as a barrier.¹⁸⁸ These percentages were among people who were actively seeking to restore their rights by affirmatively connecting with advocates, so the number may be even higher among the broader population. These wealth-based barriers, only one of which (court costs) has a safety valve for indigency in connection with voting rights restoration, mean that

183. Even with the significant advocacy push around re-enfranchisement, the number of people re-enfranchised between 2016 and 2020 is equal to only approximately 10% of the growth in disenfranchisement. *Compare* UGGEN ET AL., *supra* note 182, at 13 tbl.2, 15–16 tbl.4, *with* UGGEN ET AL., *supra* note 1, at 16 tbl.3 (highlighting the re-enfranchisement numbers during this time period).

184. The data on restoration comes from a public record request made by the author to the Tennessee Department of Elections in January 2022. Restoration of Voting Rights after Felony Conviction: Denials from 01/01/2000 to 12/20/2021, attached to Letter from Mark Goins, Coordinator of Elections, State of Tenn., to Cara Suvall, Assistant Clinical Prof. of L., Vanderbilt L. Sch. (Dec. 21, 2021) (on file with author) [hereinafter *PRR Analysis*].

185. These include 163 denials, 105 incomplete/unlisted convictions and 41 LFOs. *PRR Analysis*, *supra* note 184.

186. *See generally* Georgia Lyon, *CLC Op-Ed Urges Tennessee to Reform Rights Restoration Process*, CAMPAIGN LEGAL CTR. (Mar. 11, 2022), <https://campaignlegal.org/update/clc-op-ed-urges-tennessee-reform-rights-restoration-process>.

187. *Written Testimony of Campaign Legal Center*, *supra* note 147, at 5.

188. *See* CHUNG, *supra* note 59, at 16.

people with outstanding financial obligations but lower income or wealth are often excluded from being able to restore their vote. Even people who seek indigency waivers for court costs are often not getting their full costs waived but rather are being put on monthly payment plans that could take years to complete.¹⁸⁹ Even though people who are declared indigent and put on payment plans should have the requirement of court costs waived because of the indigency declaration,¹⁹⁰ in practice, courts often require the full court costs be paid before signing off on this. Hopefully this area will be one where advocacy and education can further shift the needle.¹⁹¹ More than 25% of the denials, which happen after a person was able to jump through the hoops involved in getting a COR signed, were related to non-payment of financial obligations.¹⁹²

Not a lot of young people. Reviewing the data from our public record request to the Department of Elections, very few young people have been able to get their voting rights restored. Over the five-year period from 2017-2021, a total of 2,875 people had voting rights restored.¹⁹³ Of that number, only a single person was between the ages of eighteen and twenty-one, .03% of the restorations.¹⁹⁴ Eleven eighteen- to twenty-five-year-olds were able to get their rights restored, amounting to .38% of the applicants, and ninety-three eighteen- to thirty-year-olds were able to get rights restored, amounting to only 3.23% of the restorations.¹⁹⁵ The numbers stretching all the way back to 2000 are slightly better (largely due to a significant outlier uptick in young adult restoration in 2008), but they are still very low.¹⁹⁶ While 12,773 people had their voting rights restored between 2000 and 2021, only 7 of those people were eighteen to twenty-one (.05%),¹⁹⁷ 140 were eighteen to twenty-five (1.09%),¹⁹⁸ and 748 were younger than thirty (5.85%).¹⁹⁹ In Tennessee, as of the date of the records received, there are zero young adults who are between the

189. *See id.* at 6.

190. TENN. CODE ANN. § 40-29-202(b)(2) (2013).

191. *See Written Testimony of Campaign Legal Center*, *supra* note 147, at 6–8 (author's conversations with court clerks in Davidson County).

192. *PRR Analysis*, *supra* note 184.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* The data from restorations in 2008 in particular indicated a significant increase in young adult restoration that year, which was perhaps energized by enthusiasm about voting in the presidential election for Barack Obama. The numbers for 2008 show 2 eighteen- to twenty-one-year-olds, 39 eighteen- to twenty-five-year-olds, and 211 eighteen- to thirty-year-olds, far outstripping numbers in other years. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

ages of eighteen and twenty-one who have had their rights restored, there are only four eighteen- to twenty-five-year-olds who have gotten their voting rights restored, and there are only sixty-three current young adults under thirty in the entire state who have had their rights restored.²⁰⁰

