

STATELESS CITIZENS: THE IMPACT OF CRIMINAL RECORD'S COLLATERAL CONSEQUENCES ON VOTING AND EMPLOYMENT

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I. INTRODUCTION

“A stateless person is someone who, under national laws, does not enjoy citizenship—the legal bond between a government and an individual—in any country.”¹ Individuals with felony records in the United States are citizens in the legal sense, however, these persons experience lives that reflect the U.S. State Department’s definition of statelessness.² Restrictions on employment, housing, government benefits, and voting for individuals with criminal records virtually strips these individuals of the legal benefits of citizenship³ and places them in a similar position to those with no national affiliation. A key difference between citizens with felony records and stateless citizens is that individuals with criminal records are required to pay taxes, while stateless citizens are not required to pay taxes to any nation due to their status.⁴ Thus, it is arguable that persons with felony records in the United States are only citizens in name alone. The notion that people convicted of criminal acts can be justifiably stripped of the unalienable rights articulated by the Framers in the Declaration of Independence is not a new idea.⁵ The

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¹ *Statelessness*, U.S. DEP’T OF STATE, <https://www.state.gov/other-policy-issues/statelessness> (last visited Feb. 14, 2022); see also G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (“Everyone has the right to a nationality[,] [and] [n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”).

² *Statelessness*, *supra* note 1. “While some people are *de jure*, or legally stateless persons,” meaning they are not recognized as citizens under the laws of any state, “many people are *de facto*, or effectively stateless persons,” meaning they are not recognized as citizens by any state even if they have a claim to citizenship under the laws of one or more states.” *Id.* See generally Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1790-91 (2012) (explaining how collateral consequences have effectively given rise to the rebirth of civil death in America).

³ Tarra Simmons, *Transcending the Stigma of a Criminal Record: A Proposal to Reform State Bar Character and Fitness Evaluations*, 128 YALE L.J.F. 759, 760 (2019).

⁴ See Daniel Stone, *Here’s What It’s Like to Be Stateless*, NAT’L GEOGRAPHIC (Nov. 17, 2014), <https://www.nationalgeographic.com/culture/article/the-stateless-among-us>.

⁵ Chin, *supra* note 2, at 1790; THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

idea of “civil death”⁶ as a form of punishment was a stowaway that traveled to America nestled inside the common law system imported from England.⁷ Policy shifts and changing attitudes regarding redemption for criminal offenders throughout American history have resulted in the evolution of civil death.⁸

Today, civil death has taken the form of over 44,000 collateral consequences affecting the lives of 70 to 100 million Americans who have been convicted of criminal offenses.⁹ These collateral consequences impose legal barriers on an individual’s ability to meet basic needs and participate in society to a meaningful degree.¹⁰ Individuals with criminal records are forced to endure long-term restrictions, and in some cases, lifetime bans on voting, employment, housing, public assistance, financial aid, and other aspects of civic engagement that are historically viewed as basic components of United States’ citizenship.¹¹

The range of impact that collateral consequences have on persons with felony convictions varies from state to state¹² This Note will focus on the effect that felon disenfranchisement and restrictions on employment opportunities have on individuals with felony convictions. For those affected directly, the different types of collateral consequences are inextricably linked and equally limiting.¹³ However, the scope of this Note will center on how collateral consequences infringe on the rights associated with civic engagement and earning a living and how lawmakers at the federal and state levels should pass legislation protecting these rights.

Section II of this Note presents a historical analysis of collateral consequences, paying special attention to the social and political shifts that led to changes in federal and state legislation. The analysis focuses on early notions of redemption that led to specific and often time-limited collateral consequences. It further examines different periods in U.S. history when there was significant political support for limiting, if not abolishing, collateral consequences and factors that diminished this support during each period. The analysis also includes a discussion on theories of racial animus

⁶ “Civil Death” is defined as “the status of a living person equivalent in its legal consequences to natural death[;] *specifically*: deprivation of civil rights.” *Civil Death*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/civil%20death> (last visited Mar. 28, 2022).

⁷ Chin, *supra* note 2, at 1790.

⁸ Margaret Colgate Love, *Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act*, 54 HOW. L. J. 753, 764-74 (2011).

⁹ U.S. COMM’N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 1-3 (2019). Examples include restricting an individual’s ability to vote, access public housing, qualify for federal benefits, or obtain certain professional licenses. *See generally id.*

¹⁰ *Id.*

¹¹ *Id.* at 1-2.

¹² *Id.*

¹³ *Id.*

and voter suppression that some legal scholars assert caused the rise of felon disenfranchisement and other collateral consequences in the post-Reconstruction United States.

