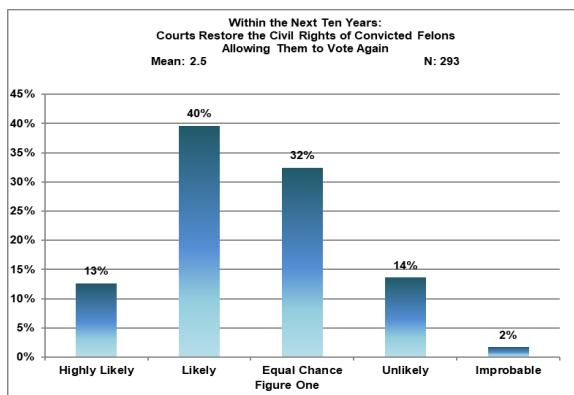




Traditionally, defendants convicted of a felony lost their right to vote, sit on a jury, and (in most states) possess a firearm. It was commonly thought that losing the right to vote was permanent. This perception can be seen even now in a recent New York Times article that focuses on the 6.2 million citizens with felony convictions who are barred from voting.<sup>i</sup>



A 2018 Future of the Courts survey scenario asked if courts would be involved in restoring voting rights to convicted felons within the next ten years. Of the 293 respondents, 37 (13%) thought the scenario was *highly likely*, 116 (40%) thought it was *likely*, 95 (32%) thought it had a *50-50 chance*, and 45 (16%) thought it was either *unlikely* or *improbable*. Most of the respondents (the mode) thought it was *likely*, but the mean tipped just slightly to the category of the scenario having an *50-50 chance* of becoming a reality.<sup>ii</sup>

Actually, over the years, the landscape on allowing convicted felons to vote has been changing. Many states now allow ex-felons who have completed their sentences to vote. Most notably, in this recent election, Florida voters decided to allow ex-felons to have their voting rights restored upon completion of their sentence, which reverses the previous law that imposed a lifetime ban on ex-felons voting.<sup>iii</sup> Asking a court to reduce a felony conviction to a misdemeanor, or expunge the conviction, would be another way an ex-felon could become eligible to vote.

Depending on what ex-felons must do to have voting rights restored, this trend could affect the courts.

- Courts can be involved in certifying that sentences have been completed and that no charges remain active and pending.
- Courts can also be involved in petitions to restore civil rights and/or to retroactively reduce felonies to misdemeanors.
- In states where judges run for contested elections, the prospect of ex-felons voting could influence election strategies. Judicial campaigns that are based on “tough on crime” might not appeal to ex-felons who have had their voting rights restored.

- Restoring voting rights might have a ripple effect of permitting ex-felons to sit on juries. This can already be seen in legal articles that espouse allowing ex-felons on juries will enhance the goal of achieving a better cross-section of the community and reintegration into society.<sup>iv</sup>
- Courts using voter rolls to select prospective jurors might need improved sorting techniques to eliminate ex-felons from the jury pool early and efficiently. Not addressing this might result in more work on the morning of a scheduled trial and even an increase in potential mistrials.

## Convicted Felons and Voting: The Changing Landscape

Maine and Vermont allow ex-felons to vote without restrictions. Fourteen states and the District of Columbia automatically allow ex-felons to register to vote after being released from jail or prison.<sup>v</sup>

Hawaii	Massachusetts	North Dakota	Rhode Island
Illinois	Michigan	Ohio	Utah
Indiana	Montana	Oregon	District of Columbia
Maryland <sup>vi</sup>	New Hampshire	Pennsylvania	

**Figure Two**

Twenty-two states automatically allow ex-felons to register to vote after they have completed their entire sentence including incarceration, probation, and parole.<sup>iv</sup>

Alaska	Georgia	New Jersey	South Dakota
Arkansas	Idaho	New Mexico	Texas
California <sup>vii</sup>	Kansas	New York	Washington
Colorado	Louisiana	North Carolina	West Virginia
Connecticut	Minnesota	Oklahoma	
Florida <sup>viii</sup>	Missouri	South Carolina	

**Figure Three**

That still leaves twelve states where ex-felons must wait well after their sentence is over to request restoration. Usually, defendants must either petition a court or request a pardon from the governor. Kentucky and Iowa have lifetime bans.<sup>iv</sup>

Alabama	Kentucky	Tennessee <sup>ix</sup>
Arizona <sup>x</sup>	Mississippi	Virginia
Delaware <sup>xi</sup>	Nebraska <sup>xii</sup>	Wisconsin
Iowa	Nevada <sup>xiii</sup>	Wyoming <sup>xiv</sup>

**Figure Four**

## The Pros and Cons

Below are some of the main arguments both for and against restoring voting rights to ex-felons.