d. Lessons from Rights Restoration in Tennessee

The takeaway from rights restoration in Tennessee is that few people get their rights back, and those who do are likely to have more financial resources and be older than those who do not. Eligibility requirements, including sentence completion and paying LFOs, combined with administrative barriers, have the effect of continuing to disenfranchise many thousands of people because of their history of conviction. As a descriptive matter, almost no people under twenty-five get their rights restored and very few under thirty do. Some may be ineligible, but many are sentence-eligible yet still cannot or do not get their rights restored. Disillusionment and disengagement certainly play a role, though the numbers of rights restoration for young people are so much lower than those for other ages that other eligibility and process barriers clearly play a significant role.²⁰¹ The result of the ways in which rights restoration is particularly difficult and unlikely for young people means that not only are young adults disproportionately likely to have disenfranchising contact during their young adult years, but they are also disproportionately unlikely to be able to move past their disenfranchisement during their young adult years through restoration. Layering these two facets of disproportionate contact and disproportionate absence of restoration means that disenfranchisement works in particularly severe ways in the lives of young adults.

III. WIDENING THE NET: MISINFORMATION AND DEMOBILIZATION

Young adults whose voting rights have been taken away face barriers to getting them back and often must contend with misinformation about the process. Misinformation is a significant problem not only for people whose rights have been taken away but also for people who think their

200. *Id.*

201. It is also a very significant outlier compared to current registration numbers. U.S. Census data shows that 20.8% of registered voters in Tennessee are eighteen to twenty-nine, 23.7% are thirty to forty-four, 33.6% are forty-five to sixty-four, and 22% are sixty-five plus. *5.1 Million Votes: See the Demographics of Tennessee's Voting Population*, STACKER (Nov. 3, 2021), <https://stacker.com/tennessee/51-million-votes-see-demographics-tennessees-voting-population>.

voting rights might have been taken away.²⁰² Youth legally disenfranchised from voting are only one portion of the young adult population that is negatively affected by felony disenfranchisement policies. Many others are de facto rather than de jure disenfranchised because of misinformation among young people about the role that contact with the criminal legal system has on their own and others' voting eligibility. This section looks specifically at misinformation among young adults related to criminal legal system involvement and discusses how this misinformation layers on top of the already costly process of voting to reduce young adult registration and voting.

While many types of voting costs weigh particularly heavily on young adult voters, among the most onerous are ones related to information costs.²⁰³ Generally, young adults have relatively low levels of information about registration and voting laws in their state.²⁰⁴ A survey found that young adults are the least likely out of any age group to have accurate information about the voting laws in their state.²⁰⁵ When asked about their state's policy on early voting, same-day registration, mail voting, and updating registration, less than half of young people ages eighteen to twenty-nine could accurately recount their state's policies.²⁰⁶ Another survey, conducted by Opportunity Youth United ("OYU") and CIRCLE at Tufts University, found that young adult survey participants not only experienced voting laws like voter ID requirements as confusing, but they often assumed the laws were more restrictive than they actually are.²⁰⁷

When a young person has contact with the juvenile or criminal legal systems, they have an additional dimension of costs layered on top of the existing barriers. These costs include knowing what their criminal records even say, being aware of what type of contact may be disqualifying, figuring out how to try to get more information about

202. Nicole Lewis & Andrew Rodriguez Calderón, *Millions of People with Felonies Can Now Vote. Most Don't Know It.*, THE MARSHALL PROJECT (June 23, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/06/23/millions-of-people-with-felonies-can-now-vote-most-don-t-know-it> (identifying misinformation about voting rights eligibility after felony convictions as a significant barrier to registration).

203. Kristian Lundberg et al., *Opaque Landscape of Felony Disenfranchisement Laws Poses Challenge for Young Voters*, CIRCLE (Oct. 14, 2020), <https://circle.tufts.edu/latest-research/opaque-landscape-felony-disenfranchisement-laws-poses-challenge-young-voters>; Hill, *supra* note 27, at 9.

204. Hill, *supra* note 27, at 13.

205. *Id.* at 26.

206. *Id.*

207. REYNOL JUNCO ET AL., EXPANDING THE ELECTORATE: HOW SIMPLE CHANGES IN ELECTION ADMINISTRATION CAN IMPROVE VOTER PARTICIPATION AMONG LOW-INCOME YOUTH 6 (2018), https://circle.tufts.edu/sites/default/files/2020-01/expanding_electorate_oyu_report.pdf.

eligibility, understanding how properly to answer questions in the registration process about criminal legal system contact, figuring out how to restore lost voting rights, and more. Each of these opens up a new dimension of uncertainty, requiring information that young people are particularly likely not to have.

