

**KENDALL CIESEMIER** [00:00:01] From the ACLU, this is At Liberty. I'm Kendall Ciesemier, your host. The United States is the only developed democracy that strips voting rights from its people on the basis of a criminal conviction. An estimated 4.6 million Americans across the country are barred from casting ballots. Now, to give you a sense of scope, this number is larger than the voting eligible population of New Jersey. At the ACLU, we believe that when we suppress the voting rights of any group of people, our democracy weakens. The good news is that many states are starting to agree with us. In the last 10 years, we've seen states slowly improve access to those formerly or currently incarcerated. And all of these movements are victories worthy of celebration. That's why today we are taking a moment to recognize a big victory in Minnesota, where the state passed the Restore the Vote bill just about a month ago, giving 55,000 Minnesotans the power to cast their vote in the next local, state or federal election after they serve their time, but before they finish their parole or probation. Jennifer Schroeder is one of those Minnesotans. She had been convicted of a felony with 40 years of probation. So even after being incarcerated due to the law on the books in Minnesota, she still wouldn't be able to vote until she was 71 years old. Even though she was an advocate working to get the law passed, she was still in disbelief when her vote was restored just last month.

**JENNIFER SCHROEDER** [00:01:56] It was pretty amazing. It was pretty unbelievable feeling. It's almost surreal just because we have worked for so long to do that. We had worked for seven years, I think, to do it.

**KENDALL** [00:02:09] To Jennifer, the restoration of her voting rights makes her feel like she's part of the community again.

**JENNIFER** [00:02:15] I think it brings people together. I think it makes me feel more integrated, I guess, back into your community, a part of something bigger than yourself that, you know, other people are part of to.

**KENDALL** [00:02:29] The restoration of voting rights is a meaningful step forward for formerly incarcerated people. It's often the last factor that separates them from their peers, according to Julie Ebenstein, a senior staff attorney with the ACLU Voting Rights Project. This change has a meaningful and positive impact on everyone.

**JULIE EBENSTEIN** [00:02:49] It's not just harmful for the individual who-who does not yet have their rights restored. It's-it's-it's harmful to their community and to society more generally, because it's shown that recidivism rates decrease when somebody has their rights restored, the more somebody is able to play a role in their community to-to engage in employment, to fully re-engage and return to society, that the better their chances for really restructuring and re-establishing their life. So, it's harmful to everybody to have folks the prior conviction excluded from the democratic process, not just because of the safety and recidivism concerns, but mass incarceration and overcriminalization is a major issue, politically, at the state level, at the federal level. It's something that we're talking about more and more. Don't we want the perspective of those who have had a direct contact with the criminal justice system, whether that's an arrest, a conviction, whether it includes prison or just parole or probation. People have a lot to contribute and to offer on that topic and on any number of other topics. And their voice should be heard in the political process. So it harms us all. When rights are not, rights are not either maintained despite somebody's conviction or if they're not restored immediately when they're released from incarceration.

**KENDALL** [00:04:13] Exactly. So, as I mentioned at the beginning of March, Minnesota passed SF 26, which is also known as the Restore the Vote Bill, which grants people who have been convicted of felonies the right to a vote immediately upon release from incarceration, which is leaving 55,000 Minnesotans to have a new right restored to them. Can you explain the listeners what the law on the books was in Minnesota? What were we existing with?

**JULIE** [00:04:45] Sure. So, before this law was passed, like you said, there were people who were still unable to vote despite being back in their communities, either on probation, parole or community supervision. They were unable to vote until the end, until they were off paper, as a lot of people, until they were they had completed their probation or parole. That was, of course, harmful to the people who were excluded from the democratic process. And it was also harmful because it was it-it was so discriminatory, it fell along racial lines. So, while there was only about one percent of the white-the white voting age population disenfranchised, there was, I believe, it's four-point five percent of the Black population in Minnesota and over eight percent of the Native American population in the state disenfranchised despite being back in their communities. So, any-any law that has pronounced racial disparities like this obviously does harm and dilutes the political power and the voting power of the communities most affected.