Section III discusses the conversation around mass incarceration and how it has recently led to shifts in statutory approaches to mitigating the problem and its vestiges. The discussion centers around the economic impact that collateral consequences have on the United States, coupled with research that addresses their ineffectiveness in deterring crime and maintaining public safety. Section IV of this Note asserts that the relevant legislation has not gone far enough to mitigate these problems and proposes that state and federal legislators take decisive action to protect the rights of individuals with criminal records. Proposals for change are also discussed in this section.

II. VARIATIONS IN THE IMPOSITION OF COLLATERAL CONSEQUENCES

A. Birth and Demise of Civil Death

Collateral consequences in the United States date back to colonial times.¹⁴ The legal system the United States inherited from England adhered to a notion of civil death that effectively stripped individuals of all vestiges of personhood after a conviction for certain crimes.¹⁵ The concept of civil death was designed to limit punishment to the life of the offender and not extend punishment onto the offender's familial relations and spouse.¹⁶ Additionally, the belief during colonial times was that an individual forfeited his privilege to fully participate in society by committing certain crimes.¹⁷ The list of crimes resulting in civil death was limited to acts of treason or other serious felonies.¹⁸ During that time, the punishment reserved for the most extreme criminal actions aimed to strip the offender of all ability to legally interact with society.¹⁹ The only way an individual could have his civil rights restored was by executive pardon.²⁰ This method of restoration, though rare, was fraught with inequity.²¹

¹⁴ Chin, *supra* note 2, at 1790.

¹⁵ *See id.* at 1794 (discussing the impact civil death had on criminal offenders' lives during colonial times); *see, e.g.,* Love, *supra* note 8, at 764 (discussing the origins of civil death in the United States).

¹⁶ Wallach v. Van Riswick, 92 U.S. 202, 210 (1875) (discussing the limitations of civil death).

¹⁷ Note, *Civil Status of Convicts*, 14 COLUM. L. REV. 592, 592-94 (1914).

¹⁸ Chin, *supra* note 2, at 1794.

¹⁹ Avery v. Everett, 18 N.E. 148, 150 (N.Y. 1888).

²⁰ Love, *supra* note 8, at 764.

²¹ *Id.*

B. The Impact of the Voting Rights Act of 1864 on Collateral Consequences

After the Civil War and the passage of the Voting Rights Act of 1864, the United States saw the first expansion of collateral consequences to include all felonies, some misdemeanors, crimes of moral turpitude, and some offenses that were not technically illegal.²² During this time, legislators in several states were afraid of the potential power that newly freed slaves would have to shift the balance of politics.²³ In response to the perceived threat of Black political power, states started passing legislation aimed at limiting African Americans' ability to participate in the political process.²⁴ Measures including poll taxes, literacy tests, and other arbitrary laws that disenfranchised Blacks were passed *en masse* across the country.²⁵ Penal codes during this time saw an expansion of crimes that were considered felonies; specifically, the passage of laws that prohibited the manufacture, sale, and possession of controlled substances.²⁶

The purpose of the newly passed voting laws was often to “preserve the [racial] purity of the ballot box.”²⁷ In an attempt that further that purpose, states began to pass legislation that placed lifetime bans on persons with felonies from exercising certain rights, especially participating in elections.²⁸ The legislative histories of several of these laws have been called into question throughout the years; however, even though these histories are absent explicit intent to do so, it is apparent that a significant number of felon disenfranchisement laws were passed specifically to suppress Black voting power.²⁹

²² 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. SOCIO. 559, 569 (2003).

²³ *Id.* at 560.

²⁴ *Id.* at 560-61.

²⁵ *Id.* at 563.

²⁶ *E.g.*, Pure Food and Drug Act of 1906, Pub. L. No. 59-384, 34 Stat. 768 (requiring the *patent medicine* industry to list all ingredients in their products in an attempt to curb the inclusion of substances like cocaine and opium in products that were easily accessible to the public); *see also* Harrison Act of 1914, Pub. L. No. 63-223, 38 Stat. 785 (making it unlawful to import, manufacture, distribute, and sell opium and coca leaves and their derivatives without registration and taxation in an attempt to curb their presence in the United States); Marihuana Tax Act of 1937, Pub. L. No. 75-238, 50 Stat. 551 (prohibiting the manufacture, sale, and possession of marijuana without registration and taxation in an attempt to curb its presence in the United States).

²⁷ U.S. COMM’N ON CIV. RTS., *supra* note 9, at 90.

²⁸ *See, e.g.*, *Ratliff v. Beale*, 20 So. 865 (Miss. 1896) (upholding Mississippi’s disenfranchisement law, despite evidence of discriminatory intent, because the law focused on traits thought to be attributable to Blacks rather than focusing on their race specifically).

²⁹ Behrens et al., *supra* note 22, at 559; *see also* Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153, 157 (1999).