The CIRCLE and OYU survey from 2018 found very high levels of confusion, uncertainty, and misinformation among young people generally about the effect of various types of criminal legal system contact.²⁰⁸ For example, 38% believed that a person with an expunged felony conviction could not vote and an additional 45% stated that they do not know.²⁰⁹ Twenty-four percent of respondents thought a person with a suspended driver's license cannot vote and an additional 42% did not know.²¹⁰ Twenty percent of respondents stated that a person convicted of a misdemeanor who has served their sentence cannot vote and an additional 41% stated they did not know.²¹¹ These numbers were even higher for young people with fewer years of formal education.²¹²

A subsequent survey by CIRCLE in 2020 looked again at the issue of disenfranchisement, and the resulting report noted that disenfranchisement may create a "chilling effect" by misleading young people into believing that they are ineligible because of criminal legal system contact.²¹³ For this survey, the authors assessed respondents' answers in light of the actual laws of the state in which each lived.²¹⁴ The authors found that 63% of young people either did not know whether people with felony convictions and who were on parole could vote in their state or answered incorrectly.²¹⁵ Respondents were more likely to be correct in their answers when they lived in a more restrictive state, meaning that people were more likely to assume the laws are even more restrictive than they are and leading people who are actually eligible to believe incorrectly they are not.²¹⁶

Perhaps even more surprising, only 53% of young people responding to the survey stated that a young person with a misdemeanor conviction could vote—meaning that 47% either stated that they could not vote or they were unsure.²¹⁷ No state disenfranchises misdemeanors generally

208. *Id.*

209. *Id.* at 7.

210. *Id.*

211. *Id.*

212. *Id.* at 7–8.

213. Lundberg et al., *supra* note 203.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

and only a small number disenfranchise people with a very narrow range of misdemeanor convictions related to election fraud²¹⁸ or other specified offenses. Given high rates of criminal legal contact among young adults, the misinformation about even minor contact and uncertainty about voting eligibility is alarming.

Young people are often misinformed not only about voting eligibility but also about their own criminal records and legal status.²¹⁹ Teens and young adults are often unclear about the differences between juvenile delinquency adjudications and adult criminal convictions (for example, incorrectly reporting felony convictions on job applications when they had a juvenile delinquency adjudication). They often have misunderstandings of what happened in juvenile court or criminal court at all, including what level of an offense (misdemeanor or felony or even unruly or status offenses in juvenile court) was involved, what the charges were, and how the case was resolved.²²⁰ Understanding one's criminal record can be particularly challenging in connection with alternative dispositions, like forms of diversion. For example, under one form of diversion in Tennessee, a person enters a guilty plea but is not convicted at the time of the plea—meaning that during the time period of diversion, they do not have a felony conviction even though they may have pled guilty to a felony.²²¹ If the diversion is completed successfully, then the charge is expungable, whereas if the diversion is not completed successfully then the conviction is entered, thereby triggering disenfranchisement.²²²

Dispositions and their structures vary state by state and sometimes require significant legal background to fully understand. Voter registration forms that say people with felony convictions are barred from voting or ask whether someone has been convicted of a felony may seem straightforward but often are not—particularly for young adults who are most likely to have confusing alternative dispositions and be less likely to have experience and understanding of their case dispositions.²²³

Misinformation around disenfranchisement is not restricted to voters alone—officials who oversee elections also often have incorrect information about disenfranchisement. In one survey interview of ninety-three local election officials, thirty-four (nearly 37%) either incorrectly

218. *Id.* (“Some states (like New Hampshire and New York) make rare exceptions in cases of bribery or elections-related violations.”).

219. This observation draws from my own experience supervising law students in counseling teens and young adults on collateral consequences through the Vanderbilt Law School Youth Opportunity Clinic.

220. This observation also draws from my own experience. *See supra* note 219.

221. TENN. CODE ANN. § 40-35-313 (2020).

222. *Id.*

223. *See supra* notes 208–22 and accompanying text.

described a central aspect of their state's law about disenfranchisement or said that they did not know a central aspect of the law.²²⁴ Young adults are less likely to contact government officials to begin with, let alone do so multiple times or push back on answers they receive from them.²²⁵ They are also less likely to consider reaching out to a lawyer or other advocate to help navigate this misinformation.