**KENDALL** [00:05:48] Absolutely. And I'm so glad that you brought that up, because, you know, we know that people of color nationwide are disproportionately represented in the criminal legal system. Black Minnesotans comprise of 36% of the state's prison population, yet they're only seven percent of the full Minnesota state population. A number from the Brennan Center reports that one in every 13 voting age African-Americans cannot vote a disenfranchisement rate more than four times

greater than that of all other Americans. In four states, more than one in five Black adults are denied their right to vote. So really here I feel like we're seeing that voting disenfranchisement is operating as a purposeful relic of slavery and Jim Crow. What is the history of felony disenfranchisement in the United States? I know that's a big question, but in brief, do you have some of the contours?

**JULIE** [00:06:43] That's exactly the history that it is a relic of Jim Crow. It was used intentionally to disenfranchise Black voters right after the 13th, 14th and 15th Amendment were passed. And because of the racial disparities in the criminal justice system, among other things, it has perpetuated that discrimination very effectively, seeing as that was the initial purpose and very destructively, up until and including now. So, it is a device with a racist history. It continues to be applied via a racist system. I don't think anyone thinks that there's racial equity in the criminal justice system and felony disenfranchise laws connect that inequity into the democratic process or draw it into the democratic process. And we see that in every state in the country. So, the racial disparities are pronounced. It is another device that dilutes the -the political sway of-of Black and Hispanic communities. And so it is hugely harmful, not just from the perspective of democracy as a standalone idea, but inclusive democracy and racial equity as a broader societal goal.

**KENDALL** [00:08:13] It feels in that way like a similar tool to suppress the Black vote. You know, we've talked about voter ID laws and the history of those. We've talked about racial redistricting, racial gerrymandering. We've reviewed the Supreme Court cases that that we're still waiting on. So our listeners know a lot about this. And this just is another tool for us to think of how the access of Black Americans to vote has been suppressed or oppressed historically and still today. I want

to dig in a little bit to the specific movement in Minnesota. The bill's passage represents the greatest expansion of voting rights in Minnesota in 50 years. Can you tell us a little bit about the fight that it took for Minnesotans to actually mount this meaningful resistance in their state to pass this new bill?

**JULIE** [00:09:07] Sure. Well, hats off to my colleagues based in Minnesota, because they have been at it for decades, trying to improve the rights restoration laws and schemes. And really, they were they were fighting felony disenfranchisement in the legislature, in the courts, and through their advocacy efforts. Jennifer was a client in our case that challenged the-the previous felony disenfranchisement scheme, both as a state constitutional violation because it violated equal protection guarantees and because of the racial disparities. That was one of the grounds that we brought in our lawsuit that that the courts need to look more closely when the outcome of a law is so racially disparate, whether or not that was the intended result. We were unsuccessful in the litigation, but we were or the people of Minnesota were successful in the law that passed a week later. So it was one part of a larger advocacy effort and a lobbying effort on their part to improve the rights restoration regime. Minnesota has one of the longest probation periods in the country. They use lengthy probation periods more than most states. I think they their fifth or something like that in the length of their terms of probation. So like Jennifer, people can end up with decades, decades on probation before they're off paper. And there's obviously other consequences to still being on probation. And as a result, before they have their rights restored. So, Minnesota really had lifetime disenfranchisement for a lot of people because of this restriction on restoration during probation. And that's I'm sure we'll talk about this. But that's something that there's been a trend away from lifetime disenfranchisement in the U.S. And so, Minnesota is really now

part of that trend. And I would congratulate my colleagues there who have spent so many years working on this.

**KENDALL** [00:11:08] Yeah, absolutely. I mean, so why don't we talk about felony disenfranchisement as an entity, we have a patchwork system across the country where we have some states aren't restoring rights to people with convictions ever. Some it's after a certain amount of probation or after they finish probation or parole. Another group of people can vote immediately upon finishing their sentence, their prison time, if you will, that's in Minnesota. And then another group of people can actually vote, never actually get their rate taken away. Is that correct? Is that a good summation or do they miss anything?