Evidence of this political ideology is apparent from the transcripts of the Alabama Constitutional Convention of 1901.³⁰ John B. Knox, a representative of the all-white delegation, spoke to the convention about the necessity of mitigating the “menace of negro domination,” and gave specific examples of how other states had done so.³¹ Knox gave detailed examples from Mississippi, North Carolina, Louisiana and Massachusetts, illustrating how tactics like poll taxes, reading requirements, and grandfather clauses had been used to prevent Blacks from voting.³² He went on to state how those examples should be improved upon to afford newly arriving European immigrants the right to vote, while excluding as many Blacks as possible.³³ Knox also pointed to case law which held that the Fourteenth Amendment prevented states from explicitly discriminating on the basis of race, but did not prevent states from deciding who could vote in their jurisdictions.³⁴ This, Knox argued, required lawmakers to use characteristics most likely shared by Blacks to deny them suffrage, rather than explicitly stating race as the predominant factor in order to ensure the constitutionality of voting laws.³⁵

C. A Brief Moment of Statutory Reform

In the mid-1900s there was significant political pressure to reform laws to provide a statutory mechanism for restoration of rights that would replace the executive pardon and invalidate the racially motivated laws from reconstruction.³⁶ Ideas of redemption came to replace the antiquated notions of punishment that resulted in civil death.³⁷ Lawmakers during this time even advocated for the abolition of laws that imposed collateral consequences on

³⁰ See JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA 11-13 (The Brown Printing Co., Printers & Binders 1901).

³¹ *Id.* at 12-18.

³² *Id.* at 16-18.

³³ *Id.* at 15-18.

³⁴ *Id.* at 15-16.

³⁵ *Id.* at 15. When giving his acceptance speech for the nomination of president of the Alabama Constitutional Convention, John B. Knox discussed holdings from the United States Supreme Court that gave state lawmakers the legal authority to disenfranchise Blacks so long as it was not explicitly for their race. *Id.* at 15-16; see also *Williams v. Mississippi*, 170 U.S. 213, 222 (1898) (challenging the composition of a Mississippi jury drawn from voter registration lists).

³⁶ Love, *supra* note 8, at 764-65; see also Demleitner, *supra* note 29, at 155 (discussing the shift in the mid-1900s that focused on rehabilitation and reintegration of people with criminal records). See generally KATHLEEN DEAN MOORE, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST (1989) (discussing the ineffectiveness of the pardon system and efforts to replace it with other approaches).

³⁷ Love, *supra* note 8, at 765; see also Demleitner, *supra* note 29, at 155 (discussing propositions to abolish all civil disabilities imposed on ex-offenders after completion of their sentence); Chin, *supra* note 2, at 1797-98 (discussing the shift in ideologies about crime that granted support for relief from collateral consequences).

people with criminal records.³⁸ At this point, there was a realization that highlighted the draconian nature of forcing individuals with criminal records into a perpetual second class citizenship where they were left with virtually no way to rejoin society.³⁹

This realization forced lawmakers at state and federal levels to consider solutions that could mitigate collateral consequences and offer redemption for persons with felony convictions.⁴⁰ In 1984, the House Committee on the Judiciary went so far as to propose legislation that would “restor[e] the convicted person to the same position as before the conviction.”⁴¹ The legislative efforts in the House, however, were in conflict with growing political support for the country’s “War on Drugs” that President Nixon waged in the 1970s.⁴² Thus, in the same year the House attempted to eliminate collateral consequences, the Senate responded with its rival, the Sentencing Reform Act of 1984, that was then passed by Congress⁴³

D. Recent Evolution of Collateral Consequences

The United States’ “War on Drugs” resulted in the reemergence of public and political support for collateral consequences that effectively resulted in civil death for individuals with felony convictions.⁴⁴ The need to manage the rising drug and crime problem in the country gave way to the position that there was no redemption for persons with felony convictions, and that the government should work to ensure that felons’ ability to reintegrate into society would be limited in the name of public safety.⁴⁵ During the “War on Drugs,” new collateral consequences were added to the list, and restrictions were extended to people with misdemeanors.⁴⁶

³⁸ Love, *supra* note 8, at 765; *see also* Demleitner, *supra* note 29 (discussing the National Council on Crime and Delinquency’s 1955 Standard Probation and Parole Act’s provisions on restoring all civil rights of ex-offenders); Behrens et al., *supra* note 22, at 591 (referring to the 1960s and 1970s as “periods of relative liberalization”).

³⁹ Love, *supra* note 8, at 764; *see also* Demleitner, *supra* note 29, at 158 (referring to persons with criminal records as “social outcasts” and “second-class citizens” due to the collateral consequences of their criminal records).

⁴⁰ Love, *supra* note 8, at 769.

⁴¹ H.R. REP. NO. 98-1017, at 133-34 n.2 (1984); *see also* Sentencing Revision Act of 1984, H.R. Res. 6012, 98th Cong. (1984).

⁴² *See* Love, *supra* note 8, at 769-70; *see also* Chin, *supra* note 2, at 1798 (discussing House Resolution 6012).