### *Ex-Felons Should Be Allowed to Vote*

The right to vote is fundamental to our nation's democracy and should be guaranteed to every citizen. Preventing ex-felons from voting contributes to the racial divide polarizing our country. More than two million African-Americans, (almost 8% of black adults), are prevented from voting because of felony convictions compared to just under 2% of non-African-American citizens.<sup>xv</sup> The process of restoring voting rights to ex-felons differs from state to state, which causes frustration and distrust of the system. Punishment needs to fit the offense and lifetime disenfranchisement is simply out of proportion for all but the most serious crimes. Although to date, courts have

dismissed challenges to ex-felon re-enfranchisement based on the 8<sup>th</sup> Amendment of the U.S. Constitution prohibiting excessive punishment, groups still contend that a valid argument can be made that lifetime ex-felon disenfranchisement is unconstitutional.<sup>xvi</sup> Permitting ex-felons to vote is an important step toward reintegrating people who have paid their debt back to society.<sup>xvii</sup>

### *Ex-Felons Should Not Be Allowed to Vote*

Convicted felons have committed serious crimes. Since they have committed serious crimes, they are deemed to be dishonest, disreputable, and undeserving of the right to vote. This argument was bolstered by the recent revelation that confessed Parkland High School shooter, Nikolas Cruz, recently registered to vote while still in the Broward County Jail. While technically, this incident does not relate to the issue at hand (Cruz has not yet been convicted), one can hardly ignore the relevance.<sup>xviii</sup>

### *Other Arguments*

The right to vote is not universal. Children and the mentally incompetent are excluded from voting. There is nothing unfair about excluding ex-felons as just another category. Voting requirements rest in state laws bounded by some U.S. Constitutional limits. The equal protection clause of the 14th Amendment has not been universally extended to ex-felons; there is no Constitutional argument.<sup>xxix</sup>

A political driver in this conversation is the perception that ex-felons are inclined to vote Democratic, hence conservative groups have tended to oppose voting rights initiatives.<sup>xx</sup> More research needs to be conducted regarding this perception. For example, one study looked at ex-felons who were granted their voting rights by Florida's Governor Charlie Crist between 2007 and 2011. Of the 150,000 ex-felons whose voting rights were restored, only 32,000 (21%) actually registered and voted. Of those, African-Americans overwhelmingly registered Democratic (87%), but non-African-Americans registered 40% Republican and 34% Democratic.<sup>xxi</sup> Remember that although African-Americans make up a disproportionate percentage of the country's prison population (approx. 38%), in sheer numbers, Caucasian prisoners still make up the largest percentage.<sup>xxii</sup>

Race	Number	Percentage
Caucasians	105,297	58.2%
African-Americans	68,764	38.0%
Native-Americans	4,076	2.3%
Asians	2,695	1.5%

## **Respondents**

To assess the current status and future of ex-felon re-enfranchisement are: Alan Carlson, a veteran court executive officer with 40 years of experience at the Superior Courts in San Francisco and Orange County, California as well as Justice Management Institute; Jeff Amram, Court Administrator for the Clark County Superior Court, Vancouver, Washington; Andra Motyka, Retired Court Administrator, Pierce County Superior Court, Tacoma, Washington, Erie County, Pennsylvania, and the U.S. District Court for the Western District of Michigan; Sarah Brown-Clark,

Clerk of Court for the Municipal Court in Youngstown, Ohio; Jeff Barlow, court professional from the Oregon Judicial Department; and Alan Slater, Retired Court Executive Officer, 36 years Orange County Superior Court, California, Advisor to the California Administrative Office of the Courts.

