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## Undermining Individual and Collective Citizenship: The Impact of Exclusion Laws on the African-American Community

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# UNDERMINING INDIVIDUAL AND COLLECTIVE CITIZENSHIP: THE IMPACT OF EXCLUSION LAWS ON THE AFRICAN-AMERICAN COMMUNITY

*S. David Mitchell\**

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*The most heartrending deprivation of all is the inequality of status that excludes people from full membership in the community, degrading them by labeling them as outsiders, denying them their very selves.<sup>1</sup>*

## I. INTRODUCTION

Felon exclusion laws<sup>2</sup> are jurisdiction-specific, post-conviction statutory restrictions that prohibit convicted felons from exercising a host of legal rights, most notably the right to vote.<sup>3</sup> The professed intent of these laws is to punish convicted felons equally without regard for the demographic characteristics of each individual, including race, class, or gender.<sup>4</sup> Felon exclusion laws, however, have a disproportionate impact on African-American males and, by extension, on the residential communities from which many convicted felons come. Thus, felon exclusion laws not only

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1. KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 4 (1989).

2. This Article uses the phrase "felon exclusion laws" because it represents the interdisciplinary approach undertaken in the analysis. Felons are not just denied rights, but are excluded from full membership in society. Other scholars have used "criminal disenfranchisement" to refer to the disenfranchisement of offenders. Alex C. Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1045-46; see generally Debra Parkes, *Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws*, 13 TEMP. POL. & CIV. RTS. L. REV. 71 (2003) (discussing the abolishment of voting restrictions for incarcerated offenders). Some scholars use the term "felon disenfranchisement." See, e.g., Eric J. Miller, *Foundering Democracy: Felony Disenfranchisement in the American Tradition of Voter Exclusion*, 19 NAT'L BLACK L.J. 32 (2005). Still others refer to the range of laws that deprive convicted felons of rights as "collateral sentencing consequences," Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL'Y REV. 153, 153 (1999), or "collateral consequences of a felony conviction," Kevin G. Buckler & Lawrence F. Travis, III, *Reanalyzing the Prevalence and Social Context of Collateral Consequence Statutes*, 31 J. CRIM. JUST. 435, 436 (2003); Kathleen M. Olivares et al., *The Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later*, 60 FED. PROBATION 10 (1996).

3. For national survey data of state statutes with regard to felon exclusion laws, such as the prohibitions and the status of the convicted felon, see generally Velmer S. Burton, Jr. et al., *Reducing the Legal Consequences of a Felony Conviction: A National Survey of State Statutes*, 12 INT'L J. COMP. & APPLIED CRIM. JUST. 101 (1998); see also generally Buckler & Travis, *supra* note 2; Olivares et al., *supra* note 2.

4. "That long history refutes any suggestion that felon disenfranchisement provisions are racially motivated. Their antebellum origins show that they were aimed at whites and were maintained for race-neutral reasons: before the ratification of the Fourteenth Amendment, the states were free to, and the vast majority did, impose direct and express racial qualifications on the franchise." Roger Clegg et al., *The Bullet and The Ballot? The Case for Felon Disenfranchisement Statutes*, 14 AM. U. J. GENDER SOC. POL'Y & L. 1, 6 (2006), available at <http://www.wcl.american.edu/journal/genderlaw/14/clegg1.pdf?rd=1>.

relegate African-American convicted felons to a position of second-class citizenship, but the laws also diminish the collective citizenship<sup>5</sup> of many African-American communities.

Upon conviction of a felony, generally defined as “a serious crime . . . punishable by imprisonment for more than one year or death,”<sup>6</sup> the individual becomes a member of the convicted felon status group. While all persons convicted of a felony are members of this status group,<sup>7</sup> not all convicted felons have the same relationship to the criminal justice system, thus I have created the following typology to characterize those relationships. The convicted felon status group can be divided into the following two categories—felons and ex-felons—where the status of the former is predicated on some type of control and the latter is not. Specifically, felons have not satisfied the requirements associated with their sentences and thus remain under the auspices of the criminal justice system. The felon category can be further divided into those persons that are incarcerated,<sup>8</sup> on probation,<sup>9</sup> or on parole.<sup>10</sup> By contrast, ex-felons have completed their entire sentences, and are no longer under the direction and control of the criminal justice system.

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5. In this context, the term “collective citizenship” refers to the process of endowing citizenship rights to an entire group. For example, Puerto Ricans were granted the rights of citizenship in the early Twentieth century as a single entity. José A. Cabranes, *Citizenship and the American Empire, Notes on the Legislative History of the United States Citizenship of Puerto Ricans*, 127 U. PA. L. REV. 391, 457 (1978). Similarly, African-Americans were granted the rights of citizenship with the passage of the Reconstruction Amendments; as were women, who became fully incorporated as a group with the passage of the Nineteenth Amendment. Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 951 (2002).

6. BLACK'S LAW DICTIONARY 633 (7th ed. 1999).

7. Convicted felons are a defined community of individuals that cross lines of race, ethnicity, gender, and socioeconomic status. Weber notes that “status groups are normally communities . . . [of] an amorphous kind . . . . Both propertied and propertyless [sic] people can belong to the same status group, and frequently they do with very tangible consequences.” Max Weber, *Class, Status and Party*, in CLASS, STATUS AND POWER: SOCIAL STRATIFICATION IN COMPARATIVE PERSPECTIVE 24 (Reinhard Bendix & Seymour Martin Lipset eds., 2d ed. 1966).

8. Incarcerated felons are individuals that are housed either in a secure facility, such as a jail, a prison, or a penitentiary, or in a community facility, where they must return every evening. BLACK'S LAW DICTIONARY, *supra* note 6, at 760.

9. Probation is “a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison.” *Id.* at 1220.

10. Parole is “the release of a prisoner from imprisonment before the full sentence has been served.” *Id.* at 1139.

Membership in the convicted felon status group comes with many disabilities, not least of which is the infringement upon the right to vote. A felony conviction, however, can also be used to deny additional rights or serve as a basis to terminate existing relationships.<sup>11</sup> For example, depending upon the jurisdiction, a convicted felon can be prohibited from serving on a jury, obtaining public employment, holding public office, or owning a firearm.<sup>12</sup> Moreover, a felony conviction can be cited as a reason to terminate a convicted felon's marriage or parental rights, and can require a convicted felon to register with local law enforcement officials.<sup>13</sup> Felon exclusion laws undermine a convicted felon's full citizenship. Within the convicted felon status group, ex-felons possess the strongest legal and moral claim for having their rights restored automatically upon the completion of their sentences.<sup>14</sup>

Felon exclusion laws have a long and complex history in American jurisprudence.<sup>15</sup> Consequently, scholars disagree as to whether such laws were passed following Reconstruction to purposefully deny the vote to the newly freed African-Americans, or were continuing a longstanding practice of disenfranchisement, political or otherwise.<sup>16</sup> While the contention that felon exclusion laws did not

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11. Olivares et al., *supra* note 2, at 11. Specific jurisdictional statutes will be presented and discussed in Part III. See *infra* notes 84-90.

12. Olivares et al., *supra* note 2, at 12-13.

13. *Id.*

14. This Article focuses specifically on the ex-felon group because ex-felons have completed their sentences and paid their debt to society. In other words, the ex-felons to which this Article refers have been unconditionally released from the direction and control of the criminal justice system. While this Article also contends that convicted felons who are either on probation or parole should not be denied their citizenship rights, that argument is beyond the scope of this Article.

15. For a discussion of the historical origins of felon disenfranchisement in the United States see generally KATHERINE IRENE PETTUS, *FELONY DISENFRANCHISEMENT IN AMERICA: HISTORICAL ORIGINS, INSTITUTIONAL RACISM, AND MODERN CONSEQUENCES* (2005) and Angela Behrens et al., *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559 (2003).

16. "In the wake of Reconstruction and suffrage for adult black males, many states amended their felon disenfranchisement laws with the specific purpose of targeting 'black crimes,' so as to reduce the number of eligible black voters." Elkan Abramowitz, *Felon Disenfranchisement v. Uniform Standards in Federal Elections*, N.Y.L.J., Jan. 2, 2001, at 3. *But cf.* ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 330 (2000) (noting that disenfranchisement laws did not exist solely to deny African-Americans the right to vote, but that "[t]he disfranchisement of felons has a long and complex history, beginning in some states well before the Civil War and interwoven, in the South, with late nineteenth and twentieth-century efforts to keep African-Americans from voting"); Clegg et al., *supra* note 4 at 6.

have a racial basis is in part valid, there is ample evidence to the contrary demonstrating that laws were designed specifically to diminish the power of the African-American community, either by limiting its members' right to vote,<sup>17</sup> thereby making African-Americans voiceless, or by increasing the obstacles to reentry following a conviction and possibly incarceration.<sup>18</sup> For instance, some jurisdictions changed the status of many offenses to felonies so that felon exclusion laws were broad and vague enough to allow newly freed African-Americans to be convicted of a felony.<sup>19</sup> In doing so, African-Americans were denied the opportunity to be full citizens. In many jurisdictions, the right to vote was restricted or outright denied more often than any other right because it served not only as a symbol of membership, and thus a marker of full citizenship, but also because it provided African-Americans with the means to effectuate legal and social change and thus acquire additional rights.<sup>20</sup> While this Article agrees that the right to vote is both symbolically and practically important, it contends that whenever a citizen is denied any right that is guaranteed to all other members of society, the citizen from whom that right is withheld is denied full citizenship.

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17. Christopher Uggen et al., *Felony Voting Rights and the Disenfranchisement of African-Americans*, 5 *SOULS* 48, 49-50 (2003).

18. "Reentry" is a legal term of art used to describe the process by which individuals that have been convicted, and more often than not incarcerated, transition back into society. Demleitner, *supra* note 2, at 156-58; see also JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* 257 (2005).

19. [S]ome states enumerated 'new' crimes . . . that triggered disenfranchisement. These included (in the case of Alabama, 1901) such offenses as 'embezzlement, larceny, receiving stolen property, obtaining money or property under false pretences, assault and battery on the wife, bigamy, miscegenation, crime against nature or crime involving moral turpitude; also any person convicted as a vagrant or tramp, or election fraud.' Georgia's (1877) constitution included a 'moral turpitude' disenfranchising clause, and South Carolina's included 'bigamy, wife beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, assault with intent to ravish, miscegenation, larceny or any offense against election laws.'

PETTUS, *supra* note 15, at 35; see also KEYSAR, *supra* note 16, at 162.

20. Parkes, *supra* note 2, at 88. "While there was an important symbolic effect of including previously disenfranchised individuals in the electorate, the push for voting rights for African Americans was not merely a symbolic matter . . ." *Id.* Under the "Black Electoral Success Theory" put forth by Lani Guinier, "three reasons were articulated for political participation: (1) to mobilize the African American community; (2) to promote a social and economic agenda; and (3) to elect responsive officials." *Id.*

The purpose of this Article is to demonstrate that felon exclusion laws are not race neutral and that the application of the laws has a racially discriminatory effect, and to call for their abolition. The laws contribute to the erosion of citizenship rights for the individual African-American ex-felon, and the undermining of the collective citizenship rights of the larger African-American community. Part II discusses the conceptualization of citizenship that underscores the premise of the Article. Part III discusses the exclusions that ex-felons encounter and the resulting impact on the individual and the community. Using Alabama as a case study, Part IV presents the operation of felon exclusion laws in a specific jurisdiction. Finally, Part V proposes that felon exclusion laws should be abolished because they deny full citizenship to the individual ex-felon and undermine the collective citizenship of the ex-felons' residential communities.

## II. CONCEPTUALIZING CITIZENSHIP

Citizenship is defined as the status of being a citizen,<sup>21</sup> where the citizen has become a member of a particular political community through a delineated process, owes allegiance to that community, and in return is afforded certain rights and privileges.<sup>22</sup> This literal definition fails to capture fully the complexity inherent in the concept itself.

Citizenship as a concept has a variety of meanings.<sup>23</sup> It is used to discuss the procedural requirements of *how* an individual becomes a citizen of a polity, *i.e.* the process of citizenship. It also refers to *what* is expected of an individual upon becoming a citizen, *i.e.* the practice of citizenship. Yet, citizenship is far too complex a concept

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21. BLACK'S LAW DICTIONARY, *supra* note 6, at 237.

22. PETTUS, *supra* note 15, at 19 (discussing classical theories of citizenship).

23. According to Bosniak, the Roman model of citizenship produced two conceptualizations—citizenship as a matter of formal legal standing, *i.e.* “to be a citizen is to possess the legal status of citizenship,” and citizenship as “entitlement to, and enjoyment of, rights.” LINDA BOSNIAK, THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP 19 (2006). In addition, T.H. Marshall, a British sociologist, posited a “tripartite structure of civil, political, and social rights.” T.H. MARSHALL, CLASS CITIZENSHIP AND SOCIAL DEVELOPMENT 78-79 (1964). Furthermore, there is also a conception of citizenship guided by “civic republican theory which contemporary scholars use to denot[e] ] the process of democratic self-government, deliberative democracy, and the practice of active engagement in the life of the political community.” *Id.* For the purposes of discussion, I use Marshall's tripartite structure as refined by Talcott Parsons, an American sociologist, to discuss how felon exclusion laws deny ex-felons full citizenship and diminish the collective citizenship of their residential communities. See generally TALCOTT PARSONS, THE NEGRO AMERICAN (Talcott Parsons & Kenneth B. Clark eds., 1965).

to be reduced to either the “status of being a citizen”<sup>24</sup> or the practices in which a citizen engages. Rather than engage in a protracted discussion of the many facets of citizenship, which would be beyond the scope of the Article, I will briefly discuss the process, the practice, and the parts of citizenship, *infra*, and the latter will serve as the framework for the analysis of how felon exclusion laws undermine not only the individual citizenship of African-American ex-felons, but also the collective citizenship of the communities of which these ex-felons are members.<sup>25</sup>

### A. The Process of Citizenship

In the United States, an individual is endowed with the status of citizen through two processes—by birth<sup>26</sup> or by naturalization.<sup>27</sup> Citizenship endowed by birth is manifested under two distinct but related doctrines—*jus sanguinis*<sup>28</sup> and *jus soli*.<sup>29</sup> Under the former, “[i]f you were born outside of the United States, you are still considered a citizen at birth if at least one of your parents was a [United States] citizen when you were born.”<sup>30</sup> Under the latter doctrine, “[i]f you were born in the United States, including Puerto Rico, Guam, and the Virgin Islands, you are a citizen at birth . . . .”<sup>31</sup> Regardless of the doctrine under which the status is obtained, the individual is granted citizenship not because of an affirmative choice or decision, but solely through the accident of birth. Under this formulation, citizenship is a passive process whose status is bestowed upon the individual as a result of biological identity. By contrast, citizenship obtained through naturalization is an affirmative, proactive process whereby the person

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24. BLACK’S LAW DICTIONARY, *supra* note 6, at 237.

25. A discussion of the undermining of collective community citizenship could easily address other groups, including Hispanics and poor whites; however, the analysis in this Article is restricted to African-Americans because of the overt historical practice of denying them citizenship.

26. 8 U.S.C. § 1401 (2006). “Most individuals who are citizens at birth are either born in the United States or its territories, or are born to parents who were U.S. citizens.” MARGARET C. JASPER, *BECOMING A CITIZEN* 7 (2005).

27. “Naturalization is the process by which U.S. citizenship is conferred upon a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act.” JASPER, *supra* note 26, at 15.