⁴³ Sentencing Reform Act of 1984, 18 U.S.C. § 3551.

⁴⁴ Love, *supra* note 8, at 770-74.

⁴⁵ *Id.*

⁴⁶ *See* Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986). *See generally* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (representing the culmination of federal drug enforcement policy during the war on drugs by including harsh penalties for low level drugs and offenses). This Act is regarded as one of the chief contributors to mass incarceration in the United States. *See* Rashawn Ray & William A. Galston, *Did the 1994 Crime Bill Cause Mass Incarceration?*, BROOKINGS (Aug. 28, 2020),

Because society wanted to be “tough on crime,” the United States saw a massive increase in its prison and jail populations that rose yearly and caused the current epidemic of mass incarceration.⁴⁷ The prison population in America increased by 500% to roughly 2.2 million individuals.⁴⁸ Because the vast majority of prisoners are eventually released and return to their communities, the imposition of collateral consequences has a crippling effect on a large number of U.S. citizens and their communities.⁴⁹ Indeed, presently, there are between seventy to one hundred million U.S. citizens who are, or will be, affected by the burden of collateral consequences.⁵⁰ A 2012 survey conducted by the United States Department of Justice (“DOJ”) identified over 100 million individuals with criminal records across the country.⁵¹ The DOJ report highlighted results from the Federal Bureau of Investigation’s (“FBI”) Interstate Identification Index (“III”) database that cross-references state level data on individuals with criminal records to filter out people who have records in multiple jurisdictions.⁵² The FBI database identified over seventy-nine million individual criminal history records, including those for people who were currently incarcerated, on probation or parole, and those who have completed all forms of supervision.⁵³

Today, felon disenfranchisement laws impact individuals in four categories: current inmates; parolees; probationers; and persons with felony convictions who have completed both prison sentences and supervision requirements.⁵⁴ While the most severe collateral consequences impose lifetime bans on voting rights and access to public housing and benefits, about seventy percent of current collateral consequences focus on employment and professional licensing restrictions.⁵⁵ Employment and professional licensing restrictions prevent individuals from becoming physicians, teachers, barbers, elected officials, and even entry-level government employees.⁵⁶ The National Inventory of Collateral Consequences of Conviction (“NICCC”) website lists over 30,000

<https://www.brookings.edu/blog/fixgov/2020/08/28/did-the-1994-crime-bill-cause-mass-incarceration/>.

⁴⁷ U.S. COMM’N ON CIV. RTS., *supra* note 9, at 79.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 1-2.

⁵⁰ *Id.* at 2.

⁵¹ OFF. OF JUST. PROGRAMS, U.S. DEP’T OF JUST., SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2012, at 3 (2014).

⁵² *Id.* at 4.

⁵³ *Id.*

⁵⁴ U.S. COMM’N ON CIV. RTS., *supra* note 9, at 90.

⁵⁵ *Id.* at 133-34.

⁵⁶ *See generally Collateral Consequences Inventory*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/consequences> (last visited Feb. 14, 2022). The NICCC website is a user-friendly tool where people can look up any jurisdiction in the United States and search the list of collateral consequences that impact the lives of individuals with criminal records in that jurisdiction. *See id.*

consequences that could impact an individual's employment prospects or his ability to obtain a professional license.⁵⁷ This implies that those with criminal records are severely limited in their ability to earn a living once released from prison and have virtually zero support from the government in obtaining housing or income to meet their basic needs.⁵⁸

E. Legal Challenges

One of the oldest and most notable records of disputes against collateral consequences in the United States comes from a case involving a New York doctor who was barred from practicing after being convicted of a crime.⁵⁹ *Hawker v. New York* involved a doctor convicted of performing an abortion in 1878 and sentenced to prison for ten years.⁶⁰ In 1893, New York lawmakers passed legislation making it unlawful for those who had been convicted of a felony to practice medicine.⁶¹ The Supreme Court of the United States held that the New York law did not violate the *ex post facto* clause of the Constitution because the statute's prohibition of felons from practicing medicine was not an additional punishment, but rather a professional licensing criteria that the state had the authority to determine.⁶² It is worth noting that in a concurrence in part to *Smith v. Doe*, Justice Stevens expressed disagreement with this notion, stating that "[i]n my opinion, a sanction that (1) is imposed on everyone who commits a criminal offense, (2) is not imposed on anyone else, and (3) severely impairs a person's liberty is punishment."⁶³

Since *Hawker*, legal challenges to collateral consequences have been categorically unsuccessful.⁶⁴ Petitioners have challenged the constitutionality of lifetime felon disenfranchisement; however, in 1974, the Supreme Court ruled in *Richardson v. Ramirez* that the Constitution gives states the authority to regulate suffrage within their jurisdictions and that bans on felons' voting rights were consistent with the intent of the Equal Protection Clause of the Fourteenth Amendment.⁶⁵ The petitioners in *Ramirez* challenged a California law that prevented felons who had served their sentences and completed their supervision requirements from voting.⁶⁶ The Court held the legislative history of the Fourteenth Amendment made it

⁵⁷ *Id.*

⁵⁸ U.S. COMM'N ON CIV. RTS., *supra* note 9, at 35.