## The Questions

**Having seen the Future of the Courts survey response, how long do you personally think it will take for most states to grant voting rights to ex-felons?**

Andra Motyka noted that it appears most states already allow some version of ex-felon enfranchisement; the states that remain are heavily affected by politics. “That does not automatically mean this issue is dead in those states because political winds do change. I believe the respondents are correct it will take another 10 years, but I would give it better odds: 70 percent to 30 percent.”

Both Sarah Brown-Clark and Jeff Amram mentioned the possibility of a legal challenge to overturn statutory bans. Jeff said that if the Supreme Court accepts a case and declares the bans unconstitutional, it could take less time; Sarah estimated that a successful legal challenge could shorten the time frame to between three and five years.

Sarah also pointed out the differences in attitude on the state and national level. “State legislature and national congressional dispositions are also a factor that could lengthen or shorten the time frame. Currently, there is a disparity in state attitudes on this issue so my thinking is that an action on behalf of ex-felons could significantly reduce the state time. However, in the current national environment, my thought is at least a ten-year time frame.”

Alan Carlson thought it was unlikely to become a reality in all states, particularly in states with more conservative electorates. The argument that keeping ex-felons disenfranchised is a form of systemic racism is not necessarily persuasive with conservatives; latent racism will probably continue to be a driving factor. “It might be different if law enforcement was enforcing drug laws against opioid use the way it used to enforce laws against marijuana, heroin, and cocaine use during the ‘War on Drugs.’” The War on Drugs tended to focus on inner city populations, mostly non-white, whereas the opioid epidemic has affected rural, mostly white, populations.

Jeff Barlow was surprised there has been any movement toward ex-felon enfranchisement, but if the question is framed as minority enfranchisement, then there would be a concerted effort. “In that case, one would expect a fairly close correlation between electoral demographics and implementation.” Jeff agreed with Alan Carlson that it was difficult to see deeply conservative states going that way.

Alan Slater thought it would take ten years for almost all states to restore voting rights for felons who have completed their sentences. “However due to the trend toward refocusing on rehabilitation in the state prison systems, I think most states will more expeditiously reinstate voting rights and other civil rights for those who have completed their sentences.”

## **How will extending voting rights to ex-felons affect court operations and workload?**

Restoration of voting rights to ex-felons will have minimal effect on courts in the opinion of both Alan Slater and Jeff Amram. Alan remarked, “Registrars of voters will have additional work to do, but once individuals have been registered to vote, courts should not be greatly impacted. One sticking point may be those who must register as sex offenders for life in some states (e.g., California). It could be argued that they never fully ‘complete’ their sentences and become eligible.” Jeff did not see a significant workload issue for courts unless a state legislature imposes one. Washington state changed the law a few years ago, and the effect on workload was imperceptible.

Sarah did not see that it would impact the actual judge-court process; the bulk of the additional work will be taken up by the clerks of courts. “Clerks will be the ones to research and validate the records for prospective re-entry voters. However, in cases where felons are seeking reduced charges, there may well be an increase in courtroom activity.”

Jeff Barlow agreed that this issue will not have as much effect as expungements and programs to clear one’s criminal record. “The bigger problem for courts, I think, is going to be records and data access control questions.”

Andra estimated that how the laws are written and passed by the legislatures will determine the workload effect on courts. “I think most of the workload will fall on election offices. If the ex-felon must petition the court for reinstatement of their rights or to certify that a sentence has been discharged, there would be a court workload issue, but that workload would not be substantial. While some ex-felons are determined to vote, the vast majority, I suspect are not and unfortunately won’t bother.”

Alan Carlson pointed out that if the law takes effect “automatically” when an ex-felon finishes the sentence, with no need to go to court to get a ruling to this effect, it will probably not have much effect. “But if the law reads that a person must go to court to get voting rights re-established, someone (i.e., victim?) could challenge the return of rights, or that a court must certify that all aspects of the sentence have been completed, it could have an impact. It might be a ‘bump’ initially to deal with the accumulated ‘backlog’, but it would taper off quickly. California went through this a few years ago with laws changing the definition of a felony in less serious cases and allowing defendants to come to court and get charges reduced. In San Diego, the public defender filed between 5,000 and 6,000 petitions in the first couple of weeks, but it tapered off in a few months.”