While rampant misinformation about one's record or sentence and what that means for voting likely leads many people to incorrectly assume they are not eligible to vote, individuals may be behaving rationally in the face of incomplete information.²²⁶ High-profile cases of people being prosecuted for voting or attempting to vote while disenfranchised affirm potential voters' concerns about registering to vote after a conviction. The prosecutions and convictions of Pamela Moses in Tennessee²²⁷ and Crystal Mason in Texas,²²⁸ while both ultimately overturned, highlight the risks of voting with a criminal record, the high costs of getting accurate information, and the risks of being incorrect about one's voting status.

IV. YOUTH SOCIALIZATION, PERCEPTIONS OF UNFAIRNESS, AND DISILLUSIONMENT

Another way that disenfranchisement can have negative spillover effects on young adult voters is through the process of political socialization and broader disillusionment. There are three primary sites of political socialization for young adults—their families, their

224. EWALD, *supra* note 142, at i.

225. Young people generally tend to be poorly educated on their civic opportunities. See COMM'N ON YOUTH VOTING & CIVIC KNOWLEDGE, ALL TOGETHER NOW: COLLABORATION AND INNOVATION FOR YOUTH ENGAGEMENT 14–15 (2013), https://circle.tufts.edu/sites/default/files/2020-01/all_together_now_commission_report_2013.pdf.

226. Lewis & Rodríguez Calderón, *supra* note 202.

227. Sophie Kasakove & Eduardo Medina, *Charges Dropped Against Tennessee Woman Who Was Jailed Over Voter Fraud*, N.Y. TIMES (Apr. 23, 2022), <https://www.nytimes.com/2022/04/23/us/pamela-moses-voter-fraud-charges-dropped.html>. Ms. Moses incorrectly was told by a probation officer that she was able to vote, and he filled out her restoration form. *Id.* Ms. Moses attempted to submit it and was prosecuted for voter fraud and sentenced to six years in jail. *Id.* The case was overturned because of withheld exculpatory evidence. *Id.* Memphis prosecutors chose not to retry her. *Id.*

228. Alexa Ura, *Crystal Mason's Contentious Illegal Voting Conviction Must Be Reconsidered, Criminal Appeals Court Says*, TEX. TRIBUNE (May 11, 2022, 12:00 PM), <https://www.texastribune.org/2022/05/11/crystal-mason-illegal-voting-texas/>. Ms. Mason was convicted of voter fraud after she cast a provisional ballot when she was ineligible, but it was overturned because there was evidence that she did not know she was ineligible, and the conviction did not properly assess her intent. *Id.*

communities, and their schools.²²⁹ Felony disenfranchisement can negatively affect the efficacy of voting-related socialization in each of these contexts thereby reducing young adult turnout.

Young adults are influenced by their families' political orientations and electoral engagement. When a youth grows up in a family that faces barriers to voting related to felony status or criminalization more broadly, that young person is less likely to vote once they reach voting age. Many children in the United States grow up in families that are facing challenges related to criminalization. Nearly half of all children in the United States live in households where a parent has some form of a criminal record,²³⁰ and 7% of all children (more than 5.2 million) in the country have experienced the jailing or imprisonment of a parent with whom they live.²³¹ There are no numbers capturing how many children grow up in households negatively affected by felony disenfranchisement, though the numbers and percentages of affected children are likely to be particularly high in the majority of states that extend disenfranchisement past the end of a carceral sentence. Many of the people serving sentences in state and federal prisons are parents, and this number has grown significantly in the past few decades.²³²

The effects of felony disenfranchisement specifically and criminal system contact generally on a family unit, including on young adult

229. Melanie Bowers & Robert R. Preuhs, *Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons*, 90 SOC. SCI. Q. 722, 725 (2009).

230. REBECCA VALLAS ET AL., REMOVING BARRIERS TO OPPORTUNITY FOR PARENTS WITH CRIMINAL RECORDS AND THEIR CHILDREN: A TWO-GENERATION APPROACH 1 (2015), https://americanprogress.org/wp-content/uploads/2015/12/CriminalRecords-report2.pdf?_ga=2.98002140.2122256458.1648353980-1367541949.1648089449.