28. *Jus sanguinis* is “right of blood” and stands for the proposition that “a child’s citizenship is determined by the parents’ citizenship. Most nations follow this rule.” BLACK’S LAW DICTIONARY, *supra* note 6, at 868.

29. *Jus soli* is the “right of the soil” and stands for the proposition that “a child’s citizenship is determined by place of birth.” *Id.*

30. JASPER, *supra* note 26, at 12.

31. *Id.*



seeking to become a citizen must not only satisfy specific statutory requirements before being endowed with the full set of rights attendant to that status, but the individual is also required to perform certain duties as well.<sup>32</sup>

While the doctrines identify two distinct paths to citizenship, the practical result remains the same—legal recognition on the part of the polity that an individual has satisfied the requisite qualifications of membership. Conceived in this manner, citizenship can be viewed simply as a process, passive for some and active for others. Yet, anyone who satisfies the statutory criteria will be recognized as an official member of the polity entitled to the same rights and privileges<sup>33</sup> enjoyed by the other members of the polity. Citizenship as a process, therefore, is a reductionist view whereby the satisfaction of statutorily proscribed criteria endows a person with the legal status of citizenship. This conceptualization of citizenship as a process fails to account adequately for the nuances inherent in the concept of citizenship. While citizenship is a legally defined process in which a person who satisfies the necessary criteria is rewarded with the status of citizen, it also requires potential and current citizens to perform affirmative duties either to qualify for or retain rights associated with the status.

## B. The Practice of Citizenship

To become a citizen and “enjoy all [the] civil rights and protections”<sup>34</sup> that come with that status, a person must fulfill certain ob-

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32. 8 U.S.C. § 1445 (2006); JASPER, *supra* note 26, at 15-16.

If [an individual] wants to become a U.S. citizen, [the individual] must be at least 18 years old before [the individual] can apply for naturalization. In addition, the following eligibility requirements must be met: 1. A period of continuous residence and physical presence in the United States; 2. Residence in a particular USCIS [United States Citizenship and Immigration Services] District prior to filing; 3. An ability to read, write, and speak English; 4. A knowledge and understanding of Civics – i.e., U.S. History and Government; 5. Good moral character; 6. Attachment to the principles of the U.S. Constitution; and 7. Favorable disposition to the United States. All applicants *must* demonstrate the last three . . . requirements . . . . The rest of the naturalization requirements . . . may be modified or waived for certain applicants, such as a member of the U.S. Armed Forces or a spouse of a U.S. citizen.

*Id.*

33. “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” U.S. CONST. amend. XIV, § 1.

34. BLACK’S LAW DICTIONARY, *supra* note 6, at 237.

ligations, foremost being “allegiance to the community.”<sup>35</sup> In this way, citizenship can be conceived as a process of exchange where the individual is required to perform affirmative duties in exchange for a specified set of benefits. In most contexts, especially American society, those benefits are realized in the form of rights. By agreeing to perform the affirmative duties of a particular political community, the individual tacitly agrees to comply with the established rules and regulations of that community. Consequently, the individual’s compliance with the rules of the community requires the individual to surrender some personal freedom.

Citizenship thus conceived is contractarian, and the individual enters into a “social contract” where “[e]ach one of us puts into the community his person and all his powers under the supreme direction of the general will; and as a body, we incorporate every member as an indivisible part of the whole.”<sup>36</sup> In other words, the individual readily submits to the dictates of the polity and is no longer viewed as separate from the polity, but as a part of the larger community. In theory, any person who fulfills the requisite obligations set forth by the political community can receive the benefits associated with that community. Ultimately, therefore, citizenship can be equated with membership in a community. What underlies that membership is the concept of equality.

At the core of American citizenship lies the concept of equality, as exemplified in the Declaration of Independence. With the simple phrase “[a]ll men are created equal,”<sup>37</sup> the founding fathers acknowledged that no one man was more important than any other.

35. *Id.*

36. JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 61 (1968). According to Rousseau, when individuals associate, they form an independent body that has its own life, and each member is individually referred to as a citizen:

Immediately, in place of the individual person of each contracting party, this act of association creates an artificial and collective body composed of as many members as there are voters in the assembly, and by this same act that body acquires its unity, its common *ego*, its life and its will. The public person thus formed by the union of all other persons was once called the *city*, and is now known as the *republic* or the *body politic*. In its passive role it is called the *state*, when it plays an active role it is the *sovereign*; and when it is compared to others of its own kind, it is a *power*. Those who are associated in it take collectively the name of a *people*, and call themselves individually *citizens*, in so far as they share in the sovereign power, and *subjects*, in so far as they and put themselves under the laws of the state.

*Id.* at 61-62.

37. “We hold these Truths to be self-evident, that all Men are created equal, that they are endowed, by their creator, with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.” *THE DECLARATION OF INDEPENDENCE* pmb1 (U.S. 1776).

Yet that simple phrase also indicates whom the founding fathers considered to be equal—while the phrase does not explicitly specify, at that time “all men” meant all propertied white men.<sup>38</sup> Today, the exclusion of women, African-Americans, and other groups from American society is not sanctioned. No one person in contemporary American society is considered more important than any other—it is that notion of equality that forms the basis of American citizenship.

In the United States . . . [equality] seems to mean common citizenship. Americans seem to feel equal when they possess a bundle of rights *and* obligations that they view as normal for their society. Citizenship does encompass certain minimal rights to income and employment . . . Equality is not so much an entitlement, a status, as an *activity*. To be equal an American must *do* things, not just claim them. From that perspective duties such as obeying the law or paying taxes become, not just burdens, but badges of belonging.<sup>39</sup>

With the performance of affirmative duties, a person is considered equal to every other person, sharing in the “common citizenship,”<sup>40</sup> and deemed worthy of the status of citizen.

Some legal scholars argue that the right to vote is a fundamental right, and as such it is central to the meaning of citizenship.<sup>41</sup> Furthermore, the fundamental importance of the right to vote is not determined by its actual exercise, but merely by its possession.<sup>42</sup> Possessing the right to vote is of paramount importance as it is a tool by which an individual engages in active participation—“[t]he right to vote serves as the embodiment of political empowerment, and it is essential to the full privilege of effective citizenship.”<sup>43</sup> The right to vote, therefore, can be construed not only as a means

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38. Laurence H. Tribe & Michael C. Dorf, *Levels of Generality in the Definition of Rights*, 57 U. CHI. L. REV. 1057, 1099 (with the phrase “‘all men,’ the Continental Congress meant only propertied men, or only free men, or only white men, or only free white men with property”).

39. LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* 238-39 (1986).

40. *Id.* at 239.

41. “The ability to exercise the franchise lies at the very root of citizenship . . .” Alice E. Harvey, *Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look*, 142 U. PA. L. REV. 1145, 1145 (1994).

42. The right to vote has significant symbolic and practical importance for previously disenfranchised groups in the United States, including women and people of color. See Eric Foner, *From Slavery to Citizenship: Blacks and the Right to Vote*, in *VOTING AND THE SPIRIT OF AMERICAN DEMOCRACY: ESSAYS ON THE HISTORY OF VOTING AND VOTING RIGHTS IN AMERICA* 55, 55-65 (Donald W. Rogers ed. 1990).

43. Harvey, *supra* note 41, at 1189.

for an individual to exercise political power, but also as a necessary requirement in being a full citizen.

Although the right to vote is undeniably important in defining citizenship, it is not the sole determinant of what it means to be a citizen. The possession of the right to vote, or more aptly the opportunity to participate in the political process, serves as an indicator of a person's legal status as a member of the polity, but nothing more.<sup>44</sup> Conversely, the loss or infringement of that right would indicate both a repudiation of membership in the polity and a lack of full citizenship. This Article contends that because the right to vote is a political right that allows an individual to be an active participant in the government and is exercised cyclically, it is not the determining factor of citizenship. Citizenship in fact embodies a full range of rights including, but not limited to, the possession or exercise of the right to vote.

### C. The Parts of Citizenship

The deprivations that ex-felons encounter extend beyond the scope of the political sphere. The right to vote is integral to a citizen's sense of belonging and undeniably holds a place of critical importance in the United States for both its symbolic and practical value; it serves as a marker of inclusion for formerly excluded groups, *i.e.*, African-Americans, women, and those under the age of eighteen.<sup>45</sup> For ex-felons the right to vote is merely one of many rights denied to them in but one of several spheres of their lives.

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44. The passage of the Fourteenth Amendment to the United States Constitution granted the right to vote to all. U.S. CONST. amend. XIV, § 1. The unimpeded exercise of that right, however, was not realized by African-American voters until the passage of the Voting Rights Act of 1965 that protected them from tactics of disenfranchisement such as literacy tests, poll taxes, and outright violence, which were employed to bar them their right. 42 U.S.C. § 1973 (2006).

45. For African-Americans, the right to vote was granted in 1870 with the Fifteenth Amendment to the United States Constitution (“[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude”), U.S. CONST. amend. XV, § 1, but not realized and legally protected until 1965 and thereafter. 42 U.S.C. § 1973. For women, the right to vote was officially recognized in 1920 with the Nineteenth Amendment (“[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex”), U.S. CONST. amend. XIX, following a vigorous universal suffrage movement. The movement was necessary because the enfranchisement granted in the Fifteenth Amendment specifically addressed race but not gender. U.S. CONST. amend. XV, § 1. Additionally, the right to vote also serves as a marker for eighteen year olds to be fully included in the polity. U.S. CONST. amend. XXVI, § 1 (“The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.”).

Convicted felons are denied a host of rights that govern the social and legal spheres of their life; many of these rights have more pressing importance than the opportunity to cast a ballot. To examine how felon exclusion laws infringe upon the full citizenship of both the individual ex-felon and the community to which the ex-felon belongs, a multi-part conceptualization of citizenship will be used. The leading contemporary scholar to consider such a multi-part conceptualization of citizenship is T.H. Marshall, a British sociologist; and, it is Marshall's formulation of citizenship that frames this Article.

Marshall posited that citizenship is comprised of three distinct, yet interdependent, elements: the civil,<sup>46</sup> meaning individual freedom; the political, referring to the franchise; and the social, addressing an individual's economic life.<sup>47</sup> The political element, according to Marshall, consists of the "right to participate in the exercise of political power."<sup>48</sup> This element is comprised not only of the right to vote, but also includes the right to pursue public office; political power is manifested in the voice of the people and through the machinations of those chosen to serve as proxies of the people. The rights most commonly associated with the civil element are those rights that are "necessary for individual freedom,"<sup>49</sup> and in the context of the United States are embodied in the Bill of Rights.<sup>50</sup>

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46. Talcott Parsons, an American sociologist, changed the civil element to a legal element to reflect more accurately the uniquely American context of citizenship. "The *civil* (which in an American reference should perhaps be called legal), the *political*, concerned particularly with the democratic franchise, and the *social*, which refers essentially to the context we defined as 'welfare' or, in the terms of our federal organization, health, education, and welfare." PARSONS, *supra* note 23, at 716. For the scope of this Article, however, Marshall's civil element of citizenship will be used.

The *civil element* is composed of the rights necessary for individual freedom—liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and *the right to justice* . . . . This shows us that the institutions most directly associated with civil rights are the courts of justice. By the *political element* I mean *the right to participate in the exercise of political power*. . . . By the *social element* I mean the whole range from *the right to a modicum of economic welfare and security to the right to share the full social heritage and to live the life of a civilized being according to the standards prevailing in the society*. The institutions most closely connected with it are the educational system and the social services.

MARSHALL, *supra* note 23, at 71-72 (emphasis added).

47. *Id.* at 72.

48. *Id.*

49. *Id.*

50. U.S. CONST. amends. I-X.

The social element provides that a citizen not only has a right to earn a living, but also to enjoy all of the intangible rights associated with being a member of that particular society—those intangibles allow an individual to take part in the social heritage of the society.<sup>51</sup> Unlike the political or civil elements, the rights associated with the social element are not explicitly set forth in the United States Constitution, but are reflected in the founding documents of the United States, whereby each person has a right to pursue happiness.<sup>52</sup> Furthermore, the practical expression of Marshall's statement that every citizen has a "right to a modicum of economic welfare and security"<sup>53</sup> and "the right to share the full social heritage and to live the life of a civilized being according to the standards prevailing in the society"<sup>54</sup> is realized, in part, in the social welfare system; the stated purpose and goals of which are to provide assistance to citizens and to prevent them from falling below a minimum standard of living.<sup>55</sup>

In accord with Marshall's conceptualization, citizenship is comprised of more than the right to vote. Citizenship means that a person who has obtained the status of a citizen is equal to all other members of society and is not only endowed with, but also entitled to, all of the rights associated with each of citizenship's three elements. By extension, the denial or the infringement of *any* right associated with one of those elements constitutes an erosion of that person's full citizenship.

### III. IMPACT OF FELON EXCLUSION LAWS

All fifty-one United States jurisdictions have felon exclusion laws, with the substance of these laws differing by jurisdiction. When ex-felons have followed the rules set forth by the criminal justice system after committing a crime, including, but not limited to, serving a sentence, and these ex-felons' rights are not restored automatically following release from that system, they are denied full citizenship. Moreover, the deprivation of citizenship to the individual ex-felon has the collateral impact of infringing upon the

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51. Marshall, *supra* note 23, at 72.

52. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

53. Marshall, *supra* note 23, at 72.

54. *Id.*

55. Eric A. Posner, *Contract Law in the Welfare State: A Defense of the Unconscionability Doctrine, Usury Laws, and Related Limitations on the Freedom of Contract*, 24 J. LEG. STUD. 283, 301 (1995) ("The purpose of the welfare system is not so much to raise the utility of the poor as to establish a minimum welfare level.").

collective citizenship of the residential community of which the ex-felon is a member.

### A. The Exclusion Laws

Any statutory proscription that either impedes an ex-felon's exercise of the vote, renders an ex-felon ineligible for jury service, denies an ex-felon an opportunity to obtain public employment, or disqualifies an ex-felon from holding public office is an infringement upon that ex-felon's full citizenship. No one right is more important than any other when defining the status of being a citizen.

#### i. *Denying the Vote*

A convicted felon is deprived of the right to vote in some manner in approximately forty-seven jurisdictions in the United States.<sup>56</sup> Jurisdictional differences relating to the deprivation of the right to vote become readily apparent when one considers the specific conditions for the loss of the right or the "rights restoration" process.<sup>57</sup> For instance, twenty-one jurisdictions deprive a person of the right to vote following a conviction only if that person is incarcerated,<sup>58</sup> but thirteen of those twenty-one restore the

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56. The jurisdictions include all fifty states and the District of Columbia. Of the four that give a convicted felon the right to vote, Maine and Vermont do so for all offenses, Alabama for offenses not "involving moral turpitude," and Mississippi for offenses not constitutionally specified. See MARGARET COLGATE LOVE, RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE 85 (2006).

57. The "rights restoration" process refers to the jurisdictional procedures to which convicted felons must follow to have their civil rights returned.