**JULIE** [00:11:48] Thankfully, you may have included one category that is often no longer at play. So, like I said, there's been this trend away from lifetime disenfranchisement. The four states that used to have lifetime disenfranchisement in all instances of a felony conviction have moved away from that. They still sometimes have subcategories that lead to lifetime disenfranchisement. But Florida being the belly of the beast for lifetime disenfranchisement, obviously made some improvements recently. So the categories for restoration are two states and the District of Columbia that never take somebody's rights away despite a conviction. There's about 22 states that takes people's rights away when they're convicted, but only for their term of incarceration and restores rights immediately upon release from incarceration. There's 15 now who wait until somebody is off paper so they remain disenfranchised through probation or parole. And then the remaining states have some hybrid system. Oftentimes, people have to wait until a point post sentence before they can have their rights restored. And that could be a three or five year wait-wait after-after they finish their conviction. In some unfortunate instances, that can mean that they have to wait until they're able to pay off legal financial

obligations related to their to their conviction. But now the the- the majority of states restore rights at an earlier point in time than- than was the case in, you know, ten years ago. And so there have been some- some improvement there.

**KENDALL** [00:13:18] And this push to restore voting rights to those with previous convictions began in the late nineties. What was the status quo before and like what was the pervasive, overriding attitude and how did that actually shift? Or can you speak to at all the attitude shift that we began to see when states started to move away from a lifetime of disenfranchisement?

**JULIE** [00:13:40] I mean, part of it, I think, was an increased awareness in the detrimental impact of overcriminalization. You know, when-when most of these felony disenfranchisement laws were put on the books, we did not have the prison population that we have now. We didn't have the number of convictions. We didn't have this proliferation of drug related convictions to the point where I can imagine, unfortunately, there are many people who don't know someone who has either been. Victim of something or has done something that could have led to conviction, were they targeted for arrest? And I think as it hit closer to home for people, either personally or within their community, the idea of removing somebody from the political process permanently became more and more foreign. These are not a small group of people who have committed the worst crimes. There are friends and neighbors and colleagues who-who should be taking part in the democratic process. So part of it was an awareness on the criminal justice front, both of the extreme numbers that we incarcerate and that we criminalize and in the racial disparities of the folks who we submit to the criminal justice system. And part of that, I think, was an increased awareness about participatory democracy. Just a-a like you said, there's a lot of fronts on which people are disenfranchised or had their vote diluted. I think there's been some increased awareness

about that and-and a desire to improve it. So, I think there are a lot of factors, but for the most part, those were some of the overarching themes that interested people in this otherwise really ever present and slow burn issue that we've contended with for a long time.

**KENDALL** [00:15:29] Thank you for that. I think that we see this with a lot of issues, right? I think we're definitely going to be witnessing, if not already are witnessing this in the repro space. Right. When-when people that we know start getting impacted by these kinds of just archaic, brutal, punitive policies, it starts to be a real thing to us. Once you know someone, it's hard to ignore it. And it does seem like felony disenfranchisement is a place where we are starting to see that kind of movement and have it actually mean something real in people's lives. To that end, though, we have to talk about Florida, because in Florida we had this big moment where there are over about a million of the disenfranchised population, a felony disenfranchised population lives in Florida, and 65% of voters in the state of Florida approved a ballot measure to restore people who had been convicted of felonies their voting rights. In the wake of that, Governor DeSantis past restrictions. Like, is there any hope for Florida here? And why are politicians trying so hard to keep some people from voting?

**JULIE** [00:16:46] So in 2018, Florida individuals, many of whom had lost their right to vote, by citizen initiated constitutional amendment, got on the ballot a a amendment that would restore rights to, at the time, 1.2 million people. That means they collect signatures, they put it on the ballot. And like you said, it passed by 65%, which for those familiar with Florida, the purple list of purple states, nothing passes in Florida by 65%. Yeah. Yeah. For-for it to clear for it to have two thirds of the voters supporting this really shows the non-partisan nature of this issue or that there's more coming together over this issue.