⁵⁹ *Hawker v. New York*, 170 U.S. 189 (1898).

⁶⁰ *Id.* at 190.

⁶¹ *Id.*

⁶² *Id.* at 199-200.

⁶³ *Smith v. Doe*, 538 U.S. 84, 113 (2003) (Stevens, J., concurring in part).

⁶⁴ Behrens et al., *supra* note 22, at 599.

⁶⁵ *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974).

⁶⁶ *Id.* at 26-27.

evident that denial of suffrage to individuals with felony convictions was consistent with the intent of the California law.⁶⁷ At that time of its enactment, felon disenfranchisement was a widely accepted practice and the legislators would have carved out an exception if they wanted to.⁶⁸ This position has gone largely unchallenged at the federal level.⁶⁹ But, there is opportunity for change among the several states.⁷⁰

Since *Ramirez* has yet to be overturned, Fourteenth Amendment challenges to collateral consequences have been mostly unsuccessful in the courts; however, passage of the Voting Rights Act of 1965 provided additional grounds to challenge state laws in federal court.⁷¹ In *Baker v. Pataki*, petitioners challenged voting restrictions, *inter alia*, on grounds that the restrictions were in violation of section two of the Voting Rights Act.⁷² Specifically, petitioners argued that the high proportion of minorities impacted by the criminal justice system in New York violated the results portion of the Act due to the resulting disparity in elections.⁷³ The court held that neither of the legislative histories of the Fourteenth Amendment nor the Voting Rights Act provided sufficient grounds for incarcerated persons or persons on felony parole to challenge the New York law because there was no evidence that either contained an exception to the law for those individuals.⁷⁴ The court also held that invalidating the New York law would “alter the ‘usual constitutional balance between the States and the Federal Government.’”⁷⁵ The court cited *Richardson*, analyzing how the Supreme Court made an appeal to the people of California to change the “draconian law,” which eventually occurred through a state constitutional amendment.⁷⁶ However, the holding of *Baker* leaves room for the argument that laws banning felons from voting indefinitely, even after they have served their sentences and completed all supervision requirements, might be successfully challenged in court.⁷⁷ The support for this argument is found in the majority opinion where Judge Mahoney said, “[i]f Congress intends to alter the ‘usual constitutional balance between the States and the Federal Government,’ it must make its intention to do so ‘unmistakably clear in the language of the statute.’”⁷⁸

⁶⁷ *Id.* at 54-56.

⁶⁸ *Id.*

⁶⁹ Behrens et al., *supra* note 22, at 569; Love, *supra* note 8, at 753.

⁷⁰ Love, *supra* note 8, at 753 (explaining that states have the ability to make significant changes to laws that impose collateral consequences).

⁷¹ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

⁷² *Baker v. Pataki*, 85 F.3d 919, 919-20 (2d Cir. 1996).

⁷³ *Id.* at 923.

⁷⁴ *Id.* at 934.

⁷⁵ *Id.* at 922 (quoting *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 65 (1989)).

⁷⁶ *Id.* at 933 (citing *Richardson v. Ramirez*, 418 U.S. 24, 55 (1974)).

⁷⁷ *Id.* at 934.

⁷⁸ *Baker*, 85 F.3d at 931 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 239-41 (1985)).

In *Padilla v. Kentucky*, the Supreme Court ruled that defendants have the right to know of collateral consequences having an impact on their citizenship status as an additional component of their sentences.⁷⁹ In this case, the plaintiff argued his counsel was ineffective for not informing him that deportation was a collateral consequence of his guilty plea for a drug charge.⁸⁰ The Court held that the attorney's actions amounted to a "constitutionally deficient" performance because his client was unaware and misled about the consequences of his plea.⁸¹ Although limited in scope, this case has been widely used by opponents of collateral consequences to illustrate the need for reform in the methods of communication about which consequences flow from pleas and convictions.⁸² The case has also been used to develop the framework for guidance documents and model codes, all of which are aimed at creating relief from collateral consequences.⁸³

III. RECENT RESTORATIVE EFFORTS AT THE FEDERAL AND STATE LEVEL

A. Federal Reform Efforts

The Second Chance Act of 2007 is federal legislation that provides assistance to individuals with criminal records in an effort to lower recidivism rates and assist individuals with reintegration into their respective communities.⁸⁴ The Act provides for the implementation of programs designed to help these individuals obtain jobs, housing, and navigate other post-release realities.⁸⁵ Section 60501(b) of the Act specifically speaks to Congressional findings on the economic impact of recidivism.⁸⁶ These findings state that "expenditures on corrections alone increased from \$9,000,000,000 in 1982, to \$59,600,000,000 in 2002."⁸⁷ This is evidence of Congress' ability to regulate collateral consequences when they deem necessary. The Second Chance Act also provides funding for transitional jobs that help employment prospects of felons by subsidizing their income, thereby allowing employers to take a chance on hiring individuals that traditionally would be considered high-risk.⁸⁸

⁷⁹ *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010).