231. *Children Who Had a Parent Who Was Ever Incarcerated By Race and Ethnicity in the United States*, THE ANNIE E. CASEY FOUND. KIDS COUNT DATA CTR., [https://datacenter.kidscount.org/data/tables/9734-children-who-had-a-parent-who-was-ever-incarcerated-by-race-and-](https://datacenter.kidscount.org/data/tables/9734-children-who-had-a-parent-who-was-ever-incarcerated-by-race-and-ethnicity#detailed/1/any/false/1696,1648,1603/10,11,9,12,1,13/18995,18996)

[ethnicity#detailed/1/any/false/1696,1648,1603/10,11,9,12,1,13/18995,18996](https://datacenter.kidscount.org/data/tables/9734-children-who-had-a-parent-who-was-ever-incarcerated-by-race-and-ethnicity#detailed/1/any/false/1696,1648,1603/10,11,9,12,1,13/18995,18996) (last visited Sept. 23, 2022). These numbers vary widely based on geography; for example, in Kentucky, it is 13% versus 3% in New Jersey. NAZGOL GHANDNOOSH ET AL., PARENTS IN PRISON 1 (2021), <https://www.sentencingproject.org/wp-content/uploads/2021/11/Parents-in-Prison.pdf>; see THE ANNIE E. CASEY FOUNDATION, A SHARED SENTENCE: THE DEVASTATING TOLL OF PARENTAL INCARCERATION ON KIDS, FAMILIES AND COMMUNITIES 5 tbl.1 (2016), <https://assets.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>. The numbers also vary by race where 20% of Native children and 13% of Black children have experienced the incarceration of a parent versus 6% of Latinx or white children. *Children Who Had a Parent Who Was Ever Incarcerated*, *supra*.

232. LAUREN E. GLAZE & LAURA M. MARUSCHAK, PARENTS IN PRISON AND THEIR MINOR CHILDREN 3 (2008), <https://bjs.ojp.gov/content/pub/pdf/pptmc.pdf> (45% of young men under the age of twenty-four are fathers and slightly higher percentages of women in that age range are mothers—48% in federal prisons and 55% in state prisons).

children, are likely to further reduce young adult voting. In family units where one or more adult is de jure or de facto prevented from voting, a young person is less likely to be able to learn from a parent's voting example or to absorb the implicit or explicit messages that voting is an important part of citizenship.²³³

A youth's community is another important site of political socialization. The experiences of criminal legal system contact and felony convictions are concentrated geographically—some neighborhoods experience a lot of policing, arrests, and incarceration while others do not.²³⁴ While people with felony records live all over the country, people with felony convictions are often concentrated in certain neighborhoods.²³⁵ In these neighborhoods, the large number of people missing because of imprisonment or otherwise sidelined from full participation due to collateral consequences can significantly reduce the resources a community can access.²³⁶ Felony disenfranchisement laws demonstrate one way that this concentration can reduce electoral participation.²³⁷ At least one study of neighborhoods in New York shows that in neighborhoods with “lost voters”—people with a history of voting who are subsequently disenfranchised—there are substantially lower rates of electoral participation overall than in other neighborhoods.²³⁸ Because disenfranchisement is concentrated in certain neighborhoods,²³⁹ typically those that are under-resourced and over-policed,²⁴⁰ young adults being socialized in those communities are less likely than those in other neighborhoods to vote²⁴¹ because of factors including a social norm of non-voting.²⁴²

233. Bowers & Preuhs, *supra* note 229, at 725.

234. See THE ANNIE E. CASEY FOUNDATION, *supra* note 231, at 6–7.

235. Press Release, Prison Policy Initiative and VOCAL-NY, Mapping Disadvantage: The Geography of Incarceration in New York State (Feb. 19, 2020), <https://www.prisonpolicy.org/origin/ny/report.html>.

236. *Id.*

237. Bowers & Preuhs, *supra* note 229, at 724.

238. Kevin Morris, *Neighborhoods and Felony Disenfranchisement: The Case of New York City*, 57 URB. AFFS. REV. 1203, 1210–15 (2021).

239. See *e.g.*, RYAN S. KING & MARC MAUER, THE VANISHING BLACK ELECTORATE: FELONY DISENFRANCHISEMENT IN ATLANTA, GEORGIA 1 (2004), <https://www.prisonpolicy.org/scans/sp/atlanta-report.pdf> (a study of Atlanta zip code and neighborhoods).

240. Morris, *supra* note 238, at 1221.

241. See S. David Mitchell, *Zero Tolerance Policies: Criminalizing Childhood and Disenfranchising the Next Generation of Citizens*, 92 WASH. U. L. REV. 271, 310 (2014) (“The impact, however, extends beyond the individual and silences entire communities because of the concentration of ex-offenders in certain communities.”).