58. See Appendix I; see also LOVE, *supra* note 56, at 85. "In most of these jurisdictions the vote is lost only if the person is actually incarcerated, and not if the prison term is suspended. However, persons sentenced to prison in Idaho, Louisiana, and South Dakota lose the right to vote even if the prison portion of the sentence is suspended . . ." LOVE *supra* note 56, at 85 n.53. All tables relating to the deprivations that ex-felons face are drawn from LOVE, *supra* note 56, and OFFICE OF THE PARDON ATTORNEY, CIVIL DISABILITIES OF CONVICTED FELONS: A STATE-BY-STATE SURVEY (1996).

right to vote upon release,<sup>59</sup> and seven upon completion of the sentence.<sup>60</sup>

An additional twenty-one jurisdictions, absent any overlap with the first group, deprive a convicted felon of the right to vote solely upon conviction.<sup>61</sup> Some require that the convicted felon be a first time offender<sup>62</sup> and others restore the right to vote depending on the type of offense.<sup>63</sup> Although the majority of jurisdictions deny the right to vote when a convicted felon is serving a sentence, there are several jurisdictions that have either waiting periods or discretionary restoration policies which impact the deprivation of the right to vote.<sup>64</sup>

Discretionary restoration policies often entail a combination of waiting periods following the unconditional discharge from a sentence and an application either to the Board of Pardon and Parole or the governor. Some jurisdictions have discretionary policies for all convicted felons. For instance, in Florida, convicted felons are

59. ILL. CONST. art. III, § 2; MICH. CONST. art. 2, § 2; MONT. CONST. art. IV, § 2; UTAH CONST. art. IV, § 6; D.C. CODE §§ 1-225, 1-241(c), 1-1302(7)(A) (2007); HAW. REV. STAT. § 831-2(a)(1) (2006); IND. CODE § 3-7-13-4(a) (2006); MASS. GEN. LAWS ANN. ch. 51, § 1 (West 2001); N.H. REV. STAT. ANN. § 607-A:2(I)(a), (b) (2006); N.D. CENT. CODE §§ 12.1-33-01 to -03 (2005); OHIO REV. CODE ANN. § 2961.01 (West 2006); OR. REV. STAT. § 137.281 (2005); 25 PA. CONS. STAT. ANN. §§ 2602(w), 3146.1 (West 2006). See UTAH CODE ANN. § 20A-1-705 (2006) (except for federal and out-of-state offenders); see also LOVE, *supra* note 56, at 135-39; OFFICE OF THE PARDON ATTORNEY, *supra* note 58.

60. See Appendix I.

61. See Appendix II.

62. Some jurisdictions deny the right to vote until the full discharge of the sentence for first time offenders. ARIZ. CONST. art. 7, § 2, MD. CONST. art. 1, § 12; NEV. CONST. art. 2, § 1; ARIZ. REV. STAT. ANN. §§ 13-904(A)(1)-(4), 16-101(5) (2006); MD. CODE ANN., ELEC. LAW § 3-102 (West 2006); MD. CODE ANN., CTS. & JUD. PROC. § 8-207(b)(1) (West 2006).

63. Some jurisdictions deny the right to vote until full discharge based upon the type of offense. TENN. CONST. art. I, § 5; S.C. CODE ANN. § 7-5-120(B)(3) (2006); TENN. CODE ANN. §§ 40-20-112, 2-19-143 (2006) (amended by S. 860, 104th Assem. (Tenn. 2006)); 94 Op. Att'y Gen. 222 (1984).

Under Tennessee's new law, all former felons can bypass the court and complete a certificate of restoration at county election commission offices. The bill, however, expanded the range of felonies that permanently disenfranchise anyone with the exception of certain offenses. It also requires the formerly incarcerated to be current on child support payments and pay financial restitution—an area of contention for some reform groups.

OFFICE OF THE PARDON ATTORNEY, *supra* note 58.

64. DEL. CONST. art. V, § 2, § 7 (five years except for certain serious offenses); NEB. REV. STAT. § 29-112, § 29-113 (2006) (two years); WYO. STAT. ANN. § 6-10-106(a) (2006) (five years for non-violent first offenders only). Maryland requires an additional three-year waiting period for recidivists. MD. CODE ANN., ELEC. LAW § 3-102 (b)(1)(ii).



denied the right to vote until an application to the Clemency Board is submitted.<sup>65</sup> Kentucky and Virginia also place the onus on the convicted felon; while the former requires an application to the governor, the latter mandates an additional waiting period in order for a convicted felon to become eligible to apply to the governor for restoration.<sup>66</sup> Other jurisdictions, however, have discretionary policies for only certain convicted felons. For instance, in Alabama, a crime of moral turpitude will lead to the loss of the right to vote, but the right can be restored upon successful application to the Pardon Board.<sup>67</sup> In Mississippi, convicted felons are required to wait an additional period of seven years following the completion of their sentence and then must apply to the governor for restoration of the right to vote.<sup>68</sup> Regardless of the manner in which it is manifested, the deprivation of the right to vote denies a convicted felon full citizenship because it infringes the political element of citizenship. In addition to disenfranchisement, the deprivation of the opportunity to hold public office is another infringement on the political element of citizenship.

ii. *Barred from Serving in a Representative Capacity*

Felon exclusion laws deprive convicted felons of the opportunity to seek public office, and also to retain public office if the felony conviction occurred while in office. For the majority of jurisdictions that use a felony conviction to bar convicted felons from serving in a representative capacity, the disqualification is based upon the type of offense that was committed.<sup>69</sup> Most jurisdictions deny convicted felons from retaining or seeking public office because they committed an offense that was a violation of trust, such as bribery, perjury, or embezzlement. Other jurisdictions require that for a convicted felon to be eligible to seek office, that person must first have had other rights restored. For example, in Georgia, a person convicted of a felony involving moral turpitude “loses the right to hold any civil office, ‘unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Pa-

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65. LOVE, *supra* note 56, at 26-27.

66. *Id.*

67. *Id.*

68. *Id.*

69. See Appendix III.

roles.’”<sup>70</sup> As such, an ex-felon must wait ten years following his unconditional discharge to be eligible to seek public office.<sup>71</sup>

Apart from offense disqualification or ineligibility due to not having other rights restored, convicted felons that are in office during the commission of the felony are statutorily prohibited from retaining that office. Thus, in some states, a felony conviction that occurs while in office constitutes a forfeiture of that office.<sup>72</sup>

### iii. *Striking Potential Jurors*

The Sixth Amendment of the United States Constitution grants an individual the right to trial by an impartial jury as quickly as is judicially feasible.<sup>73</sup> Nowhere does that right explicitly or implicitly state that an individual has a constitutional right to serve on a jury. If, however, a distinct segment of the population is permanently barred from serving as a juror then the impartiality of the jury system is suspect. In thirty jurisdictions, convicted felons are permanently barred from serving on a jury.<sup>74</sup> Of the remaining twenty-one jurisdictions, seven deny convicted felons the opportunity to be jurors until they have been unconditionally discharged,<sup>75</sup> and four require convicted felons to wait an additional period of time, ranging from one to ten years, before their eligibility for jury service is restored.<sup>76</sup> Not all jurisdictions, however, disqualify a convicted felon outright from jury service.

In some jurisdictions, convicted felons are permitted to be members of the jury pool and are allowed to be disqualified during the voir dire process. For instance, Iowa allows convicted felons to be challenged for cause.<sup>77</sup> Other jurisdictions restrict jury service to

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70. GA. CONST. art. II, §§ II, III.2; GA. CODE ANN. § 45-2-1(3) (2006); *see also* Appendix IV.

71. GA. CONST. art. II, §§ II, III.2; GA. CODE ANN. § 45-2-1(3).

72. *See* Appendix V.

73. “The right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” U.S. CONST. amend. VI.

74. *See* Appendix VI.

75. MINN. CONST. art. VII, § 1; ALASKA STAT. § 33.30.241 (2006) (“No person convicted of a felony may serve on a jury until his unconditional discharge.”); 705 ILL. COMP. STAT. § 305/2 (2006); LA. CODE CRIM. PROC. ANN. art. 401(A)(5) (2006) (the right to serve on a jury is not restored unless the person is pardoned); MICH. COMP. LAWS § 600.1307a(1)(e) (2006); MINN. STAT. § 609.165, subdiv. 1 (2006); WASH. REV. CODE § 2.36.070(5) (2007); WIS. STAT. § 756.02 (2006); *see* State v. Baxter, 357 So. 2d 271, 275 (La. Ct. App. 1978); 49 Op. Att’y Gen. 134 (1980).

76. CONN. GEN. STAT. § 9-46(a), (b) (2007); D.C. CODE ANN. § 11-1906(b)(2)(B) (LexisNexis 2007); KAN. STAT. ANN. § 21-4615(1), (2) (2005); MISS. CODE ANN. § 1-3-19 (2006).

77. IOWA R. CIV. P. 1.915(6); IOWA R. CRIM. P. 2.18(5).

felons convicted only in their jurisdiction and summarily restore the right to serve on a jury upon release from confinement.<sup>78</sup> By contrast, Colorado, Maine, and New Hampshire have no law restricting convicted felons from jury service.<sup>79</sup>

The denial of convicted felons, and more specifically ex-felons, from jury service infringes Marshall's civil element of citizenship because of the direct impact on the institutions commonly associated with that element, the courts of justice.<sup>80</sup> Withholding the right to serve on a jury denies convicted felons the exercise of a civic duty and thus denies an opportunity for such individuals to participate and therefore be full citizens. In addition to being denied the opportunity to exercise a civil element right, convicted felons are statutorily restricted in the employment and occupational licensing opportunities available to them thereby impacting the social element of citizenship.

#### iv. *Public and Private Employment and Occupational Licensing Restrictions*

A majority of jurisdictions statutorily regulate the extent to which a convicted felon can be denied either public employment, private employment, or a license based solely upon their conviction.<sup>81</sup> For many jurisdictions convicted felons can be denied employment, either public or private, or occupational licensing provided that there is a nexus between the occupation and the nature of the offense.<sup>82</sup> For example, even the four jurisdictions with the most "comprehensive laws prohibiting discrimination on grounds of conviction"<sup>83</sup> still allow such grounds to be used to deny the employment opportunities of convicted felons if a relationship

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78. N.D. CENT. CODE § 27-09.1-08(2)(e) (2005); OR. REV. STAT. § 137.281 (2005); VT. STAT. ANN. tit. 4, § 962(a)(5), tit. 12, § 64 (2006).

79. COLO. REV. STAT. § 18-1-105(3) (2006) ("Eligibility for jury service is not lost by conviction, since the disqualification statute was repealed in 1989."); ME. REV. STAT. ANN. tit. 17-A, § 1152(4) (2006); N.H. REV. STAT. ANN. § 607-A:2(I)(a), (b) (2006) ("No disqualification from jury service is imposed upon conviction.").

80. MARSHALL, *supra* note 23, at 78.

81. "Thirty-three states have enacted a generally applicable law purporting to regulate the extent to which public employers and/or licensing authorities can consider conviction in connection with deciding whether to hire or whether to terminate employment." LOVE, *supra* note 56, at 64.

82. "[A] full two-thirds of the states have enacted general laws regulating consideration of a felony conviction in connection with employment and/or licensure, requiring that such a conviction be 'reasonably related' (or 'directly' or 'substantially related') to the particular occupation or profession before termination or refusal to hire is permitted." *Id.* at 63-64.

83. *Id.* at 68-71.

exists between the employment or licensing sought and the nature of the conviction.<sup>84</sup> While other jurisdictions operate similarly, each differs with respect to the type of employment, public or private, that convicted felons are disqualified from holding or the type of licensing that is withheld.

In the absence of a relationship between occupation type and the nature of the conviction, a number of jurisdictions do not deny convicted felons the opportunity to secure public employment and occupational licensing.<sup>85</sup> These same jurisdictions, however, do not restrict the potential for denial in the area of private employment.<sup>86</sup> On the other hand, jurisdictions such as Kansas and Mas-

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84. In Hawaii, with certain exceptions, a person may not be denied public employment, or an occupational or professional license, solely by reason of a prior conviction of a crime. HAW. REV. STAT. § 831-3.1(a), (d) (2006). Hiring and licensing entities may consider a conviction as a possible justification for refusal, suspension, or revocation of employment or a license when the offense directly relates to possible performance in the job and it is determined that “the person so convicted has not been sufficiently rehabilitated to warrant the public trust.” *Id.* § 831-3.1(b).

In New York, a professional or occupational license may be denied, revoked, or suspended because of a conviction. N.Y. ALCO. BEV. CONT. LAW § 126(1) (1-a) (McKinney 2007) (trafficking in alcoholic beverages); N.Y. JUDICIARY LAW § 90(4) (McKinney 2007) (attorney).

In Pennsylvania, employers may consider felony and misdemeanor convictions only to the extent they relate to the applicant’s suitability for employment in that position. 18 PA. CONS. STAT. § 9125(b) (2006). A professional or occupational license may be denied, suspended, or revoked because of conviction of a felony or misdemeanor related to the occupation. *Id.* § 9124(c). Occupations in which conviction of certain crimes may affect licensure include: architect, 63 PA. CONS. STAT. § 34.19(a)(8) (2006) (felony or crime of moral turpitude); psychologist, *id.* § 1208(a)(6) (federal or state felony or equivalent foreign crime, or misdemeanor involving psychology); pharmacist, *id.* § 390-5(a)(2) (felony, offense involving moral turpitude, or offense in connection with the practice of pharmacy); and social worker, *id.* § 1911(a)(1) (felony or crime of moral turpitude).

In Wisconsin, no state employer, private employer, or licensing agency may deny or terminate employment or a license because of a person’s conviction record unless the circumstances of the offense substantially relate to the particular position, or the conviction would preclude obtaining a required bond. WIS. STAT. §§ 111.321, 111.322, 111.32(6), 11.335(c) (2005). For example, a person engaged in the business of installing burglar alarms may not employ a convicted felon as an installer of burglar alarms unless the felon has received a pardon. *Id.* §§ 111.335(1)(cm), 134.59(1). Further, a person’s license or permit relating to alcoholic beverages may be revoked, suspended, or not renewed based solely on his conviction for certain drug offenses under *Id.* § 161.41, or under federal law or the law of another state that is substantially similar. *Id.* §§ 111.335(1)(cs), 125.04(5)(1), (5)(b). Effective July 1, 1997, convicted felons who have not been pardoned are ineligible to be licensed as private detectives or private security persons. *Id.* § 440.26(2)(c)(1). Other fields in which a conviction may be relevant in the licensing decision include medical practices, *id.* § 448.05(1)(a), and optometry, *id.* § 449.07(1)(d).

85. See Appendix VII; see also LOVE, *supra* note 56, at 71-76.

86. LOVE, *supra* note 56, at 71-76.

sachusetts choose to limit public and private employers' inquiry into a conviction, but do not place any such restrictions on occupational licensing authorities;<sup>87</sup> even these jurisdictions exempt classes of occupations from using a felony conviction as grounds for denying employment.<sup>88</sup> Still others restrict the disqualification of convicted felons with regard to "occupational licensure but not employment."<sup>89</sup> Finally, several jurisdictions allow a felony conviction to be used to deny licensing for specified occupations.<sup>90</sup>

While many jurisdictions regulate the potential disqualification from public or private employment and occupational licensing that convicted felons encounter as a result of their convictions, ex-felons are still readily excluded from a vast number of employment opportunities. Consequently, convicted felons are statutorily precluded from making economic choices that directly impact their well-being and collaterally impact their communities.

### B. Impact of the Exclusions on the Individual

All convicted felons, as members of the convicted felon status group, should occupy a similar position not only within the criminal justice system but also upon release from the system. Felon exclusion laws therefore should impact all persons convicted of a felony equally. Nothing could be further from reality. With the lack of uniformity across jurisdictions and between the federal and state system, convicted felons encounter a variety of disabilities depending upon the jurisdiction in which the conviction occurred. In addition to the differential impact across jurisdictions or in specific

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87. In Kansas, a licensing board may consider an applicant's felony conviction, but the conviction is not an absolute bar to licensure. KAN. STAT. ANN. § 74-120 (2005). A felony conviction may result in suspension or revocation of a license. *Id.* § 65-2836(c) (healing arts), § 65-1120(a)(2) (nursing), § 65-1627(a)(2), (c) (pharmacy), § 74-5324(a) (psychology), § 1-311(a)(9) (accounting).