⁸⁰ *Id.* at 365.

⁸¹ *Id.* at 374.

⁸² Love, *supra* note 8, at 756-58.

⁸³ *Id.* at 759.

⁸⁴ Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 34 U.S.C.).

⁸⁵ *Id.*

⁸⁶ Second Chance Act of 2007, 34 U.S.C. § 60501(b).

⁸⁷ *Id.* § 60501(b)(4).

⁸⁸ 122 Stat. 657.

In 2011, The Uniform Law Commission (“ULC”) drafted the Uniform Collateral Consequences of Conviction Act (“UCCCA”), a model code that provides mechanisms for mitigating the impacts of collateral consequences.⁸⁹ The UCCCA came about in response to the Supreme Court’s decision in *Padilla* and American Bar Association (“ABA”) guidance on collateral consequences.⁹⁰ The Act requires that defendants are notified about collateral consequences throughout their criminal trial so they can make informed decisions about any necessary steps to take during proceedings, such as whether to accept a plea.⁹¹ The Act also provides that collateral consequences should only be imposed when expressly authorized by statute and not by ordinance, policy, or court rule.⁹² To date, the model Act has only been adopted in full by Vermont.⁹³ Provisions in the UCCCA that propose complete relief after a time of law-abiding behavior act as an additional sentence after a person has completed all judicially mandated requirements because they make complete freedom contingent on that additional time period.⁹⁴ Additionally, the UCCCA makes the determination of relief from collateral consequences discretionary, which creates the potential for abuse, because this determination is left to the discretion of individual judges.⁹⁵

In April 2012, the Equal Employment Opportunity Commission (“EEOC”) released guidance designed to limit employers’ use of criminal records in the hiring process.⁹⁶ The guidance was based in part on agency findings that the use of criminal records had a disparate impact on minorities and people of different national origins.⁹⁷ A Texas court challenged the guidance on the basis that the EEOC had promulgated a rule impacting state governments without carrying out the required notice and comment period, yet attempted to pass it off as merely administrative guidance.⁹⁸ Although the challengers defeated the guidance in court, the EEOC’s rationale illustrates a trend of recognizing not only the ineffectiveness of collateral consequences, but also the discriminatory impact they have on protected classes of citizens.⁹⁹

The First Step Act is the latest legislation aimed at reducing recidivism and improving the chances of reintegration for individuals with criminal

⁸⁹ U.C.C.A. §§ 10-11 (UNIF. L. COMM’N 2010).

⁹⁰ Love, *supra* note 8, at 780-81.

⁹¹ U.C.C.A. §§ 5-6 (UNIF. L. COMM’N 2010).

⁹² *Id.* § 7.

⁹³ U.S. COMM’N ON CIV. RTS., *supra* note 9, at 34.

⁹⁴ U.C.C.A. § 11 (UNIF. L. COMM’N 2010).

⁹⁵ *Id.* § 8.

⁹⁶ U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC-CVG-2012-1, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT (2012).

⁹⁷ *Id.* § V.

⁹⁸ U.S. COMM’N ON CIV. RTS., *supra* note 9, at 44.

⁹⁹ U.S. EQUAL EMP. OPPORTUNITY COMM’N, *supra* note 96.

records.¹⁰⁰ This law was intended to pick up where the Second Chance Act left off and addresses issues such as recidivism and job placement that were not effectively covered by the previous Act.¹⁰¹ The passage of the First Step Act, coupled with previous legislative measures, is evidence that previous congressional action has fallen short of addressing the root cause of the problem.¹⁰² To date, no federal legislation aiming to reduce recidivism has categorically prohibited collateral consequences as a means of ensuring individuals exiting prisons will be given an honest chance to rejoin society as full citizens.¹⁰³ The goals of the First Step Act and congressional findings point to the need for immediate action, yet truly do little to reach the supposed goal of reducing the risk that prisoners will recidivate.¹⁰⁴

In March 2021, the U.S. House of Representatives passed the For the People Act, which is a landmark voting rights legislation aimed at protecting the integrity of elections in the United States.¹⁰⁵ The bill passed the House and has been forwarded to the Senate for consideration.¹⁰⁶ Relevant portions of this bill make it a violation of the Act for states to impose voting restrictions on individuals with criminal records, and requires notice of restoration of voting rights.¹⁰⁷ The bill states:

The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.¹⁰⁸

If this legislation passes the Senate, it will represent the most sweeping reform to the nation's voting policies since the Voting Rights Act. Congress highlighted constitutional authority for the bill in the Elections Clause of the Constitution; article IV, section four of the Constitution; and sections one and five of the Fourteenth Amendment.¹⁰⁹ Findings in the bill list racial

¹⁰⁰ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5195 (2018).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See, e.g.*, Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 34 U.S.C.); *see also* 132 Stat. 5195 (providing for resources for job training and other programing but not abolishing collateral consequences).