242. Bowers & Preuhs, *supra* note 229, at 724 (“It is plausible to suspect that nonfelon participation will be affected by [felony disenfranchisement] policy. A key mechanism is

A third area that is likely to be a site of political socialization for young adults is primary and secondary education. Civics education in K-12 schools has long been discussed as a vehicle for potentially improving young people's rates of electoral participation.²⁴³ As with most educational outcomes, the provision and outcomes of civics education varies significantly based on resources.²⁴⁴ As one example, students whose parents had a high school education or less performed significantly worse on civics assessments than students whose parents attended college.²⁴⁵ Civics education must be strong and equitable in order to have positive social effects. In addition to learning higher-level skills related to our democracy, civics education can also help give young adults the knowledge and confidence to navigate the barriers to voting. One civics proposal, then, is to include specific information about those barriers—like voter registration and voting eligibility in the relevant state—in civics classes. Information about ID requirements and registration deadlines, which show up as obstacles to voting alongside disenfranchisement as a result of a conviction, are important areas for school civics education to address rather than leave it up to each individual young adult to try to figure out on their own.²⁴⁶ The failure to address things like felony disenfranchisement in school civics education programs contributes to high rates of misinformation discussed above.²⁴⁷

Beyond general socialization, youth are also likely to be socialized through the “educational” experience of contact with the criminal legal system, both through their own as well as peers’ and family members’ contact. Studies consistently show lower levels of electoral engagement among people with criminal legal system contact.²⁴⁸ Most of this is not due to formal disenfranchisement but rather due to other factors, including the educative effect that contact with the punitive arm of the state has on potential voters.²⁴⁹ This effect may include mistrust of

that political participation is partly a function of the social norms regarding participation that are present in the environment in which individuals make decisions about participation.”).

243. *Teens and Elections*, *supra* note 22.

244. PETER LEVINE & KEI KAWASHIMA-GINSBERG, THE REPUBLIC IS (STILL) AT RISK—AND CIVICS IS PART OF THE SOLUTION 7–10 (2017), <https://civxnow.org/sites/default/files/resources/SummitWhitePaper.pdf>.

245. *Id.* at 8–9.

246. COMM’N ON YOUTH VOTING & CIVIC KNOWLEDGE, *supra* note 225, at 36.

247. *See supra* notes 202–22 and accompanying text.

248. *See generally* Vesla M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 AM. POL. SCI. REV. 817 (2010).

249. *Id.* at 818, 827.

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political actors and decreased attachment to broader political institutions.²⁵⁰

Young people also experience the educational effects of the criminal legal system not through their own direct contact but through proximal contact—relationships with others who are subject to the criminal legal system and de jure or de facto disenfranchisement. Studies examining the effects of proximal contact paint a complex story about the effects of criminal legal system contact on others, though they typically show at least short-term decreases in voting.²⁵¹

The experiences of young people with the criminal legal system, personally or by proxy, may also create a negative norm against participation by encouraging the questioning of the legitimacy of politics and participation.²⁵² Youth, particularly those in over-policed communities, experience disenfranchisement alongside other disempowering experiences of the state, such as police stops, as well as structural disempowerment through prison gerrymandering.²⁵³ A CIRCLE study noted, “young people in urban communities feel a sense of civic and political disempowerment Interacting with the criminal justice system is one important way in which such a sense of powerlessness and antagonism to authority is generated.”²⁵⁴ When youth voters feel disempowered, which they often do through criminalization generally and disenfranchisement specifically, they are less likely to vote.

250. *Id.* at 818–19.

251. Some studies show significant and sustained decreased likelihood of voting while others show only a short-term dip in electoral engagement after a family member’s conviction. *Id.*; Ariel White, *Family Matters? Voting Behavior in Households With Criminal Justice Contact*, 113 AM. POL. SCI. REV. 607, 607–13 (2018). Some studies show heightened political engagement in family members through non-voting activities, further showing the complexity of the effects here. See Hannah L. Walker, *Extending the Effects of the Carceral State: Proximal Contact, Political Participation, and Race*, 67 POL. RSCH. Q. 809, 818 (2014); Hannah L. Walker & Marcela García-Castañón, *For Love and Justice: The Mobilizing of Race, Gender, and Criminal Justice Contact*, 13 POL. & GENDER 541, 563–66 (2017).