## **What are some opportunities and risks if the scenario becomes a reality?**

To Sarah, the primary opportunity is that convicted felons will have their rights restored. “They will have opportunities to feel like citizens, which can be helpful during the re-entry process. The underlying concept of convictions and incarcerations is to punish and rehabilitate. To me, that means that once a person has served the required time, that individual should be permitted to exercise all the rights and privileges of American citizenship.”

There are possible political risks for elected judges and other elected officials if ex-felons indeed exercise their right to vote in large numbers and oppose elected officials who are perceived to be unfair. However, given the difficulty in “getting out the vote,” over the years, it is quite possible that

allowing ex-felons to vote will have no impact. As an example, Ohio restores voting rights automatically upon release from prison, but ex-felons must re-register, which complicates the process. This can result in fewer ex-felons re-registering, and thereby fewer voting.

Sarah went on to comment, “I find the concern about party preference to be an unsubstantiated fear, particularly as it relates to the stereotype of African-Americans as primarily Democratic voters. There might be more of a risk posed by white supremacists who are ex-felons and advocates of white privilege.”

To Jeff Amram, the opportunity is in creating more voters allowing us all to believe that democracy works; preventing those who have paid their debt to society from voting is seen as legally and morally wrong.

Andra agreed that, in most states, a basic right has been restored to a segment of society once their sentence has been served. “Any racial stigma would be eliminated. While judges in states with elections may lose some votes, I don’t see it being a major factor impacting judicial elections.” She is admittedly skeptical since currently voting is not exercised by all who are eligible. She would be interested to see whether ex-felons do register and then actually vote.

Both Jeff Barlow and Alan Slater do not see any immediate opportunities or risks. Alan commented that a benefit of publicizing the re-enfranchisement of voting rights to ex-felons might be to encourage misdemeanants not to progress to felonies and therefore lose their voting rights in the first place. “I could see a campaign like that in a crime prevention context.”

### **Is extending voting rights to ex-felons a preferred future?**

Sarah, Andra, and Alan Slater all agreed that restoring voting rights to ex-felons is a preferred future. Andra thought states have the opportunity to choose from several options: allow prisoners to vote while incarcerated, allow ex-felons to vote upon release, or allow ex-felons to vote after completion of the sentence. States can choose the option least objectionable to voters in that state. Alan Slater saw restoring voting rights to those who have completed their “debt to society” as a good and appropriate policy. “I think it provides at least some incentive to continue to participate as a good citizen and not return to a life of crime and back to prison.”

Alan Carlson said that it is his preferred future, but he is not convinced that most of the public agrees. Since so few people vote anyway, those who do not will see little harm in preventing others from being allowed to vote. There are also people who establish barriers to voting, relying on the threat of voter fraud. They will not be in favor of ex-felons having voting rights restored.

If enough Americans believe in reducing the impact of past systemic racism in the justice system, then Alan Carlson thinks there will be a trend toward restoring voting rights. “There also needs to be a sense that when someone has served their time and complied with all sentencing terms, then society needs to accept them back and consider them rehabilitated, at least as to voting.” Continuing to prevent a person from being able to vote when they have “done their time” really says they have not yet done their time and makes them less committed to a society that “won’t let go.”

Although Jeff Amram said he thought it likely that the percent of felons who end up actually voting will be small, it should still be a preferred future.

## In Conclusion

Thanks to Alan Carlson, Sarah Brown-Clark, Jeff Amram, Alan Slater, Andra Motyka, and Jeff Barlow for helping to analyze this dynamic trend that is touching the nation. The effect it will have on the courts seems still to be decided depending on how new laws are written, but there is agreement that it is a preferred future. We look forward to your comments. Please send in your feedback at [www.courtleader.net](http://www.courtleader.net).

<sup>i</sup> Michael Wines, "Why So Many Kentuckians Are Barred from Voting on Tuesday, and for Life," *New York Times*, November 4, 2018.

<sup>ii</sup> Phillip Knox & Peter C. Kiefer, *2018 Combined Future of the Courts Survey Results*, August 27, 2018.