In Massachusetts, certain convictions may be considered by a licensing authority in deciding whether to grant, suspend, or revoke an occupational or professional license. MASS. GEN. LAWS ANN. ch. 112, § 5 (medicine), ch. 112, § 52D (dentistry), ch. 112, § 60A, 60G (architecture), ch. 112, § 128 (psychology), ch. 112, § 55 (veterinary medicine) (West 2004). See also LOVE, *supra* note 56, at 76-77.

88. In Massachusetts, no person who has been convicted of a felony may be appointed as a peace officer, MASS. GEN. LAWS ANN. ch. 41, § 96A, and no person who has been convicted of a felony or convicted of a misdemeanor for which she was confined in any jail or house of correction is eligible to be a state correctional officer, unless, in the case of lower-ranking employees, the commissioner of the department of correction certifies that the appointment will contribute substantially to the work of the department. *Id.* ch. 125, § 9. No convicted felon may be appointed as an inspector of the Department of Public Safety. *Id.* ch. 22, § 6A.

89. See Appendix VIII; see also LOVE, *supra* note 56, at 77-82.

90. See Appendix IX.

regions of the United States, felon exclusion laws also have a disproportionate impact across other demographic categories, such as race and socioeconomic status. More specifically, felon exclusion laws disproportionately impact African-American convicted felons because of their representation in the felon status group relative to their presence in the general population of the United States.<sup>91</sup> To illustrate the impact of felon exclusion laws on the African-American community, voting registration and the lack thereof will be used as a proxy for exclusions within the community with respect to voting and the other disabilities that convicted felons encounter.

According to the 2000 Census, the population of the United States totaled 281,421,906.<sup>92</sup> African-Americans comprise 35,658,190 members of the total population, or approximately 12.3 percent. By comparison, there are a total of 211,460,626 who identify as whites only, or approximately 75.1 percent; Hispanics or Latinos (of any race) comprise 35,305,818, or approximately 12.5 percent of the population.<sup>93</sup> The population data indicates that there are six times more whites (single race only) than African-Americans in the total general population. Therefore, the impact of any practice or policy will be more profound for the group whose population is smaller relative to the larger group. The im-

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91. The statistical methodology reflected in this section was presented originally using 1990 Census data.

The 1990 Census reported that 29,986,060 of a total 248,709,873 Americans are black, compared to 199,686,070 white citizens. Blacks account for roughly 12.1% of the total U.S. population, compared to the 80.3% white population . . . . [T]he black voting age population which, in 1998, was estimated to be 9,171,000, or approximately 4% of the current total population. Of that number of eligible black voters, 5,842,000 blacks, or 63.7 were registered to vote.

Harvey, *supra* note 41, at 1150-51. In this Article, the methodology is similarly applied with 2000 data.

92. The 2000 census data is used instead of the later estimates of 2004 because the relevant data on registration of voters and convictions of felonies is for 2002, thus making a comparison between the two inexact. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, PROFILES OF GENERAL DEMOGRAPHIC CHARACTERISTICS: 2000, <http://www.census.gov/prod/cen2000/dp1/2kh00.pdf> [hereinafter CENSUS DEMOGRAPHICS 2000].

93. The percent total for African-Americans, Whites, and Hispanics equals 99.9 percent. "Because Hispanics may be of any race, data in this report for Hispanics overlap slightly with data for the Black population and for the Asian and Pacific Islander population. Based on the November 2000 Current Population Survey, 2 percent of the Black population 18 and older and 1 percent of the Asian and Pacific Islander population 18 and older were of Hispanic origin." BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2002, at 3 n.6, <http://www.census.gov/prod/2002pubs/p20-542.pdf> [hereinafter VOTING AND REGISTRATION].

pact is even more profound when the pool of individuals is decreased further.

The United States voting population is bounded not only by age restrictions, but also by citizenship. Thus, the relevant population under consideration is all persons at least eighteen years old, and citizens of the United States.<sup>94</sup> In the year 2000, that number was 209,128,094.<sup>95</sup> Of that number, there were 129,549,000 individuals that were not only eligible to vote but also registered to vote, and 110,826,000, or approximately 69.5 percent, reported actually exercising the right.<sup>96</sup> Within the African-American population, the total number of eligible citizens was 22,753,000, with 15,348,000 registered to vote. Of the latter number, there were 12,917,000, or 67.5 percent, that reported actually voting.<sup>97</sup> By reference, the relevant figures for the eligible white, non-Hispanic, voting population was 144,732,000, of which 103,588,000 were registered and 89,469,000, or 71.6 percent that actually voted.<sup>98</sup> Comparatively, there are six times more eligible non-Hispanic whites than African-Americans that are able to cast a ballot.<sup>99</sup> Thus, any practice that affects the ability to either register or cast a ballot will have a greater impact on the African-American community; that becomes readily apparent when the number of African-American males convicted of a felony is considered.

In the United States, men over the age of eighteen are forty-eight percent of the total general population, but comprise approximately eighty-three percent of the convicted felon population.<sup>100</sup> While non-Hispanic whites were seventy-nine percent of the gen-

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94. U.S. CONST. amend. XXVI, § 1 ("The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.").

95. CENSUS DEMOGRAPHICS 2000, *supra* note 92, at 3.

96. *Id.*

97. For Hispanics of any race, the figures are: total eligible 13,158,000; total registered 7,546,000, with 5,934,000 reporting voted or 57.3. *Id.*

98. *Id.* at 3.

99. In no way does this Article assert that all non-Hispanic whites or African-Americans vote the same way. The use of the voting and registration data is used to demonstrate that with such a population advantage in the non-Hispanic white community, the impact of felon exclusion laws may not be felt to the same extent as in the smaller African-American community. It is important to note, however, that if the communities were divided along other demographic categories, such as socioeconomic status, communities of low socioeconomic non-Hispanic whites would be disproportionately impacted relative to their position with other members in the non-Hispanic white category.

100. MATTHEW R. DUROSE & PATRICK A. LANGAN, FELONY SENTENCES IN STATE COURTS, 2000 (2003), <http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc00.pdf>.

eral population, they only accounted for fifty-four percent of the felony convictions.<sup>101</sup> On the other hand, African-Americans were only twelve percent of the general population, but were forty-four percent of the convicted felon population.<sup>102</sup> In other words, of the estimated 924,700 felony convictions in state court, African-Americans accounted for 410,100 of the convictions.<sup>103</sup> Approximately two percent of the eligible African-American voting population was disenfranchised as a consequence of a felony conviction occurring in the year 2000. While two percent of the African-American community encounters the prospect of disenfranchisement in a single calendar year, the cumulative effect is much greater. According to Uggen and Manza, as well as others, the number of disenfranchised citizens in the African-American community is seven percent, compared to only 2.3 percent in the general population.<sup>104</sup> Others have noted that African-Americans are disenfranchised at a rate of seven times that of the national average.<sup>105</sup>

With each passing year, the conviction and incarceration rate of African-American males continues to increase<sup>106</sup> and the denial of

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101. *Id.* The Bureau of Justice Statistics does not disaggregate the groups according to age groups. *Id.*

102. *Id.*

103. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, STATE COURT SENTENCING OF CONVICTED FELONS (2000), tbl. 2.1, <http://www.ojp.usdoj.gov/bjs/abstract/scscts.htm>.

104. "4.6 million ex-felons are disenfranchised," and within the African-American community, which comprises less than thirteen percent of the total United States population, *supra* note 91, more than seven percent of the population is barred from voting due to felony convictions; while in the general population that comprises more than eighty-five percent of the total United States population, *supra* note 91, only "2.3 percent" are restricted from voting. Uggen et al., *supra* note 17, at 52. According to Human Rights Watch, "3.9 million adults, or 2% of the population, are disenfranchised at present; but among black men the figure is 1.3 million, or 13%." Human Rights Watch, *Disenfranchised for Life*, THE ECONOMIST, Oct 24, 1998 at 30 [hereinafter Human Rights Watch, *Disenfranchised for Life*]; see also Lani Guinier, *What We Must Overcome*, THE AMERICAN PROSPECT, Mar. 12, 2001, at 26, available at <http://www.prospect.org/print/V12/5/guinier-l.html>; Gillian Metzger, *Cruel and All Too Usual*, NAT'L L.J., June 28, 1999, available at [http://www.brennancenter.org/stack\\_detail.asp?key=96&subkey=6696](http://www.brennancenter.org/stack_detail.asp?key=96&subkey=6696).

105. HUMAN RIGHTS WATCH AND THE SENTENCING PROJECT, LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 8 (1998), [http://www.sentencingproject.org/tmp/File/FVR/fd\\_losingthevote.pdf](http://www.sentencingproject.org/tmp/File/FVR/fd_losingthevote.pdf).

106. We are incarcerating African-American men at a rate of approximately four times the rate of incarceration of black men in South Africa under apartheid . . . . The number of black men, in prison (792,000) has already equaled the number of men enslaved in 1820 . . . . If current trends continue, only 15 years remain before the United States incarcerates as many African-American men as were forced into chattel bondage at slavery's peak, in 1860.



their full citizenship continues to proliferate. Accepting the data that seven percent of the African-American population is disenfranchised means that a significant portion of the African-American community is not only deprived of the opportunity to cast a ballot but also denied the opportunity to seek public office, serve on a jury, or secure gainful employment. The cumulative effect of these disabilities not only undermines the individual convicted felon's citizenship status but also denies collective citizenship to the community.

### C. Impact on the African-American Community

Felon exclusion laws deny the individual convicted felon rights and privileges and the aggregation of those affected individuals in specific communities directly impacts the political power, economic viability, and social stability of the larger communities to which they belong. In other words, communities with a large number of convicted felons have a significant disadvantage with respect to other communities because many of the members are excluded from participation in the political, civil, and social spheres of community life. The significance of the individual exclusions for such communities is highlighted in a study of two Florida communities.

Todd Clear, a criminal justice professor, conducted an extensive study of two poor and mostly black communities in Tallahassee, Florida, and found that there was "not a single family without at least one disenfranchised man."<sup>107</sup> Extrapolating from these two communities, the extent of the problem is pervasive and, equally as important, concentrated. The concentration of ex-felons in a particular community will impact that community along each of the Marshall elements,<sup>108</sup> thereby undermining the collective citizenship of the community.

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Graham Boyd, *The Drug War is the New Jim Crow*, NACLA REP. ON THE AMERICAS, July-Aug. 2001, at 18, available at <http://www.aclu.org/drugpolicy/racialjustice/10830pub20010731.html>. In the same vein, Human Rights Watch predicts that thirty to forty percent of the next generation of African-American could be permanently disenfranchised if present trends continue. Human Rights Watch, *Disenfranchised for Life*, *supra* note 104 at 30.

107. Nicholas Thompson, *Locking Up the Vote: Former Prisoners Barred From Voting Under Florida Law*, WASH. MONTHLY, Jan. 1, 2001, at 17.

108. See PARSONS, *supra* note 23, at 716.

i. *Silencing the Collective Voice and Diminishing Representative Choice*

When individual ex-felons are denied the right to vote, communities lack the collective ability to alter the outcome of legislation and to choose representatives sensitive to the community's needs. With a disproportionate representation of convicted felons in a community, for example the Tallahassee, Florida communities, it is "unlikely that the community will be able to band together when . . . a state senator proposes locating a toxic waste dump nearby."<sup>109</sup> The community's ability to resist negative proposals is severely hampered, thereby leaving the community at the mercy of an otherwise disengaged and external majority. Moreover, disenfranchisement precludes the community from electing those persons that may serve as representatives of their collective interests.

When a significant segment of the community is denied the opportunity to participate in the political process, communities are subsequently denied the opportunity to vote individuals or parties into office that are favorably disposed to the needs and desires of the community. "The political implications of disenfranchisement can be significant . . . . Because most felons are likely to be poor and members of racial minority groups . . . 'disenfranchisement laws tend to take votes away from Democratic candidates.'"<sup>110</sup> The importance of a community having a representative that is responsive to its needs and that can represent the community's interests in legislative bodies is highlighted in the numerous redistricting and ballot access cases.<sup>111</sup> It has long been recognized that the power to vote is without force if a majority can consistently override the wishes of a substantial minority.<sup>112</sup> Hence, the loss of community voting power prohibits the community from having an effective voice in the political sphere, and the collective voice of the people is effectively silenced. Not only do the deprivations impact the political element of citizenship from the community's perspective, but they also adversely impact other areas, such as the criminal justice system.

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109. Thompson, *supra* note 107, at 17.

110. Somini Sengupta, *Felony Costs Voting Rights for a Lifetime in 9 States*, N.Y. TIMES, Nov. 3, 2000, at A18, A28.

111. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428 (1992); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986); *Bullock v. Carter*, 405 U.S. 134 (1972).

112. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Whitcomb v. Chavis*, 403 U.S. 124 (1971).

ii. *A Priori Jury Pool Bias*

Prior to the venire or seating of a jury, felon exclusion laws operate to disqualify from jury service a disproportionate number of individuals from lower socioeconomic groups and from racial minorities. Consequently, members of those groups who are on trial face the distinct possibility of having a non-representative pool of jurors from which to select a jury of their peers.<sup>113</sup> While there may be a compelling argument for denying probationers and parolees from jury service because of their conditional release status, ex-felons should be allowed to sit on a jury because they have successfully fulfilled the citizenship duties associated with their conviction.<sup>114</sup>

The *a priori* exclusion of ex-felons from jury service has a disproportionate impact on African-American, lower socioeconomic status defendants.<sup>115</sup> Although the United States Supreme Court has stated that proportional representation is not necessary to create a fair jury,<sup>116</sup> the lack of peers in a potential pool of jurors creates an unfair bias not only for the defendant of the same racial group but also for other defendants; moreover, no quantity of protection during the voir dire process can alleviate that inequality. With the increasing number of African-American males convicted of felonies, the issue is not proportional representation, but the lack of a viable pool from which to draw jury members who are demographically similar across a variety of characteristics, such as gender, education, and class.

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113. "It remains clear, however, that the constitutional right to be tried by a jury of one's peers provides 'an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.'" *Neder v. United States*, 527 U.S. 1, 29 (1999) (citing *Duncan v. Louisiana*, 391 U.S. 145 (1968)); see also *Nebraska Press Assoc. v. Stuart*, 427 U.S. 539, 572 (1976) ("The right to a fair trial by a jury of one's peers is unquestionably one of the most precious and sacred safeguards enshrined in the Bill of Rights.").

114. One of the often overlooked affirmative duties of citizenship is adhering to the procedures of the criminal justice system. Therefore, the individual that is convicted of a crime and subsequently serves her sentence is entitled to have her rights automatically restored. The ex-felon may have transgressed the laws and thus failed to perform the positive affirmative duty of refraining from breaking the law, but by completing the sentence and being released from the criminal justice system, the individual has fulfilled another affirmative duty of citizenship. 12 FED. SENT. R. 248.

115. Harvey, *supra* note 41, at 1156.

116. *Batson v. Kentucky*, 476 U.S. 79, 86 (1986) ("Indeed, it would be impossible to apply a concept of proportional representation to the petit jury in view of the heterogeneous nature of our society.").