252. Bowers & Preuhs, *supra* note 229, at 726.

253. Garrett Fisher et al., *Prison Gerrymandering Undermines Our Democracy*, BRENNAN CTR. FOR JUST. (Oct. 22, 2021), <https://www.brennancenter.org/our-work/research-reports/prison-gerrymandering-undermines-our-democracy>.

254. Compare SURBHI GODSAY ET AL., “THAT’S NOT DEMOCRACY”: HOW OUT-OF-SCHOOL YOUTH ENGAGE IN CIVIC LIFE & WHAT STANDS IN THEIR WAY 43–45 (2012), https://circle.tufts.edu/sites/default/files/2020-01/thats_not_democracy_2012.pdf (citations omitted), with Kristian Lundberg et al., *The Civic and Political Attitudes of Young White Men*, CIRCLE (Apr. 29, 2020), <https://circle.tufts.edu/index.php/latest-research/civic-and-political-attitudes-young-white-men> (“One of the major factors that can lead to engagement among youth is a sense of political power and civic agency. If young people believe that they have the power to effect change—as 81% of youth ages 18-24 did in the lead-up to the 2018 midterms—they may be more willing to participate in elections, in activism, and in civic life more broadly.”).

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CONCLUSION

Felony disenfranchisement laws have a particularly negative effect on young adult voters. They exclude young people from voting during formative years, create misinformation and confusion around voting eligibility, and shift power away from overpoliced communities. When advocates for youth voting fail to consider the effects of criminal legal system contact on young adult voters, they fail to take into account one of the most prominent barriers that face a portion of this age group. Similarly, advocates seeking to limit the negative effects of felony disenfranchisement must also remember that a significant number of people affected are young adult voters. To effectively address voting barriers for all people, advocates approaching this issue from both perspectives must consider how the intersecting identities of young adults and disenfranchised person combine to create the steepest barriers for people in this population. This lens suggests that some interventions will be particularly helpful and others less helpful or even have the risk of harming this population.

One of the big takeaways is the importance of addressing misinformation and helping young adult voters navigate administrative barriers related to restoring voting rights. The higher administrative barriers are, the more costly restoration will be particularly for young voters and the less likely it is that they will be able to benefit from even generous restoration policies.²⁵⁵ Allocating resources to helping young adults who are interested in voting navigate barriers related to restoration may be particularly important for a young adult voter to actually be able to follow through on this process.

Advocates may also want to consider ways to institutionalize decreasing information costs, such as by having rights restoration be better integrated into re-entry planning or probation services. The barriers even around seemingly small obstacles like re-registering after automatic restoration can be significant, and particular care must be paid to these seemingly small barriers that may have the effect of pushing young voters further away from the goals of registration and voting. Promoting discussions of administrative barriers generally, and disenfranchisement specifically, in civics education may be another way to demystify some of this process.

One particular barrier to restoration, LFOs, deserves special focus for those concerned about disenfranchisement and young adult voters. Ending LFO requirements will benefit all people who are disenfranchised

255. See *supra* Parts II, III.

but will be a particularly essential reform for young adults who are least likely to be able to pay.²⁵⁶ Highlighting young adult voters may be a particularly helpful way to demonstrate the urgency around ensuring LFOs do not significantly delay voting rights restoration.

Other reforms, like easing the restoration process but retaining a waiting period, are likely to make it easier for older voters to restore their rights while continuing to exclude young adult voters and further expand this disparity.²⁵⁷ Waiting periods and delays are significant barriers for all voters but particularly problematic for young voters who will not be in that status for long. Even efforts to restrict disenfranchisement only to the period of time that a person is imprisoned rather than the period that they are on probation or parole may continue to exclude relatively young voters while restoring rights to older voters. While advocates may choose to go that route rather than preserve the status quo in permanently disenfranchising states, they should also have a clear understanding of the costs of such a policy particularly on young adult voters and identify ways to support these most heavily burdened voters.

Talking about young adult voting without discussing the criminal legal system and felony disenfranchisement, and vice versa, leaves out the portion of potential young voters that are most likely to face the steepest barriers. Centering young adult voters who are disadvantaged by felony disenfranchisement on top of the other costly barriers young voters face can help advocates consider reforms and policy improvements that will promote access to voting for all.

256. See *supra* notes 106–22 and accompanying text.

257. See *supra* Section II.A.1.