<sup>iii</sup> Lindsay Schnell, "Florida Votes to Restore Felon Voting Rights; Missouri, Michigan Legalize Marijuana," *USA Today*, November 7, 2018.

<sup>iv</sup> Sharion Scott, "Justice in the Jury: The Benefits of Allowing Felons to Serve on Juries in Criminal Proceedings," *Washington University Journal of Law & Policy*, Vol. 57, 2018.

<sup>v</sup> "Felony Voting Rights," *National Conference of State Legislatures*, April 30, 2017.

<sup>vi</sup> Defendants in Maryland convicted of buying or selling votes can only have their voting rights restored through pardon. In 2016 the Maryland State Legislature overrode the Governor's veto to pass legislation allowing the felons to vote.

<sup>vii</sup> In 2016, California passed legislation allowing defendants in county jails to vote while incarcerated, but not those in state or federal prison.

<sup>viii</sup> On November 6, 2018, Florida constituents voted to allow felons who have served their sentence, including parole and probation to vote. The new law does not apply to those convicted of murder or sexual offenses. Lindsay Schnell, "Florida Votes to Restore Felon Voting Rights; Missouri, Michigan Legalize Marijuana," *USA Today*, November 7, 2018.

<sup>ix</sup> Defendants in Tennessee convicted of murder, rape, treason, or voting fraud, must request a pardon from the Governor. "Felony Disenfranchisement State by State: Felon Voting Rights." <https://exoffenders.net/felon-voting-rights>.

<sup>x</sup> Defendants in Arizona with a single felony conviction can have their voting rights restored once the Department of Corrections issues an absolute discharge of the sentence, including probation and parole. Defendants with more than one felony conviction must petition the court to have their civil rights restored. [www.jobforfelonshub.com](http://www.jobforfelonshub.com)

<sup>xi</sup> Delaware requires a five-year waiting period after completion of the sentence. Christopher Uggen, Sarah Shannon, Jeff Manza, "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," The Sentencing Project: Research and Advocacy for Reform, July 2012.

<sup>xii</sup> Nebraska requires a two-year waiting period. Uggen, Shannon, and Manza.

<sup>xiii</sup> Nevada excludes recidivists and those convicted of violent felonies. Uggen, Shannon, and Manza.

<sup>xiv</sup> Defendants in Wyoming must apply to the governor to have their rights restored. This can be done after the sentence, including prison, parole, and probation is completed. First time and non-violent offenders must wait 5 years.

<https://exoffenders.net/felon-voting-rights>

<sup>xv</sup> Uggen, Shannon, and Manza.

<sup>xvi</sup> In the past, courts have rejected ex-felon disenfranchisement arguments stating that prohibiting voting is not a punishment. Amy Heath, "Cruel and Unusual Punishment: Denying Ex-Felons the Right to Vote," *The American University Journal of Gender, Social Policy and the Law*, Vol. 25, Is. 3, 2017.

<sup>xvii</sup> Jerry Shaw, "Voting Rights: 6 Reasons Ex-Felons Should Vote," *Newsmax*, April 15, 2015.

<sup>xviii</sup> Alex Johnson, "Confessed Parkland High School Shooter Nikolas Cruz Registered to Vote from Jail," *NBC News*, November 11, 2018.

<sup>xix</sup> Jerry Shaw, "Voting Rights: 6 Reasons Ex-Felons Shouldn't Vote," *Newsmax*, April 15, 2015.

<sup>xx</sup> An example is Kentucky's outgoing Democratic Governor, Steve Beshear who issued an Executive Order restoring the right to vote to defendants convicted of non-violent felonies upon completion of their sentence. The order was reversed by incoming Republican Governor Matt Bevin. Chris Kenning, "Locked Out: Critics Say It's Time to End Kentucky's Ban on Felon Voting," *Louisville Courier-Journal*, November 11, 2018.

<sup>xxi</sup> Marc Meredith and Michael Morse, "Why Letting Ex-Felons Vote Probably Won't Swing Florida," *Vox*, November 2, 2018.

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xxii *Federal Bureau of Prisons*, October 27, 2018.