So, what that amendment four that passed in 2018 went into effect in 2019. What that it is, it automatically restored rights to people at the completion of their sentence, including parole and probation. So that provision did not restore people when released from prison. It restored people upon the completion of their sentence, including parole and probation. Here's the law that passed in the spring of 2019 that really disenfranchised probably up to over 700,000 people. Florida legislators passed a law, SB 7066, that require that people pay off all of their legal financial obligations before they would be considered to have completed their sentence for purposes of restoration. So, there's a new law passed that says you have to be able to pay if you want to be able to vote, in our view, and undermine the purpose of the constitutional amendment that Florida voters had supported and passed. And also in Florida, you have extensive LFOs, legal financial obligations assigned for each conviction. So, you can have hundreds or thousands for one of our we challenged the law for one of our clients, millions of dollars that you owe related to your felony conviction. And approximately 77% of the people with an in-state Florida conviction. When we did a study on this, when one of our experts in litigation to the study were indigent at the point of conviction, meaning they were assigned to public defender, they couldn't afford to pay for a lawyer, They most likely at that moment, could not have paid hundreds or thousands of dollars in LFOs. And often times, are not in a better position, post-conviction or post prison sentence to have that kind of money available. So, we-challenged this law as a poll tax as-as a number of other constitutional violations. We were successful for some time to receive a preliminary injunction and then went on appeal and then a trial. But it was a decision that was overturned by the 11th Circuit en banc. So unfortunately, as of spring or sorry, fall of 2020, the SB 7066 remained in effect. And so, it's still the case that people do receive their rights back once they complete their sentence.

**KENDALL** [00:19:52] They change the definition.

**JULIE** [00:19:54] They change the definition. But this is.

**KENDALL** [00:19:55] Still completing sentence. Yeah.

**JULIE** [00:19:57] Right. But this is still the biggest restoration that the country has seen in decades, probably since the Voting Rights Act passed. So, it is-it it's still significant. It doesn't negate the improvements and the steps forward that Florida took just because the-the politicians tried to claw back some of that restoration. But it did diminish the number more than a lot of advocates for-for amendment for had originally hoped. And is there hope for Florida, I think you also asked. Yes, there is! You know, a lot of I think now a lot of the focus there and elsewhere is to make sure that people know when their rights are restored because the systems are so confusing, the rules are so confusing. People with a prior conviction often don't know if they're eligible to vote or not and don't feel confident in registering and voting if they think there's any chance that they might be violating the law. So that's-that's getting people who are eligible registered and out there to vote. There's certainly a push for that in Florida and elsewhere.

**KENDALL** [00:21:01] Thank you for that context. I think that's really helpful. And you know, the confusion piece, it just- I think deeply resonates as we see issues across the country mired in legalese or vague language and the confusion that that causes. It does leave a lot of rights on the floor kind of to be to be picked up if and when people have the time to understand, learn, explain it to other people. That's another kind of component of our lived experience of our civil rights and civil liberties that that just feels tough.

**JULIE** [00:21:40] In our view, the state should be responsible for telling people so. The states, including Florida, should be able to give a clear answer Am I eligible or am I not eligible? And one of the grounds of our challenge in Florida was that it was a due process violation for the state to say, well, we can't tell you if you're eligible to vote or not. So states are responsible for-for being able to provide information on-on voters' eligibility categorically and individually. So, if I asked, "I live in New York, New York, how old do I have to be to vote?" And the answer was, "oh, I don't know. you know, best guess around this, around that." That's crazy, right? We would never we would never stand for that. You need to have clear eligibility requirements when it comes to rights restoration, if a state is unable to say exactly when or how somebody becomes eligible, that's a problem on the part of the state. That's not a it's a problem that affects the individual voters. But it's outrageous that a state can't answer its citizens and say you are eligible or you are not eligible. Here's how you register. Let me help you do that. There should be that type of encouragement for returning citizens to rejoin the process. One of the things that we're that we've been doing that we're looking at-at the Voting Rights Project is people's mistakes in their eligibility. So, we have this Crystal Mason case that is going to be heard by the Texas Supreme Court, I believe it's April 18th, where somebody was criminally charged with voting when they were ineligible. In that case, it's a it was her mistake of fact about her eligibility. So, she-she was just wrong on whether she was eligible or not or didn't know at the time that she was ineligible. We've seen that in Florida really as an outgrowth of this chaotic system that that Florida itself created, where people have no way to determine whether they've paid off their LFOs, for example. So, they they're unable to-to determine their eligibility. Florida has now, through their office with the special prosecutor and a few high-profile arrests, look to prosecute people who make a good faith error about their eligibility. So, this is a rising concern for us states that are targeting people who