¹⁰⁴ 132 Stat. 5195.

¹⁰⁵ For the People Act, H.R. 1, 117th Cong. (2021).

¹⁰⁶ *H.R.1 - For the People Act of 2021, Actions*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1/actions> (last visited Apr. 11, 2022).

¹⁰⁷ H.R. 1 § 1403.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* § 3.

disparities and the racially motivated histories of voting restriction laws as rationales for the legislation.¹¹⁰

B. State Comparison

Due to the reluctance of courts to invalidate collateral consequences on constitutional grounds,¹¹¹ and the time it takes for legislation to make its way through Congress, states have an opportunity to make immediate reforms in their jurisdictions. In fact, several states have already implemented at least some reform effort to address the issue:

1. California: In 2016, lawmakers restored voting rights to people convicted of a felony offense housed in jail, but not in prison. That year, officials authorized persons sentenced to prison to be released to probation rather than parole, affirming voting rights for residents under felony community supervision.
2. Louisiana: In 2019, authorized voting for residents under an order of imprisonment for a felony who have not been incarcerated for five years, including those on probation and parole.
3. New York: In 2018, Governor Cuomo reviewed and restored voting rights to persons currently on parole via executive order. There is currently no assurance that this practice will continue, however, so New York is listed as a state that continues to disenfranchise people on parole.
4. Alabama: In 2016, legislation eased the rights restoration process after completion of sentence for persons not convicted of a crime of “moral turpitude.” The state codified the list of felony offenses that are ineligible for re-enfranchisement in 2017.
5. Arizona: Permanently disenfranchises persons with two or more felony convictions. In 2019, removed the requirement to pay outstanding fines before rights are automatically restored for first time felony offenses only.
6. Delaware: In 2013, removed the five-year waiting period to regain voting eligibility. Apart from some disqualifying offenses, people convicted of a felony are now eligible to vote upon completion of sentence and supervision.
7. Florida: In 2018, voters passed an amendment to restore voting rights to most people after sentence completion. In 2019, legislation was passed that made restoration conditional on payment of all restitution, fees, and fines. As of October, 2020, only the rights of those who had paid all legal financial obligations (fines and fees) had been restored.
8. Iowa: In 2020, Governor Reynolds signed an executive order restoring voting rights to people who have completed their sentences,

¹¹⁰ *Id.* § 3(D).

¹¹¹ *See generally* Padilla v. Kentucky, 559 U.S. 356, 374 (2010).

except for those convicted of homicide. This follows previous executive orders from Governor Vilsack (restoring voting rights to individuals who had completed their sentences in 2005) and Governor Branstad (reversing this executive order in 2011).

9. Kentucky: In 2019, Governor A. Beshear issued an executive order restoring voting rights to those who had completed sentences for nonviolent offenses. This follows a similar 2015 executive order by Governor S. Beshear, which had been rescinded by Governor Bevin later that year.

10. Mississippi: Permanently disenfranchises individuals convicted of certain offenses.

11. Nebraska: In 2005, Reduced its indefinite ban on post-sentence voting to a two-year waiting period.

12. Tennessee: Disenfranchises those convicted of certain felonies since 1981, in addition to those convicted of select crimes prior to 1973. Others must apply to the Board of Probation and Parole for restoration.

13. Virginia: In 2019, Governor Northam reported that his administration has restored voting rights to 22,205 Virginians previously convicted of felonies. Governor McAuliffe had earlier restored rights to 173,166.

14. Wyoming: In 2017, restored voting rights after five years to people who complete sentences for first-time, non-violent felony convictions.¹¹²

Currently, only two states—Vermont and Maine—as well as the District of Columbia allow prisoners to vote while they are incarcerated.¹¹³ In seventeen states, persons with felony convictions regain their voting rights immediately upon release from prison.¹¹⁴ In seventeen other states, individuals must complete all requirements of their sentence, including probation and parole, before rights are restored.¹¹⁵ In eleven states, felons are permanently disenfranchised unless they receive an official executive pardon or take the necessary steps to satisfy another official restoration process.¹¹⁶ In three states, only prisoners and parolees are barred from voting.¹¹⁷ This

¹¹² THE SENT'G PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 5 (2020).

¹¹³ ME. CONST. art. II, § 1; VT. CONST. ch. II, § 42.

¹¹⁴ THE SENT'G PROJECT, *supra* note 112, at 5 (listing Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah).

¹¹⁵ *Id.* (listing Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin).