The rights of an individual accused of a crime are protected by the Sixth Amendment of the U.S. Constitution.<sup>117</sup> Convicted felons should not have a right to sit on a jury simply because they are members of a class of persons that is not represented in the jury trial. They should be allowed to sit on a jury because the felon exclusion laws have a disproportionate impact on a class of persons that is protected, namely African-Americans. Furthermore, ex-felons have served their full sentences and thus their full citizenship should be returned—this can only be effectuated by the automatic restoration of all of their civil rights.

iii. *No Employment, No Capital—Social or Financial*

Families must financially support unemployed ex-felons without the aid of public assistance, which is usually denied to those who have been convicted of a felony.<sup>118</sup> Moreover, the lack of viable employment for ex-felons limits social networking for other members of the community. In other words, potential job opportunities based upon connections and contacts are lost because the social networks built through employment are drastically reduced.<sup>119</sup> In addition to reducing the social networking opportunities for the community members, the lack of employment adversely impacts the self-esteem of ex-felons and, by extension, increases the likelihood of recidivism.<sup>120</sup>

**IV. “SWEET HOME ALABAMA,”<sup>121</sup> BUT NOT FOR EX-FELONS**

Historically, Alabama stands as a reminder that African-American civil rights were not easily granted. Vivid images of the civil rights struggle in Alabama are forever etched in the country’s collective conscience: Birmingham Sheriff “Bull” Connor setting police dogs and turning fire hoses on nonviolent demonstrators and

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117. “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .” U.S. CONST. amend. VI; see also *supra* note 73.

118. See Donna M. Bishop & Charles E. Frazier, *The Consequences of Transfer*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT* 227, 260 (Jeffery Fagan & Franklin Zimring eds., 2000); see also LEGAL ACTION CTR., *AFTER PRISON: ROADBLOCKS TO REENTRY* 12 (2004), available at [http://www.lac.org/lac/upload/lacreport/LAC\\_PrintReport.pdf](http://www.lac.org/lac/upload/lacreport/LAC_PrintReport.pdf).

119. See Dina Rose & Todd Clear, *INCARCERATION, REENTRY AND SOCIAL CAPITAL: SOCIAL NETWORKS IN THE BALANCE*, at 187, available at [http://www.urban.org/UploadedPDF/410623\\_SocialCapital.pdf](http://www.urban.org/UploadedPDF/410623_SocialCapital.pdf) (last visited Apr. 10, 2007).

120. *Id.* at 194.

121. LYNRD SKYNRD, *Sweet Home Alabama*, on *SECOND HELPING* (Sanctuary Records 1974).

the removal of four little girls' bodies from the Sixteenth Street Baptist Church.<sup>122</sup> Alabama stands as a model for how the acquisition of full citizenship status for African-Americans was denied at every turn. Alabama's entrenched policies of denying citizenship to African-Americans still stand strong today. Even in the absence of Bull Connor and the overt influence of the Ku Klux Klan, the Alabama legislature has circumvented the Fourteenth and Fifteenth Amendments of the United States Constitution and infringed upon the citizenship status of African-Americans in many ways. For example, upon a felony conviction, Alabama bars: (1) the right to vote; (2) the right to hold public employment; (3) the right to serve as a juror; and, (4) the right to hold office.<sup>123</sup> Moreover, Alabama allows a felony conviction to be used as grounds for the termination of parental rights and the granting of a divorce; it also requires ex-felons to register in their local communities.<sup>124</sup>

With respect to disenfranchisement, in Alabama and Florida one-third of all African-American men, most of them ex-offenders, have lost their right to vote.<sup>125</sup> Many of the provisions in the state constitution of Alabama parallel the U.S. Constitution. The Alabama constitution of 1868 outlines the processes to gain state citizenship, and they are the same as the federal government—birth or naturalization.<sup>126</sup> When Alabama amended its constitution in 1901 (“the 1901 constitution”), the legislature added several sections that discuss citizenship rights, foremost among them the prohibition of slavery and the protection of the right to vote. Article I, Section thirty of the 1901 constitution states that “no citizen shall be exiled.”<sup>127</sup> In Section thirty-two of the same article, the constitution states that “no form of slavery shall exist in this state; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.”<sup>128</sup> Section thirty-three addresses the right to vote: “[t]he

122. MARY BETH NORTON, ET AL., *A PEOPLE AND A NATION: A HISTORY OF THE UNITED STATES* 622-24 (1996).

123. Olivares et al., *supra* note 2, at 13. The restoration of the right to vote can be obtained with a pardon or a certificate of eligibility from the Board of Pardons and Paroles. ALA. CODE § 17-3-31 (1975).

124. *Id.* at 12-13.

125. Human Rights Watch, *Disenfranchised for Life*, *supra* note 104, at 30.

126. “That all persons resident in this state, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, hereby declared citizens of the State of Alabama, possessing equal civil and political rights.” ALA. CONST. of 1868, art. I, § 2.

127. ALA. CONST. art. I, § 30.

128. *Id.* art. I, § 32.

privilege of suffrage shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.”<sup>129</sup> In many ways, the state constitution of Alabama does not differ from the U.S. Constitution.

In subsequent articles to the 1901 constitution, the State outlined the restrictions that could bar an Alabama citizen from certain activities. In Article IV, for example, the constitution identifies which citizenship rights are restricted when a citizen is convicted of a felony. Section sixty outlines the felonies that prohibit a citizen from holding public office.<sup>130</sup> In Amendment 579(b), Alabama sets forth the conditions that restrict a citizen’s right to vote. “No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”<sup>131</sup> Other felon exclusion laws appear in Alabama’s criminal code and focus on criminal registration.<sup>132</sup>

For ex-felons who must submit to criminal registration in Alabama, the constitutional provision focuses on the issue of residence. An ex-felon who has been convicted of two or more felonies is required to register with authorities if present in the state for a period exceeding twenty-four hours.<sup>133</sup> In addition, Alabama requires the registered felon to possess and carry a registration card, and present the card for inspection upon demand by any law enforcement agent.<sup>134</sup> This requirement evokes images not of

129. *Id.* art. I, § 33.

130. “No person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature, or capable of holding any office of trust or profit in this state.” *Id.* art. IV, § 60.

131. *Id.* art. VIII, amend. 579 (repealed and reenacted 1996).

132. Olivares et al., *supra* note 2 at 18.

133. It shall be the duty of any person who has been convicted more than twice of a felony under the laws of any state or the United States, who has not been restored to his civil rights by competent legal authority . . . to register within 24 hours after his arrival in the county, in a book of registration . . . under the supervision of the sheriff.

ALA. CODE § 13A-11-181 (1975).

134. [T]he sheriff or one of his deputies shall give to such person a registration card, showing the name of such person, his address in the county and the date of registration . . . . It shall be unlawful for anyone who is required to register under the provision of this article to be within any county in the state without having in his immediate possession a registration card . . . . It shall be the duty of such person to carry the card with him at all times while he is within the county and to exhibit the same to any officer of a municipality, a county or the state upon request.

*Id.* § 13A-11-182.

the United States, but of South Africa under apartheid. The State of Alabama exacerbates the stigma of being an ex-felon by placing additional prohibitions on the ex-felons; they are branded with a symbolic scarlet letter and must display it upon request.

Consider Arthur Sabree's story. Sabree, age fifty-six, is a one-time cocaine dealer of considerable influence who has been out of prison for ten years and off parole for two years.<sup>135</sup> Mr. Sabree is now a spiritual leader at the Shining Light for Lost Souls Ministry, sells t-shirts on the street, serves as the captain of his neighborhood watch group, and owns the home where he lives with his wife of ten years.<sup>136</sup> As he is a convicted felon, Alabama law bars Mr. Sabree from voting for the rest of his life: "I work every day, I pay taxes, [and] I am now the leader in the spiritual community teaching other people to obey. Voting is a right."<sup>137</sup>

Alabama is a jurisdiction with a difficult process for ex-felons to regain their rights.<sup>138</sup> Alabama denies the right to vote from anyone with a felony conviction and only a pardon from state officials will restore this right,<sup>139</sup> and such an application may require a DNA test and notification to the crime victim.<sup>140</sup> Therefore, upon completion of one's sentence in Alabama, the submission of a DNA test is necessary in order to be able to exercise the right to vote, as well as to exercise other deprived rights. The State finds this process to be reasonable.<sup>141</sup> Regardless of the indisputable fact that the prison time assigned to the crime has been completed, there are extralegal barriers to regaining citizenship in Alabama. Consequently, the denial of citizenship in that state will continue to persist and continue to disproportionately impact African-Americans.

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135. Sengupta, *supra* note 110, at A28.

136. *Id.*

137. *Id.*

138. Civil rights lost as a result of a felony conviction may be regained only through a pardon; the state's pardoning power is generally vested in the Board of Pardons and Paroles. ALA. CONST. amend. 38; ALA. CODE § 15-22-36. A state pardon does not relieve civil and political disabilities unless "specifically expressed in the pardon." ALA. CODE § 15-22-36(c).

139. ALA. CONST. amend. 38; ALA. CODE § 15-22-36.

140. Persons convicted of a felony or certain other offenses involving danger to other persons must submit to the taking of a DNA sample as a mandatory condition of pardon. ALA. CODE § 36-18-25(f).

141. Alabama Attorney General Bill Pryor states that the restoration of the voting rights process "ensures that voting privileges are accorded to the deserving. 'I think it would be a mistake to restore automatically all voting rights for all defendants without regard to whether they've accepted responsibility, expressed remorse and paid restitution to the victim.'" Sengupta, *supra* note 110, at A18.

## V. AUTOMATIC RESTORATION OF RIGHTS FOR EX-FELONS

By depriving convicted felons of the rights and privileges granted to all other citizens, convicted felons are denied full citizenship and reduced to a position of second-class citizenship. The proposition that there are differing levels of citizenship has long been settled,<sup>142</sup> and a deprivation of a fundamental right for one group of citizens and not another violates the Equal Protection Clause.<sup>143</sup> A convicted felon that is denied certain statutorily proscribed rights is not simply relegated to a secondary status of citizenship, but is for all intents and purposes denaturalized. The Supreme Court held that denaturalization without due process is a violation of that person's rights.<sup>144</sup> The remedy proposed for the infringement of a convicted felon's citizenship through the deprivation of rights is the automatic restoration of those rights following unconditional discharge, absent the following exception. For convicted felons that remain under the auspice and control of the criminal justice system, automatic restoration of rights is a rebuttable presumption whereby the State bears the burden of demonstrating that there is a compelling interest to restrict the restoration of a right. In sum, the remedy provided for in this Article is the automatic and unqualified restoration of rights for ex-felons and the automatic restoration for all other categories of felons with the onus on the State to demonstrate that a limitation on restoration is rationally related to a compelling interest.<sup>145</sup>

### A. Exclusion Laws Violate the Fourteenth Amendment

Following the completion of their sentences, ex-felons are unconditionally discharged from the criminal justice system and thus no longer owe a debt to society. Felon exclusion laws inhibit the citizen ex-felon from successfully re-entering society as an equal. The subsequent inequality to which ex-felons are subjected appears to be a violation of the Equal Protection Clause.<sup>146</sup> Appearances,

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142. *See* *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

143. U.S. CONST. amend. XIV.

144. *Trop v. Dulles*, 356 U.S. 86, 124 (1957) ("Divestment of citizenship by the Government has been characterized, in the context of denaturalization, as 'more serious than a taking of one's property, or the imposition of a fine or other penalty.'").

145. This Article will focus on the former proposal, the automatic and unqualified restoration of rights to ex-felons.

146. U.S. CONST. amend. XIV.



however, are not legal conclusions, and thus ex-felons have had difficulty prevailing on that and other constitutional bases.<sup>147</sup>

To prevail under an equal protection claim, an ex-felon would have to demonstrate the existence of a discriminatory purpose and discriminatory intent, and that the group was arbitrarily chosen as the target.<sup>148</sup> Although African-Americans are disproportionately represented in the convicted felon status group, and by extension in the ex-felon category, it would be difficult to demonstrate that the purpose and intent of the felon exclusion laws were aimed at disenfranchising individual African-American males or the collective African-American community, hence the lack of constitutional success. Consequently, an equal protection challenge would not be successful to assert a basis for the automatic restoration of rights to ex-felons. Ex-felons may have a greater opportunity of success in looking for a legislative enactment to restore their rights similar to the manner in which the Voting Rights Act<sup>149</sup> was used to ensure that African-Americans as a whole would not be disenfranchised.

### **B. Legislative Action Needed for Automatic Restoration of Ex-Felon's Rights**

In *Richardson v. Ramirez*,<sup>150</sup> the Supreme Court declared that states may generally deprive offenders of the right to vote without violating the Fourteenth Amendment's Equal Protection Clause. More than a decade after *Ramirez*, the Court held that an Alabama law that disenfranchised certain offenders was invalid because its application lacked uniformity, disproportionately impacted minorities, and there was discriminatory intent that accompanied its passage.<sup>151</sup> Thus, the court invalidated the law not because it impacted citizenship, but because it was an overt dis-

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147. See Ewald, *supra* note 2, at 1047 (citing Elizabeth Du Fresne & William Du Fresne, *The Case for Allowing "Convicted Mafiosi to Vote for Judges": Beyond Green v. Board of Elections of New York City*, 19 DEPAUL L. REV. 112 (1969)); Howard Itzkowitz & Lauren Oldak, Note, *Restoring the Ex-Offender's Right to Vote: Background and Developments*, 11 AM. CRIM. L. REV. 721 (1972); Gary L. Reback, Note, *Disenfranchisement of Ex-Felons: A Reassessment*, 25 STAN. L. REV. 845, 846 (1973); Note, *The Equal Protection Clause as a Limitation on the States' Power to Disenfranchise Those Convicted of a Crime*, 21 RUTGERS L. REV. 297, 297 (1967); Douglas R. Tims, Comment, *The Disenfranchisement of Ex-Felons: A Cruelly Excessive Punishment*, 7 SW. U. L. REV. 124, 127 (1975).

148. *United States v. Armstrong*, 517 U.S. 456, 465 (1996).

149. Voting Rights Act, 42 U.S.C. § 1973 (2006).

150. *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974).

151. *Hunter v. Underwood*, 471 U.S. 222, 225 (1985) (affirming that the district court appropriately found discrimination and that "Section 182 would not have been enacted in absence of the racially discriminatory motivation.").

criminy action on the part of Alabama legislators to deny the right to vote to African-Americans.<sup>152</sup> The Court barred the imposition of restrictive voting laws for ex-felons, but only insofar as there was a discriminatory purpose and intent on the part of the legislators. In the absence of recourse in the judiciary, State legislatures need to address the discriminatory effect that felon exclusion laws have on ex-felons as a whole, and the disproportionate impact that the laws have on African-American male ex-felons and their communities.