make honest mistakes in whether or not they're eligible. And like I said, a lot of that problem stems from complicated systems where states themselves are unable to explain how and when people are eligible. And I don't want that to scare anybody off of determining their eligibility and voting just to say these are really misused resources that a state would-would search and search and search to try to find one person to accuse of mistakenly voting instead of spending that time and energy and effort and money to help register people who-who are eligible and want to vote. But that's something that we're looking at now in the Voting Rights Project and-and at the state level.

**KENDALL** [00:24:45] We do have a few states that I just want to highlight. As the movement continues to gain traction, New Mexico and Nebraska are considering expanding their voting rights laws similarly to Minnesota. This year. We also have seen Illinois and Oregon thinking about adopting similar statutes to even restore more rights to-to people who are incarcerated. So maybe all incarcerated people will have access to the right to vote. So, we're seeing like this slow wave move across the country. And it feels very like step by step, right? Like so maybe a state does what Minnesota did and then soon Minnesota will do something like, you know what? Anyone who's incarcerated can vote. We're not going to take away that right, ever, just wanted to put that out there. Given all of this, given this like slow wave of progress, do you feel hope that we will see a day where-where people who are incarcerated are never removed from the democratic process across the country?

**JULIE** [00:25:51] I certainly hope so. I mean, I definitely I think the last 10 years should give us hope. So. the four states that had lifetime disenfranchisement before have made changes since 2019. Right. That's-that's nothing. We no longer have a state that just has lifetime disenfranchisement for every felony conviction. There have been about six states in the last few years

that have made a shift to restoring rights at the end of incarceration instead of at the end of parole and probation. That's a huge change. I mean, people are shocked when they look at how many or the percentage of those disenfranchised in any state who are on probation or parole, not in prison, but-but going about there, about their life. So those are hopeful moves in the right direction. And like you said, with. We've seen it from citizen movement. We've seen it from state legislative movement. I'm hopeful that it will continue and I hope that we get to a we get quickly to people having full democratic rights irrespective of whether they have a felony conviction or not.

**KENDALL** [00:26:57] What do you think is the biggest threat that currently operates in resisting this kind of change?

**JULIE** [00:27:02] Part of it's inertia. You know, I think like I said, I think the way things are, the way things have been is is-is often easier to maintain than-than significant change. But I will say, one of the reasons I'm hopeful is that, I think that people have-have started to really invest and believe in giving others second chances. So, I think we are moving away from this idea that that returning citizens are only their worst day, their commission of a crime. And there there's an increasing sense that people deserve to have a second chance and to be a part again of the full community and-and voting process. So, I think there's some resistance. But like we talked about, if-if 65% of Florida voters can vote for it, then even in states that maybe don't seem to be likely to make these groundswell changes, there certainly hope that they can.

**KENDALL** [00:28:17] Jennifer hopes that Minnesotans will be a meaningful part of this groundswell. She believes this step in Minnesota will be a rallying point for all.

**JENNIFER** [00:28:28] I think that it's going to be received really well. I do. I really, really hope that this challenge that this is affecting to go out and vote, I really do, because it's going to show the power of people, you know.

**KENDALL** [00:28:51] Indeed, Jennifer, we do know. We can all show up for meaningful reforms in our community, like the restoration of voting rights. Thanks so much to Jennifer Schroeder and Julie Ebenstein, for joining us. And thanks so much to you all for listening. Hey, we've got a new series and we need your help. We're looking for stories of how you are showing up in your community. Maybe you're registering people to vote or volunteering at your school's LGBTQ alliance. We want to hear from you. Leave us a message at 212-549-2558. That's 212-549-2558. Or you can email us at [podcast@aclu.org](mailto:podcast@aclu.org). We want to feature you in an upcoming episode. Until next week, keep showing up.