

Convicted Felons Are Still Denied the Right to Vote. Here's What Lawyers Can Do About It.

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BY AMANDA MCGINN AND ZARA SHORE

Felony disenfranchisement, despite barring millions of Americans from voting each election, is not a new topic. But the issue came to the forefront during this year's presidential election, after more than six million Americans were deprived of the right to vote in the 2018 midterms.

Today, convicted felons across the country are still denied the right to vote, and even D.C. prisoners face barriers despite a recent change in legislation guaranteeing them this right. We saw this with our client, Walter McCollough III, who desperately wanted to make his voice heard by exercising his right to vote.

The right to vote for convicted felons is decided at the state level, and only D.C., Maine and Vermont have no restrictions whatsoever on them voting. Seventeen states have restrictions during incarceration; four have restrictions during incarceration and parole; 16 have restrictions during incarceration, parole and probation; and 11 have restrictions during incarceration, parole, probation and post-sentence.

The consequence of these laws is that there are an estimated 5.17 million Americans—43% of whom have already completed their sentences—disenfranchised due to a felony conviction. This disproportionately affects people of color. In fact, many states' restrictions have roots in Jim Crow as part of an effort to disenfranchise African Americans after they gained the right to vote.

Even when incarcerated individuals obtain the right to vote, they still face obstacles. Prisons provide inmates with minimal access to the internet and inconsistent information regarding their right to vote. Furthermore, prisons notoriously have



Courtesy photos

Akin Gump associates Amanda McGinn, left, and Zara Shore, right

delays in their mailing system, and an inmate's correct registered address can be difficult to ascertain. Locating an individual is particularly challenging for D.C. inmates, as they can be sent to any federal prison in the country.

McCollough serves as a poignant example of how important attorney advocacy is for obtaining the right to vote.

McCollough spent over 20 years incarcerated for voluntary manslaughter. When we met him, McCollough had been denied parole three times despite having a pristine disciplinary record and completing thousands of hours of educational, work and skills-based programming, as well as substance and alcohol abuse treatment and victim empathy courses. McCollough also held the highly coveted and trusted position of a suicide watch companion, a program in which inmates provide support to other inmates on suicide watch.

McCollough originally requested pro bono representation for a habeas corpus petition to challenge

the denial of “Superior Program Achievement” credit at his first parole hearing, which would have made him eligible for parole sooner. But our representation did not stop there. Shortly after we filed the habeas petition, COVID-19 began to spread throughout the United States and its prisons.

As a result, D.C. passed legislation that permits the compassionate release of incarcerated individuals who meet certain criteria. Given McCollough’s age and underlying health conditions, as well as his demonstration of full rehabilitation, we thought this law could be another potential avenue for his release. Although our motion was denied because the court concluded his health conditions were not sufficiently severe, the same legislation made McCollough eligible to be considered for parole in October 2020 instead of October 2021. We immediately began preparing for his hearing, and this time McCollough was successful.

Once the excitement of the parole decision wore off, we realized there was still a lot of work to do in order to prepare McCollough for reentry. We needed to ensure he had safe housing, a plan for reemployment, and social support networks in place. One of the issues that came up as we were discussing reentry was McCollough’s right to vote, and he shared with us the struggles he was having in exercising that newly acquired right.

As background, prior to the passage of D.C.’s legislation allowing inmates to vote, McCollough wanted desperately to participate in the democratic process. At the time, the only way he knew how

was to write a “Letter to America” in which he explained the circumstances of his first and only time voting and how his political views have drastically changed throughout his incarceration:

IN 1990 I TURNED 18. I MOVED BACK TO D.C. AND I VOTED FOR MY FIRST AND ONLY TIME. I CAN'T SAY THAT I WAS EDUCATED ON ANY OF THE ISSUES, OR THAT I GAVE MY CHOICES A LOT OF THOUGHT. I JUST DROVE MY GRANDMOTHER TO REGISTER AND TO THE POLLS, WHILE DOING SO, I REGISTERED AND VOTED WHERE I WAS WITH HER.