Following the passage of the Reconstruction Amendments, African-Americans were constitutionally granted citizenship and endowed with the right to vote. Moreover, the right to vote was protected from infringement from other jurisdictions.<sup>153</sup> Yet, a host of disenfranchisement techniques were used to deprive African-Americans of their constitutionally guaranteed right to vote, including literacy tests, poll taxes, whites only primaries, and grandfather clauses.<sup>154</sup> While judicial action was not wholly successful in overcoming the obstacles that effectively disenfranchised African-Americans, Congress did manage to address disenfranchisement with the passage of the Voting Rights Act.<sup>155</sup>

As a group, ex-felons face wholesale disenfranchisement similar to that experienced primarily by African-Americans after the passage of the Reconstruction Amendments. For ex-felons, however, the impact exceeds the denial of the right to vote and encompasses a host of additional disabilities that lack a nexus to the offense committed. "Most felon disenfranchisement laws apply to anyone who is convicted of a crime for which imprisonment is a possible sentence, regardless of the sentence they actually receive, the nature of their particular crime, or their criminal history."<sup>156</sup> The law ensnares anyone who has been convicted of a felony. With the lack

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152. The U.S. Supreme Court recognized this shameful history in 1985 when it unanimously struck down an Alabama constitutional provision—enacted in 1901 by lawmakers who openly stated that their goal was to 'establish white supremacy'—that had permanently taken the vote from two men who had each written a bad check, a crime of 'moral turpitude' according to the state's attorney general.

Andrew L. Shapiro, *The Disenfranchised*, THE AMERICAN PROSPECT, Nov.-Dec. 1997, available at <http://www.prospect.org/print/V8/35/shapiro-a.html>.

153. U.S. CONST. amend. XIV.

154. *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 664 (1966) (poll tax); *Lassiter v. Northhampton County Bd. of Elections*, 360 U.S. 45, 46 (1959) (literacy test); *Guinn v. United States*, 238 U.S. 347, 357 (1915) (grandfather clause and literacy test).

155. Voting Rights Act, 42 U.S.C. § 1973 (2006).

156. Metzger, *supra* note 104.

of uniformity across jurisdictions, in addition to the Supreme Court's unwillingness to interfere with the criminal justice systems of individual states, perhaps in deferential respect of federalism, it is imperative that Congress acts on ex-felons' behalf and enacts legislation that will secure the automatic restoration of their rights.

## VI. CONCLUSION

The denial of any of the rights of citizenship associated with Marshall's elements<sup>157</sup> denies full citizenship to convicted felons. Of the convicted felon status group members, ex-felons possess the strongest moral and legal claim for the automatic restoration of their rights following release from the criminal justice system. Ex-felons have performed the affirmative duty of serving their required sentence following conviction. While the State may have a compelling reason to deny the franchise to convicted felons who are either incarcerated, on probation, or on parole, there is no compelling or legitimate state interest for withholding the vote from ex-felons,<sup>158</sup> other than punishment. "Disenfranchising ex-felons who have served their time and paid their debt to society is indefensible under even the most punitive theories of criminal justice."<sup>159</sup> A released ex-felon is thrust into a halfway status of having physical freedom, but not the full rights of a free citizen.

Ex-felons are required and expected to comply with the affirmative duties of citizenship, such as obeying the law and paying taxes, yet they do not receive the attendant benefits and rewards for the performance of those duties. In fact, the ex-felon situation parallels that of the founding fathers who stated that taxation without representation was unfair and commenced a revolution to end the tyranny of a system of government that did not recognize them as full citizens.<sup>160</sup> In addition to the principled reasons for restoring these rights, there are important practical considerations as well.

With the silencing of ex-felons and the resulting ostracism that occurs, ex-felons are more likely to re-offend.<sup>161</sup> Felon exclusion laws contribute to the difficulty of prisoners reentering their com-

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157. MARSHALL, *supra* note 23, at 71-72.

158. There is no compelling reason to deny the franchise to any convicted felon. This Article concedes that point merely to stress that ex-felons have completed their sentences and the punishment should end at the conclusion of their legislatively mandated sentences.

159. Shapiro, *The Disenfranchised*, *supra* note 152.

160. The American Revolution commenced with the rallying cry of "no taxation without representation." NORTON ET AL., *supra* note 122, at 92.

161. See Rose & Clear, *supra* note 119, at 187-192.

munities. "There can be no legitimate Constitutional basis for disenfranchising them once the state has freed them to reintegrate into society. Denying them the right to participate in the core of democratic governance only raises barriers to their rehabilitation as law-abiding members of the community."<sup>162</sup> Moreover, increased alienation is a factor that leads to increased acts of criminality, and thus an increase in recidivism.<sup>163</sup> Faced with a denial of rights, convicted felons are likely to have a lack of respect for the law; the commission of future crimes is not deemed a violation of the social compact because the contract no longer exists.<sup>164</sup> By keeping ex-felons on the margins of society, many will become repeat offenders.

While some suggest that "it makes little difference whether ex-cons regain the vote because they are unlikely to use it,"<sup>165</sup> that is not the point. One of the most important federal protections is the right of both state and national membership in the American polity.<sup>166</sup> In other words, one of the most inviolable rights is that of citizenship. The Constitution mandates that no distinctions regarding the citizens of each state shall exist. Ex-felons, however, are the exception to that rule. In each jurisdiction, full citizenship for the individual ex-felon and the collective citizenship of their communities are undermined in some manner, effectively rendering the ex-felon and the community powerless to participate in the governing of society.<sup>167</sup> Felon exclusion laws infringe upon the ex-

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162. Metzger, *supra* note 104.

163. "Disenfranchising ex-convicts is counterproductive as a matter of criminal policy. Criminologists have found that people who feel connected to their communities are much less likely to commit crimes than those without community ties." David Cole, *Denying Felons Vote Hurts Them, Society*, USA TODAY, Feb. 3, 2000, at 17A.

164. Alex Friedmann, a recently released ex-felon, stated, "[i]f society doesn't care enough about former prisoners to treat them as citizens, with voting rights of citizens, then why should former prisoners care enough about society to act like law-abiding citizens?" Thompson, *supra* note 107, at 17.

165. Shapiro, *The Disenfranchised*, *supra* note 152.

166. U.S. CONST. amend. XIV.

167. Disenfranchisement is the harshest civil sanction imposed by a democratic society . . . the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship . . . voiceless at the ballot box . . . the disinherited must sit idly by while others elect his civic leaders and while others choose the fiscal and governmental policies which will govern him and his family.

Shapiro, *The Disenfranchised*, *supra* note 152. "The right to vote is a precious constitutional right that, if denied, silences a group already on society's margins. Denying prisoners and ex-convicts the vote serves no legitimate penal purpose, impedes rehabilitation and denies all of us the views of those who have experienced prison from the inside." Cole, *supra* note 163, at 17A.

felons' full citizenship because they deny to ex-felons the same rights and privileges granted to other citizens while simultaneously undermining the community's collective citizenship. The only remedy in accord with the interest of justice is the automatic restoration of rights; second class citizenship is no citizenship at all.

**APPENDIX I – RIGHT TO VOTE LOST UPON CONVICTION  
IF INCARCERATED**

California	CAL. CONST. art. II, § 4; <i>Flood v. Riggs</i> , 145 Cal. Rptr. 573 (Cal. Ct. App. 1978).
Colorado	COLO. REV. STAT. § 1-2-103(4) (2006); <i>Danielson v. Dennis</i> , 139 P.3d 688 (Colo. 2006) (en banc).
Connecticut	CONN. GEN. STAT. § 9-46(a)-(b) (2006).
District of Columbia	D.C. CODE ANN. § 1-1001.02(7)(A) (LexisNexis 2007).
Hawaii	HAW. REV. STAT. § 831-2(a)(1) (2006).
Idaho	IDAHO CODE ANN. § 18-310(1) (2006).
Illinois	ILL. CONST. art. II, § 2; 730 ILL. COMP. STAT. § 5/5-5-5(c) (2006).
Indiana	IND. CODE § 3-7-13-4(a) (2006).
Kentucky	KY. CONST. § 145.
Louisiana	LA. CONST. art. I, § 10; LA. REV. STAT. ANN. § 18:102 (2007); <i>Crothers v. Jones</i> , 120 So. 2d 248 (La. 1960).
Massachusetts	MASS. GEN. LAWS ANN. ch. 279, § 30 (West 2006).
Michigan	MICH. CONST. art. II, § 2; <i>see also</i> MICH. COMP. LAWS § 168.758b (2006).
Montana	MONT. CONST. art. IV, § 2; MONT. CODE ANN. § 13-1-111(2) (2005); <i>Melton v. Oleson</i> , 530 P.2d 466 (Mont. 1974).
New Hampshire	N.H. REV. STAT. ANN. § 607-A:2(I)(a), (b) (2006).
New York	ASSEMB. B. 11652, 228th Leg. Sess. (N.Y. 2005) (On June 21, 2005, the New York State Assembly passed the Voting Rights Notification and Registration Act, a bill that would reduce barriers to voting for individuals with felony convictions).
North Dakota	N.D. CENT. CODE § 12.1-33-01 (2005).
Ohio	OHIO REV. CODE ANN. § 2961.01 (West 2007); <i>State ex rel. Corrigan v. Barnes</i> , 443 N.E.2d 1034 (Ohio Ct. App. 1982).
Oregon	OR. REV. STAT. § 137.281 (2006).
Pennsylvania	25 PA. CONS. STAT. § 2602(w) (2007); 25 PA. CONS. STAT. § 3146.1 (2007); <i>United States v. Essig</i> , 10 F.3d 968 (3d Cir. 1993); <i>Owens v. Barnes</i> , 711 F.2d 25 (3d Cir. 1983), <i>cert. denied</i> , 464 U.S. 963 (1983); 1974 OP. ATT'Y GEN. 186 (No. 47) (1974).
South Dakota	S.D. CONST. art. III, § 3 & art. VII, § 2; S.D. CODIFIED LAWS § 23A-27-35 (2007) .
Utah	UTAH CONST. art. IV, § 6; UTAH CODE ANN. § 20A-1-705 (2006); UTAH CODE ANN. § 20A-2-101 (2006); <i>Dodge v. Evans</i> , 716 P.2d 270 (Utah 1985). Here incarceration refers to actual confinement and not a suspended prison term.

## APPENDIX II – RIGHT TO VOTE DENIED UPON CONVICTION

Alaska	ALASKA STAT. § 15.05.030 (2006).
Arizona	Conviction of a felony suspends the rights to vote, to hold public office, and to serve on a jury. ARIZ. CONST. art. VII, § 2; ARIZ. REV. STAT. ANN. §§ 13-904(A)(1)-(3) (2007), 16-101(5), 21-201(3).
Arkansas	ARK. CONST. art. 3, §§ 1, 2 <i>amended by</i> ARK. CONST. amend. 8; amend. 51, § 17.
Georgia	GA. CONST. art. II, § I; GA. CODE ANN. § 21-2-216(b) (2007); 1986 OP. ATTY. GEN. GA. 25 (No. 86-15) (1986).
Iowa	IOWA CONST. art. II, § 5; IOWA CODE § 48A.30 (2006).
Kansas	A person convicted in state or federal court of a crime punishable by imprisonment for one year or longer and sentenced to imprisonment forfeits the rights to vote. KAN. STAT. ANN. § 21-4615(1), (2) (2005).
Maryland	A person convicted of “theft or other infamous crime” loses the right to vote. MD. CODE ANN., ELEC. LAW, § 3-4(c) (West2006).
Minnesota	MINN. CONST. art. VII, § 1; MINN. CONST. art. VII, § 6; MINN. STAT. § 201.014, subdiv. 2(a) (2007); MINN. STAT. § 609.165, subdiv. 1 (2007).
Missouri	MO. REV. STAT. § 115.332(C) (2007); MO. REV. STAT. § 561.026(1) (2007); MO. REV. STAT. § 561.026(2) (2007); <i>Bruno v. Murdock</i> , 406 S.W.2d 294 (Mo. Ct. App. 1966); <i>State ex rel. Barrett v. Sartorius</i> , 351 Mo. 1237 (1943).
Nevada	A person convicted of “treason or felony in any state” may not vote in Nevada unless restored to civil rights. NEV. CONST. art. 2, § 1.
New Jersey	N.J. STAT. ANN. § 2C:51-3(a) (West 2007); N.J. STAT. ANN. § 19:4-1(8) (West 2007); N.J. STAT. ANN. § 19:4-1(6), (7) (West 2007).
New Mexico	N.M. CONST. art. VII; §§ 1, 2; N.M. STAT. ANN. §§ 10-1-2, 31-13-1(A) (West 2007); <i>State ex rel. Chavez v. Evans</i> , 446 P.2d 445 (N.M. 1968).
North Carolina	A person “adjudged guilty” of a state or federal felony or of a felony in another state that would be a felony in North Carolina forfeits the right to vote. N.C. CONST. art. VI, §§ 2(3), 8.
Oklahoma	OKLA. STAT. tit. 26, § 4-101(1) (2007); OKLA. STAT. tit. 26, § 4-120 (2007).
Rhode Island	“No felon shall be permitted to vote until completion of such felon’s sentence, served or suspended, and of parole or probation . . . .” R.I. CONST. art.

- South Carolina II, § 1; *Bailey v. Baronian*, 394 A.2d 1338 (R.I. 1978); *Violet v. Voccola*, 497 A.2d 709 (R.I. 1985). The right to vote is lost upon conviction of a felony or an election crime until completion of sentence, including probation and parole. S.C. CODE ANN. § 7-5-120(B)(3) (2006).
- Tennessee A person convicted of "an infamous crime" or "convicted in federal or another state court of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed," may not register to vote or vote. TENN. CONST. art. I, § 5; TENN. CODE ANN. §§ 2-19-143, 40-20-112.2 (2007).
- Texas TEXAS CONST. art. 6, § 1; *Shepherd v. Trevino*, 575 F.2d 1110 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129 (1979); *Hayes v. Williams*, 341 F. Supp. 182 (S.D. Tex. 1972) .
- Washington WASH. CONST. art. VI, §§ 1, 3; WASH. REV. CODE § 29A.01.079 (2007); *Farrakhan v. Gregoire*, 2006 WL 1889273 (E.D. Wash. July 7, 2006) (On July 7, the Federal District Court for the Eastern District of Washington dismissed the decade-long case in which minority plaintiffs argued that discrimination in the state's criminal justice system leads to high rates of disenfranchisement for minorities and therefore, violates Section 2 of the 1965 Voting Rights Act.).
- West Virginia W. VA. CONST. art. IV, § 1; W. VA. CODE § 3-1-3 (2007).
- Wisconsin A person convicted of "treason, felony or bribery" loses the right to vote. WIS. STAT. § 6.03(1)(b) (2007).



**APPENDIX III – DISQUALIFICATION BASED UPON TYPE OF  
OFFENSE**

- Alabama** Anyone who is not a qualified elector or who has been convicted of “treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary” is ineligible to hold public office. ALA. CODE § 36-2-1(a)(1), (3) (2006). Persons convicted of “embezzlement of the public money, bribery, perjury, or other infamous crime” are ineligible to serve in the legislature or to hold “any office of trust or profit.” ALA. CONST. art. IV, § 60; *see Hogan v. Hartwell*, 7 So. 2d 889, 894 (Ala. 1942) (disqualification from office applies to federal as well as state convictions).
- Arkansas** A person convicted of embezzlement of public money, bribery, forgery, or other “infamous” crime, may not hold any office of trust or profit. ARK. CONST. art. V, § 9.
- California** Any person convicted of vote-buying, bribery, perjury, forgery, malfeasance in office, or other high crime is disqualified from public office. CAL. CONST. art. VII, § 8; CAL. GOV’T CODE § 1021 (2007); CAL. PENAL CODE §§ 67, 68, 74, 88, 98.1(2007).
- Delaware** Individuals convicted of embezzlement of public money, bribery, perjury, or other “infamous” crimes are not eligible to hold a seat in the legislature or any office of trust, honor, or profit. DEL. CONST. art. II, § 21.
- District of Columbia** A felon is disqualified from seeking or holding public office, including the offices of Mayor and City Council member, but only during a period of incarceration. D.C. CODE ANN. §§ 1-225, 1-241(c) (LexisNexis 2007).
- Florida** FLA. CONST. art. VI, § 4; FLA. STAT. ANN. § 97.041(2)(b) (2007).
- Indiana** Persons convicted of a felony under Indiana law or the law of another jurisdiction are disqualified from holding or being a candidate for elected office. IND. CODE § 3-8-1-5(b)(3) (2006). This provision has been held to apply to federal offenses. *Wilson v. Montgomery County Election Bd.*, 642 N.E.2d 258, 261 (Ind. Ct. App. 1994). In addition, persons convicted of certain federal offenses lose the right to hold public office. IND. CODE § 5-8-3-1 (2006).

- Kentucky A person convicted of a felony loses the right to hold public office. KY. CONST. § 150; KY. REV. STAT. ANN. § 29A.080(2)(e) (West 2007). The disqualification from office has been held to apply to federal felons. *Arnett v. Stumbo*, 153 S.W.2d 889, 891-92 (Ky. 1941).
- Mississippi A person convicted after November 3, 1992, of any offense that is a felony under Mississippi law or of a federal felony is disqualified to hold any state office of profit or trust. MISS. CONST. art. IV, § 44(2). This disqualification does not apply to persons convicted of manslaughter or of state or federal tax offenses, unless the tax offense involved misuse or abuse of office or of money that came to the defendant through her office. MISS. CONST. art. IV, § 44(3). In addition, any person convicted of bribery to procure an election or appointment to office is disqualified from holding office. MISS. CONST. art. IV, § 44(1).
- New York A convicted felon is not generally disqualified from holding future office. 1983 N.Y. OP. ATT'Y GEN (INF.) 1136 (1983).
- Pennsylvania No person convicted of "embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth." PA. CONST. art. II, § 7.
- Tennessee A person convicted of "a felony or an infamous crime and sentenced to the penitentiary, either on the state or federal level" loses the right to seek or hold public office. TENN. CODE ANN. § 40-20-114 (2006). Persons convicted of bribery, larceny, or any infamous offense are disqualified from holding office until their rights are restored. TENN. CODE ANN. § 8-18-101(1) (2006).
- Texas Any person who has been convicted of paying or offering a bribe to procure her election or appointment to office is disqualified from holding any office of profit or trust. TEX. CONST. art. XVI, § 5. Individuals convicted of certain other crimes may be required to forfeit public office or may be ineligible for public office. TEX. LOC. GOV'T CODE ANN. § 87.031 (Vernon 2006) (removal of county officer); TEX. LOC. GOV'T CODE ANN. §252.063 (Vernon 2006) (removal and ineligibility of municipal officers and employees); TEX. GOV'T CODE ANN. § 406.018 (Vernon 2006) (removal of notary public upon con-

- viction of willful neglect of duty or official misconduct).
- West Virginia No person “convicted of treason, felony, or bribery in an election, before any court in or out of this state,” shall hold elected or appointed office “while such conviction remains unreversed.” W. VA. CODE § 6-5-5 (2007).
- Wisconsin A person convicted of an “infamous” crime in any “court within the United States” is ineligible for any office of trust, profit, or honor. WIS. CONST. art. XIII, § 3.

**APPENDIX IV – RESTORATION GENERALLY NEEDED**

- Georgia                    A person who is not a registered voter or who has been convicted of a “felony involving moral turpitude” may not hold any office or appointment of trust, unless her civil rights have been restored and ten years have passed since completion of sentence without subsequent conviction of another felony involving moral turpitude. GA. CONST. art. II, § II, para. III. A person convicted of a felony involving moral turpitude under the laws of Georgia, or of any other jurisdiction if the offense would be a felony under Georgia law, loses the right to hold any civil office, “unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Paroles.” GA. CODE ANN. § 45-2-1(3) (2006). Persons convicted under federal law or the law of any state of “fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude” may not run for or be elected to municipal, county, or state office or serve in various election-related positions unless their civil rights have been restored. GA. CODE ANN. § 21-2-8 (2006).
- Nevada                    Since no person is eligible for public office unless she is a qualified elector, NEV. CONST. art. 15, § 3, a person who is disqualified from voting because of a conviction is also ineligible for office.
- Rhode Island            A person is disqualified from seeking or holding elective or appointive state or local office if she is not a qualified elector, R.I. CONST. art. III, § 1, or if she has been convicted of or pleaded nolo contendere to a felony or to a misdemeanor resulting in a jail sentence of six months or more, either suspended or to be served. R.I. CONST. art. III, § 2. A person may not become eligible to hold public office until three years have passed following completion of sentence, including probation or parole. R.I. CONST. art. III, § 2.
- South Carolina           [E]ligibility for public office is contingent upon being a qualified voter, S.C. CONST. art. XVII, § 1, and a person who is disqualified from voting by reason of a conviction is also disqualified from public office. A person convicted of felony embezzlement of public funds is also disqualified from holding any office of honor or emolument in the state; this disability may be removed by a two-thirds vote of the General Assembly upon payment in full of the prin-

Virginia

cipal and interest of the sum embezzled. S.C. CODE ANN. § 16-13-210 (2006).

Because the right to hold office is contingent upon being qualified to vote, a person convicted of a felony also loses the right to hold public office. VA. CONST. art. II, § 5.

**APPENDIX V – FORFEITURE OF OFFICE**

- Iowa It is grounds for contesting an election that the incumbent had been “duly convicted of a felony.” IOWA CODE § 57.1(2)(c) (1970). Conviction of a felony is also grounds for removal of an appointed state officer. IOWA CODE § 66.26(8) (1999). The disqualification from holding office has been held to apply to federal felons. *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451, 453 (Iowa 1957).
- New Jersey A person holding public office or employment at the time of conviction of an offense involving dishonesty or a third or higher degree crime under New Jersey law (or its equivalent under federal law or the law of another state) forfeits his position. N.J. STAT. ANN. § 2C:51-2(a) (West 2005). A person holding public office or employment forfeits his office or position if convicted of an “offense involving or touching on his public office, position or employment,” and is “forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions.” N.J. STAT. ANN. § 2C:51-2(d) (2005). The state appellate court has determined that this disqualification applies to all government employment. *Pastore v. County of Essex*, 237 N.J. Super. 371, 379 (N.J. Super. Ct. App. Div. 1989), *cert. denied*, 122 N.J. 129 (1990).
- New Mexico A person convicted of a felony or infamous crime forfeits the right to hold public office; N.M. CONST. art. VII, §§ 1, 2; N.M. STAT. ANN. §§ 10-1-2, 31-13-1(A) (2006); *state ex rel. Chavez v. Evans*, 446 P.2d 445, 450 (N.M. 1968) (disqualification from holding office held to arise from federal offenses as well as state crimes).
- Ohio A state or federal felon loses the rights to hold an office of honor, trust, or profit. OHIO REV. CODE ANN. § 2961.01 (West 2006).

**APPENDIX VI – PERMANENTLY BARRED FROM JURY SERVICE**

Alabama	ALA. CODE § 12-16-60(a)(4) (1978).
Arkansas	ARK. CODE ANN. § 16-31-102(a)(4) (1969).
California	CAL. CIV. PROC. CODE § 203(a)(5) (West 1988).
Delaware	DEL. CODE ANN. tit. 10, § 4509(b)(6) (1975).
Florida	FLA. STAT. ANN. § 40.013(1) (West 1877).
Georgia	GA. CODE ANN. § 15-12-60(b)(2) (1877); GA. CODE ANN. § 15-12-120 (1869); <i>Clark v. State</i> , 338 S.E.2d 269, 271 (Ga. 1986) (The disqualification from grand jury service has been interpreted to apply only to persons convicted after 1976 and only to those convicted of felonies under Georgia law, not under federal law or the law of another state.); 33 OP. ATT'Y GEN. GA. 69 (1983).
Hawaii	HAW. REV. STAT. § 612-4(b2) (1973).
Idaho	IDAHO CODE ANN. § 18-310(1) (1972) (losing civil rights).
Kentucky	KY. CONST. § 150; KY. REV. STAT. ANN. § 29A.080(2)(e) (West 2006).
Maryland	MD. CODE ANN., CRIM. LAW, § 9-202 (West 2006), MD. CODE ANN., CTS. & JUD. PROC. § 8-207(b)(5)-(6) (West 2006).
Massachusetts	MASS. GEN. LAWS ANN. ch. 234A, § 4(7) (Mass. 1982); MASS. GEN. LAWS ANN. ch. 234, § 8 (West 1982).
Missouri	MO. REV. STAT. § 561.026(3) (1977).
Montana	MONT. CODE ANN. § 3-15-303 (1895).
Nebraska	NEB. REV. STAT. § 29-112 (1873).
Nevada	NEV. REV. STAT. § 6.010 (2003).
New Jersey	N.J. STAT. ANN. § 2B:20-1(e) (West 1995).
New Mexico	N.M. STAT. ANN. § 38-5-1 (West 1978).
New York	N.Y. JUD. LAW § 510(3) (McKinney 1977).
Ohio	OHIO REV. CODE ANN. § 2961.01 (West 1953).
Oklahoma	OKLA. STAT. tit. 38, § 28(B)(6) (1949).
Pennsylvania	42 PA. CONS. STAT. ANN. § 4502(3) (West 2006).
Rhode Island	R.I. GEN. LAWS § 9-9-1.1. 56 (1956).
South Carolina	S.C. CODE ANN. § 14-7-810(1) (1984).
South Dakota	S.D. CODIFIED LAWS § 23A-27-35 (1939).
Tennessee	TENN. CODE ANN. § 22-1-102 (1987).
Texas	TEX. GOV'T CODE ANN. § 62.102(7) (Vernon 1985); TEX. CODE CRIM. PROC. ANN. art. 19.08(4) (Vernon 2005).
Utah	UTAH CODE ANN. § 78-46-7(2) (2002).
Virginia	VA. CONST. art. II, §§ 1, 2; VA. CODE ANN. § 8.01-338 (1977).
West Virginia	W. VA. CODE § 52-1-8(b)(5), (6) (1986).
Wyoming	WYO. STAT. ANN. § 1-11-102 (2003); WYO. STAT. ANN. § 6-10-106(a) (1982).

**APPENDIX VII – RESTRICTION OR DENIAL OF PUBLIC  
EMPLOYMENT AND LICENSING, NOT  
PRIVATE EMPLOYMENT**

- Arizona** A person may be denied public employment or a license “if the offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought.” ARIZ. REV. STAT. ANN. § 13-904(E) (2007). Examples include: certified public accountant, ARIZ. REV. STAT. ANN. §§ 32-721(A)(3), 32-741(A)(1) (2007); dentist and dental hygienist, ARIZ. REV. STAT. ANN. §§ 32-1263(2), 32-1290 (2007); nurse, ARIZ. REV. STAT. ANN. §§ 32-1663(A)(2), (D)(2) (2007); and pharmacist, ARIZ. REV. STAT. ANN. § 32-1927(A)(1) (2007).
- California** A conviction of a crime may result in the denial, suspension, or revocation of a professional or business license if the crime is substantially related to the qualifications, functions, or duties of the business or profession. CAL. BUS. & PROF. CODE § 490 (West 2007). Some of these licenses include: law, CAL. BUS. & PROF. CODE § 6060(b) (2007); real estate, CAL. BUS. & PROF. CODE § 10177(b) (West 2007); medicine, CAL. BUS. & PROF. CODE § 2236 (West 2007); nursing, CAL. BUS. & PROF. CODE § 2761(f) (2007); physical therapy, CAL. BUS. & PROF. CODE § 2660(d) (West 2007). Conviction of certain drug or sex offenses results in suspension and revocation of credentials issued by the State Board of Education or the Commission on Teacher Credentialing, CAL. EDUC. CODE § 44425 (West 2007), or in the loss of other jobs in the field of education, CAL. EDUC. CODE § 44435 (West 2007).
- Colorado** A felony conviction involving moral turpitude does not automatically disqualify an individual from public employment or a professional or occupational license, but it may be taken into account in determining whether an applicant has the good moral character to qualify for such employment or license, COLO. REV. STAT. § 24-5-101 (2006), and in denying, revoking, or suspending a license. COLO. REV. STAT. § 12-35-129(b) (2006) (dentist); COLO. REV. STAT. § 12-25-108(c) (2006) (engineer); COLO. REV. STAT. § 12-38-117(b) (2006) (nurse); COLO. REV. STAT. § 12-22-125(1)(b) (2006) (pharmacist); COLO. REV. STAT. § 12-36-117(f) (2006) (physician); and COLO. REV. STAT. § 12-61-113(m) (2006) (realtor);



- COLO. REV. STAT. § 24-31-304(4)(a) (2006) (peace officer).
- Connecticut A person may not be denied state employment or an occupational or professional license solely because of conviction of a crime. CONN. GEN. STAT. § 46a-80(a) (2006). Such employment or license may be denied because of a conviction if it is determined that the person is not suitable for the job, taking into account the nature of the offense and its relationship to the job, the rehabilitation of the person, and the age of the conviction. CONN. GEN. STAT. §§ 46a-80(b), 46a-81(a) (2006). Examples include, day care center operator or worker, CONN. GEN. STAT. § 19a-87a(a) (2006); psychologist, CONN. GEN. STAT. § 20-192 (2006); and public accountant, CONN. GEN. STAT. § 20-281a(8) (2006).
- Florida A person may not be disqualified from public employment solely because of a criminal conviction unless the conviction was for a felony or a first-degree misdemeanor and directly related to the position of employment sought. FLA. STAT. ANN. § 112.011(1)(a) (West 2007). These restrictions do not apply to law enforcement or correctional agencies, FLA. STAT. ANN. § 112.011(2)(a) (2007), or to the fire department, as to which a four-year disqualification is imposed (unless the person receives a pardon or has his civil rights restored), FLA. STAT. ANN. § 112.011(2)(b) (2007).
- Kentucky A person may be denied public employment or an occupational or professional license on account of a felony conviction. KY. REV. STAT. ANN. §§ 335B.010, 335B.020 (West 2007). Examples include: insurance, KY. REV. STAT. ANN. § 304.9-440(1)(f) (West 2007); dentistry, KY. REV. STAT. ANN. § 313.130(1) (West 2007); nursing, KY. REV. STAT. ANN. § 314.091(1)(b) (West 2007); and medicine, KY. REV. STAT. ANN. § 311.595(4) (West 2007).
- Louisiana A person may not be denied certain professional or occupational licenses solely because of his criminal record unless he was convicted of a felony and the crime directly relates to the position or occupation. LA. REV. STAT. ANN. § 37:2950(a) (2006). The restriction does not apply to many licensing boards such as civil engineering, LA. REV. STAT. ANN. § 37:698(a)(3)-(5) (2006); dentistry, LA. REV. STAT. ANN. § 37:776(a)(2) (2006); medicine, LA. REV. STAT. ANN. § 37:1285(a)(1), (2) (2006); or psychol-

- ogy, LA. REV. STAT. ANN. § 37:2359(b)(4), (5) (2006).
- Minnesota A person may not be disqualified from public employment or from obtaining an occupational or professional license solely or in part because of a conviction unless the crime directly relates to the position. MINN. STAT. § 364.03, subdiv. 1 (2006). Professions or occupations in which a conviction may be taken into account in the licensing decision include: insurance, MINN. STAT. § 72B.08, subdiv. 1(f) (2006); medicine, MINN. STAT. § 147.091, subdiv. 1(c) (2006); nursing, MINN. STAT. § 148.261, subdiv. 1(3) (2006); dentistry, MINN. STAT. § 150A.08, subdiv. 1(2), (3) (2006); pharmacy, MINN. STAT. § 151.06, subdiv. 1(7)(ii), (iii) (2006); veterinary medicine, MINN. STAT. § 156.081, subdiv. 2(2) (2006); and law, MINN. STAT. § 481.15, subdiv. 1(1) (2006).
- Missouri A state agency may consider a felony conviction as a factor. MO. REV. STAT. § 314.200 (2006). For example, the State Board of Education may refuse to issue (or may revoke) a teacher's certificate upon conviction of a felony. MO. REV. STAT. § 168.071(2) (2006). A person with a felony conviction may not serve as a superintendent or member of the patrol or radio personnel of the state highway patrol. MO. REV. STAT. § 43.060 (2006).
- New Jersey A state licensing authority may not disqualify an applicant solely because he has been convicted of a crime, unless the crime relates adversely to the profession or occupation for which licensure is sought. N.J. STAT. ANN. § 2A:168A-2 (West 2007).
- New Mexico A felony conviction or a misdemeanor involving moral turpitude may be considered by a state agency or licensing authority for a professional or occupational license. N.M. STAT. ANN. §§ 28-1, 28-2, 28-2-3, 28-2-4; *see Garcia v. State Bd. of Educ.*, 694 P.2d 1371, 1375 (N.M. Ct. App. 1984), *cert. denied*, 694 P.2d 1358 (N.M. 1985).
- Washington Neither public employment nor a professional or occupational license may be denied solely because of a felony conviction unless the offense is directly related to the position sought and less than ten years have elapsed since conviction, although the fact of a prior conviction of a crime may be considered. WASH. REV. CODE § 9.96A.020(1), (2) (2006).