SINCE THEN, I'VE GIVEN UP MY RIGHT TO VOTE BY BECOMING A FELON. (THAT'S ANOTHER PART OF THE SYSTEMIC OPPRESSION THAT WE'LL ADDRESS AT A LATER DATE) BUT, EVEN IF I HADN'T BECOME A FELON, I MORE THAN LIKELY WOULD NOT HAVE VOTED AGAIN ANYWAY. WHY? WELL, BECAUSE AT 18 I WASN'T INTERESTED IN POLITICS. AFTER ALL, IN THE NEIGHBORHOODS THAT I RAN AROUND IN AND WITH THE ROLE THAT I HUNG OUT WITH, I WOULD HEAR THINGS LIKE, "YOUR VOTE DON'T MATTER," "THEY'RE GOING TO DO WHATEVER THEY WANT ANYWAY," AND OTHER THINGS OF THAT NATURE. FOR THE MOST PART I WAS SURROUNDED BY RADICAL APATHY. I BELIEVE THAT PEOPLE TEND TO BECOME PART AND PARCEL OF WHAT SURROUNDS THEM. AFTER ALL, A CHILD IS BORN KNOWING ONLY LOVE, AND MOST OF WHAT HE LEARNS, HE LEARNS THROUGH OBTUSION.

IN OUR COMMUNITIES, WE COME UP HEARING "THEY." YOU KNOW, "THEY DID THIS," "THEY DIDN'T DO THAT," "THEY ARE GOING TO LET MOM WIN," "THEY DON'T CARE NOTHING ABOUT US." WELL, I STARTED ASKING, "WHO IS THIS INFAMOUS THEY?"

NEWS FLASH, THE INFAMOUS "THEY" IS SYSTEMIC OPPRESSION. THE ONLY WAY TO BEAT "THEM" IS TO VOTE! WE HAVE TO EDUCATE ANYWAY, THE ELECTION COMING UP IN A FEW MONTHS IS SO VERY IMPORTANT. THOSE OF US WHO CAN'T LET OUR VOICES BE HEARD IN THE VOTER'S BOOTH NEED ALL OF YOU WHO CAN, TO MAKE SURE THAT YOU GET YOUR VOTE IN.

Based on his writings, you can imagine how excited McCollough was when he learned he would have the opportunity to make his voice heard in this year’s election. But that excitement was quickly followed by disappointment. Despite registering to vote in mid-September, he never received his absentee ballot. Because of limitations on his ability to communicate outside the prison, he could not track his ballot or contact the D.C. Board of Elections. It was not until five days prior to Election Day that we discovered his ballot was sent to his last known home address. We were not sure whether the new ballot would arrive in time, given the slow mailing system, which had been particularly delayed due to COVID-19 and prison lockdowns.

Fortunately, McCollough received his ballot and was able

to postmark it on Nov. 2. Nevertheless, our partners at the Washington Lawyers’ Committee informed us the same difficulties were met by countless other D.C. inmates without advocates.

The individuals most impacted by the criminal justice system are without the ability to make their voices heard, only perpetuating the systemic racism and feelings of political apathy that McCollough discusses in his letter. Indeed, restoring voting rights can help promote reentry and lower recidivism. This is where lawyers can assist.

First, lawyers who represent convicted felons should learn about their respective state’s laws, and advocate to ensure they are able to vote in the next election if permitted.

Second, lawyers may take up lobbying efforts to restore convicted felons’ rights to vote. This may include lobbying to remove obstacles, such as Florida’s legislation making restoration of voting rights conditional on payment of all restitution, fees, and fines, or advocating for election infrastructure to make voting accessible in prisons and jails.

Third, lawyers may partner with grassroots organizations to ensure prisons have adequate systems for registering inmates who are eligible to vote.

All attorneys have a role to play in ensuring more Americans have and are able to exercise the right to vote prior to the next election.

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