**APPENDIX VIII – OCCUPATIONAL LICENSURE REGULATIONS  
BUT NOT EMPLOYMENT**

- Arkansas**            A professional or occupational license may be revoked, suspended, or denied as a consequence of a felony conviction. ARK. CODE ANN. § 17-95-409(a)(2)(A)(i) (2006) (physician); ARK. CODE ANN. § 17-82-316(b)(C)(3) (2006) (dentist); ARK. CODE ANN. § 17-97-310(a)(2) (2006) (psychiatrist); ARK. CODE ANN. § 17-96-308(a)(2) (2006) (podiatrist); ARK. CODE ANN. § 17-12-601(a)(5) (public accountant), ARK. CODE ANN. § 17-36-306(5) (2006) (landscape architect).
- Delaware**            A professional or occupational license may be revoked or suspended for conviction of certain crimes. DEL. CODE ANN. tit. 24, § 1731(b)(2) (2007) (medicine); DEL. CODE ANN. tit. 24, § 1131(2) (2007) (dentistry); DEL. CODE ANN. tit. 24, § 117(4), (5) (2007) (accountant); DEL. CODE ANN. tit. 24, § 2912(c) (2007) (real estate).
- Indiana**             The offense may be taken into account in determining “whether the applicant or holder should be entrusted to serve the public in a particular capacity.” IND. CODE § 25-1-1.1-1 (2006). In addition, an occupational or professional license may be revoked or suspended for conviction of certain drug offenses (generally involving possession of drugs or drug paraphernalia), IND. CODE § 25-1-1.1-2 (2006), and must be revoked or suspended for conviction of other drug offenses (generally involving trafficking or manufacture of certain drugs). IND. CODE § 25-1-1.1-3 (2006). Rule 12 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys precludes convicted felons from taking the bar examination. IND. CT. R. ADMISSION TO THE BAR & DISCIPLINE OF ATTY’S 12.
- Maine**                A licensing agency may take into account criminal history to determine whether to grant a license, but a felony conviction is not an automatic bar to licensure. ME. REV. STAT. ANN. tit. 5, § 5301(1) (2006). In addition, there are time limits (three years for some professions and 10 years for others) upon considering the conviction itself, rather than the conduct, in the licensing decision. ME. REV. STAT. ANN. tit. 5, § 5303 (2006).
- Michigan**            A “judgment of guilt in a criminal prosecution . . . shall not be used, in and of itself, by a licensing board or agency as proof of a person’s lack of good

- moral character,” but it “may be used as evidence in the determination.” MICH. COMP. LAWS § 338.42 (2006). Some licenses for which conviction of certain crimes may result in denial, suspension, or revocation include: private detective, MICH. COMP. LAWS §§ 338.830(1)(c), 338.838(1) (2006); private security guard, MICH. COMP. LAWS §§ 338.1056(1)(e), 338.1060(1)(c) (2006); and real estate broker, MICH. COMP. LAWS § 339.2505(2) (2006).
- Montana A professional or occupational license may not be refused solely because of a previous conviction. MONT. CODE ANN. § 37-1-203 (2005). A license may be denied if the applicant has been convicted of a criminal offense that “relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought” and the licensing agency finds that the “applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust.” MONT. CODE ANN. § 37-1-203 (2005).
- North Dakota A person may be denied a license if it is determined that he has not been sufficiently rehabilitated, or that the offense has a direct bearing upon his ability to serve the public in that job. N.D. CENT. CODE § 12.1-33-02.1 (2005).
- Oregon A licensing board or agency may “consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.” OR. REV. STAT. § 670.280 (2005). This statute does not apply to all licensing decisions. *See, e.g., In re Gortmaker*, 782 P.2d 421, 428 (Or. 1989) (Or. Rev. Stat. § 670.280 does not apply in proceeding to reinstate an attorney suspended upon conviction of a felony and may not preclude adverse licensing decisions based upon specific, designated criminal convictions.). Occupations in which conviction of certain crimes may be relevant to a licensing decision include: accountant, OR. REV. STAT. § 673.170(2)(h) (2005); tax consultant, OR. REV. STAT. § 673.700(4)(a), (b) (2005); social worker, OR. REV. STAT. § 675.540(1)(a), (b) (2005); and physician, OR. REV. STAT. § 677.190(6) (2005).
- South Carolina Persons convicted of certain crimes may be disqualified from obtaining or maintaining a professional or occupational license. S.C. CODE ANN. § 38-53-

- 150(a)(6) (2006) (bail bondsman); § 40-37-220(2) (2006) (optometrist); § 40-47-200(F)(2) (2006) (physician); and § 40-63-110(2) (2006) (social worker); § 23-6-40(B)(4) (2006) (law enforcement officer).
- Texas Persons convicted of a felony or misdemeanor that “directly relates to the duties and responsibilities of the licensed occupation” are subject to license revocation, suspension, or denial. *TEX. OCC. CODE ANN.* § 53.021 (Vernon 2006). A convicted federal or state felon may not serve as the executor or administrator of an estate, unless he is pardoned or has had his civil rights restored. *TEX. PROB. CODE ANN.* § 78(b) (Vernon 2006).
- Virginia A licensing board may deny a license if it finds, in light of all information available, that the applicant is unfit or unsuited to engage in that occupation. *VA. CODE ANN.* § 54.1-204 (2006). Examples include optometry, *VA. CODE ANN.* § 54.1-3215(2) (2006); nursing, *VA. CODE ANN.* § 54.1-3007(4) (2006); dentistry, *VA. CODE ANN.* § 54.1-2706(2) (2006); accounting, *VA. CODE ANN.* § 54.1-2006(2) (2006); funeral director, *VA. CODE ANN.* § 54.1-2806(1) (2006); and pharmacy, *VA. CODE ANN.* § 54.1-3316(9) (2006).

**APPENDIX IX – SPECIFIC OCCUPATION LICENSING STATUTES**

- Alabama** ALA. CODE § 34-3-86(1) (2007) (attorney); ALA. CODE § 34-1-12(5), (6) (2007) (certified public accountant); ALA. CODE § 34-24-360(4) (2007) (physician); ALA. CODE § 34-9-18(A)(5), (11) (2007) (dentist).
- Alaska** ALASKA STAT. § 21.27.410(A)(7) (2006) (insurance agent); ALASKA STAT. § 08.04.450(5), (6) (2006) (accountant); ALASKA STAT. § 08.68.270(2) (2006) (nurse); ALASKA STAT. § 08.88.171(A) (2006) (real estate broker).
- District of Columbia** D.C. CODE ANN. § 2-3305.3(A)(1) (LexisNexis 2007) (health care professional); D.C. CODE ANN. § 2-2729(A)(2) (LexisNexis 2007) (veterinarian); D.C. CODE ANN. § 11-2503 (LexisNexis 2007) (attorney); D.C. CODE ANN. § 25-115(G)(1) (LexisNexis 2007) (liquor license).
- Georgia** State examining boards may deny or revoke an occupational or professional license, or impose discipline upon a licensee, because of a conviction of any felony or of a crime involving moral turpitude in any state or federal court. GA. CODE ANN. § 43-1-19(a)(3) (2007). Examples include: chiropractor, GA. CODE ANN. § 43-9-12(a)(3) (2007); dentist, GA. CODE ANN. § 43-11-47(a)(3) (2007); and dietician, GA. CODE ANN. § 43-11a-15(3) (2007).
- Idaho** A state agency may demote, suspend, or discharge an employee who is convicted of official misconduct in office, any felony, or any other crime involving moral turpitude. IDAHO CODE ANN. § 67-5309(n)(9) (2006). State licensing boards may revoke, suspend, or refuse to issue a license because of a felony conviction. IDAHO CODE ANN. § 3-301(1) (2006) (law); IDAHO CODE ANN. § 33-1208(1)(f)-(k) (2006) (teaching); IDAHO CODE ANN. § 54-2113 (2006) (veterinary medicine); IDAHO CODE ANN. § 54-1726(c)(1) (2006) (pharmacy); IDAHO CODE ANN. § 54-923 (2006) (dentistry); IDAHO CODE ANN. § 54-608(3) (2006) (podiatry); IDAHO CODE ANN. § 54-305(1)(d) (2006) (architecture); IDAHO CODE ANN. § 54-219 (1)(e) (2006) (accounting).
- Iowa** A felony conviction “related to the profession or occupation of the licensee” or “that would affect the licensee’s ability to practice within a profession” is grounds for suspending or revoking a professional license in a number of health-related occupations, including medicine, podiatry, osteopathy, psychol-

ogy, chiropractor, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, pharmacy, cosmetology, barbering, dietetics, mortuary science, and social work. IOWA CODE §§ 147.2, 147.55(5) (2006).

Other fields in which a felony conviction may be relevant to the licensing decision include: accountant, IOWA CODE § 542c.21(5) (2006); real estate broker, IOWA CODE § 543b.29(5) (2006), and landscape architect, IOWA CODE § 544b.15(5) (2006).

#### Maryland

The restricted occupations are: veterinary medicine, MD. CODE ANN., AGRIC. § 2-310(2)-(4) (2006); accounting, MD. CODE ANN., BUS. OCC. & PROF. § 2-315(a)(3) (2006); dentistry, MD. CODE ANN., HEALTH OCC. § 4-315(a)(4) (2006); nursing, MD. CODE ANN., HEALTH OCC. § 8-316(a)(4) (2006); and optometry, MD. CODE ANN., HEALTH OCC. § 11-313(3) (2006).

#### Mississippi

The following licenses are restricted: alcohol license, MISS. CODE ANN. § 67-1-57(a) (2006); apothecary, MISS. CODE ANN. § 41-29-303 (2006); architect, MISS. CODE ANN. § 73-1-29(1)(g) (2006); attorney, MISS. CODE ANN. § 73-3-41 (2006); bail agent, MISS. CODE ANN. § 83-39-3(2) (2006); retailer of beer and light wine, MISS. CODE ANN. § 67-3-19 (2006); bingo gaming supplies or equipment, MISS. CODE ANN. § 97-33-201(2)(a), (b) (2006); bingo game operator, MISS. CODE ANN. § 97-33-57(4)(a), (b) (2006); chiropractor, MISS. CODE ANN. § 73-6-19(1)(e) (2006); dentist, MISS. CODE ANN. § 99-19-35 (2006); state gaming license, MISS. CODE ANN. § 75-76-67(3) (2006); insurance agent, MISS. CODE ANN. § 83-17-123(1)(f) (2006); nurse, MISS. CODE ANN. § 73-15-29(1)(b) (2006); optometrist, MISS. CODE ANN. § 73-19-23(2)(c), (d) (2006); physician, MISS. CODE ANN. §§ 73-25-29(1)(d), (f); 99-19-35 (2006); psychologist, MISS. CODE ANN. § 73-31-21(1)(b) (2006); speech pathologist or audiologist, MISS. CODE ANN. § 73-38-27(1)(c) (2006); social worker, MISS. CODE ANN. § 73-53-13(d)(iv) (2006); school teacher or administrator, MISS. CODE ANN. § 37-3-2(7)(g)-(h), (8)(d)-(e) (2006); and veterinarian, MISS. CODE ANN. § 73-39-19(c) (2006). A felon may not serve as a sheriff's deputy, MISS. CODE ANN. § 19-25-19 (2006), nor as the administrator of an estate, MISS. CODE ANN. § 91-7-65 (2006).

#### Nebraska

A felony conviction is grounds for denial, suspension, or revocation of a professional or occupational

- license. NEB. REV. STAT. § 71-1 147.10(1)(a),(e) (2006) (pharmacy); NEB. REV. STAT. § 81-885.24(28) (2006) (real estate); NEB. REV. STAT. § 48-503 (2006) (employment agency).
- Nevada A professional or occupational license may be denied, suspended, or revoked because of a conviction for a gaming employee, NEV. REV. STAT. § 463.335(8)(c), (d) (2006); nurse, NEV. REV. STAT. § 632.320(2) (2006); employment agent, NEV. REV. STAT. § 611.045(1)(a) (2006); contractor, NEV. REV. STAT. § 624.265(3) (2006); or physician, NEV. REV. STAT. § 630.301(1) (2006).
- North Carolina A professional or occupational license may be denied, suspended, or revoked because of certain convictions. N.C. GEN. STAT. § 83A-15(a) (2006) (architect); N.C. GEN. STAT. § 84-28(b)(1) (2006) (attorney); N.C. GEN. STAT. § 90-14(a)(7), (c) (2006) (physician); N.C. GEN. STAT. § 90-171.37(2) (1981) (nurse); N.C. GEN. STAT. § 93-12(9)(a) (2006) (public accountant); N.C. GEN. STAT. § 93A-6(b)(2) (2006) (real estate broker); N.C. GEN. STAT. § 18B-900(a)(3) (2006) (alcohol permit).
- Tennessee TENN. CODE ANN. § 62-13-312(B)(12) (2006) (real estate broker); TENN. CODE ANN. § 23-3-201(1) (2006) (attorney); TENN. CODE ANN. § 62-26-217(A)(4) (2006) (private investigator).
- Vermont VT. STAT. ANN. tit. 8, § 4804(A)(7) (2005) (insurance agent or broker); VT. STAT. ANN. tit. 26, § 1582(A)(2) (2005) (nurse); VT. STAT. ANN. tit. 31, § 661(1) (2005) (license to sell lottery tickets).
- West Virginia A felony conviction may be grounds for suspension or annulment of a professional license. W. VA. CODE § 30-2-6 (2007) (attorney), W. VA. CODE § 30-7-11(b) (2007) (registered professional nurse), W. VA. CODE § 30-10-11(e) (2007) (veterinarian).