¹¹⁶ *Id.* (listing Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming).

¹¹⁷ *Id.* (listing California, Connecticut, and New York).

section will focus on approaches in Vermont,¹¹⁸ Maine,¹¹⁹ Alabama,¹²⁰ and Florida¹²¹ to demonstrate the breadth and variation in responses to this issue, as well as to offer examples of strategies that other states can implement to for similar reform.¹²²

1. Vermont

Vermont is the first of two states allowing prisoners to vote while they are incarcerated.¹²³ In 1799, a now defunct branch of state government called the Council of Censors, which was responsible for interpreting the state constitution, decided that the constitution's language intended every freeman had the right to vote unless he committed a serious crime in regard to that privilege specifically.¹²⁴ Since then, prisoners in Vermont have been able to vote in the manner provided by the state board of electors.¹²⁵ In order to ensure that prisoners are aware of their rights, volunteers from advocacy organizations educate inmates on the voting process ninety days before an election.¹²⁶

Although prisoners retain the ability to vote, state officials estimate that only about ten percent of prisoners actually take advantage of the opportunity.¹²⁷ This is believed to be linked to the low literacy rates in Vermont prisons.¹²⁸ Regardless, lawmakers believe that helping inmates feel as though they are a part of society helps them to “know their neighbors” and

¹¹⁸ VT. CONST. ch. II, § 42; *see also* VT. COUNCIL OF CENSORS, RECORDS OF THE COUNCIL OF CENSORS OF THE STATE OF VERMONT 716 (1991).

¹¹⁹ ME. CONST. art. II, § 1; *see also* Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here's why Few Do.*, THE MARSHALL PROJECT (June 11, 2019, 6:00 AM), <https://www.the-marshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>.

¹²⁰ Definition of Moral Turpitude Act, H.B. 282, 2017 Leg., Reg. Sess. § 17-3-30.1 (Ala. 2017) (providing a list of crimes that constitute acts of moral turpitude as a way to eliminate the subjectivity in disenfranchisement policies).

¹²¹ FLA. CONST. art. VI, § 4 (amending Florida's constitution to allow people with felonies to vote).

¹²² *See generally* U.S. COMM'N ON CIV. RTS., *supra* note 9.

¹²³ VT. CONST. ch. II, § 42.

¹²⁴ VT. COUNCIL OF CENSORS, *supra* note 118, at 716.

¹²⁵ *See Voter Information, Elections Division*, VT. SEC'Y OF STATE, <https://sos.vermont.gov/elections/voters/> (last visited Feb. 14, 2022). Vermont uses a network of volunteers to help facilitate the voting process. *See* Lewis, *supra* note 119.

¹²⁶ Lewis, *supra* note 119; *see also* DISABILITY RTS. VT., 2020 VOTERS GUIDE FOR PEOPLE WITH DISABILITIES 5 (2020), <https://www.castletonvermont.org/sites/g/files/vyhlif376f/uploads/drvt-voter-guide.2020.pdf>. Vermont views incarceration as a disability as it relates to voting and addresses access to voting for inmates under that framework. *Id.*

¹²⁷ Jane C. Timm, *Most States Disenfranchise Felons. Maine and Vermont Allow Inmates to Vote from Prison*, NBC NEWS (Feb. 26, 2018, 3:43 AM CST), <https://www.nbcnews.com/politics/politics-news/states-rethink-prisoner-voting-rights-incarceration-rates-rise-n850406>.

¹²⁸ *Id.*

have a better opportunity at integrating back into their respective communities.¹²⁹

2. *Maine*

Maine is the second state that allows inmates to vote, regardless of their conviction.¹³⁰ Prisoners in Maine are required to vote through an absentee ballot.¹³¹ Additionally, these inmates are considered residents of the county they lived in prior to prison.¹³² This ensures that inmates who vote do not have an adverse impact on local elections in communities where prisons are located.¹³³

Of particular note regarding Vermont and Maine's willingness to allow prisoners to vote is the majority of inmates in both states are white, thus eliminating the issue of racial tensions that exist at the root of most felon disenfranchisement laws.¹³⁴ Indeed, Maine and Vermont have the highest percentage of white citizens in the country.¹³⁵ African Americans in Vermont represent only ten percent of the prison population.¹³⁶ States such as Alabama and Mississippi that have historically had a much higher percentage of African Americans—both in their general populations as well as their prison populations—have taken the opposite approach to voting rights for inmates and people with criminal records.¹³⁷

3. *Alabama*

Alabama has a well-documented history of policies and laws that were enacted with the express intent of limiting the potential political power of a

¹²⁹ *Id.*

¹³⁰ ME. CONST. art. II, § 1; *see also* Lewis, *supra* note 119.

¹³¹ VT. STAT. ANN. tit. 28 § 807(a) (1974) (“Notwithstanding any other provision of law, a person who is convicted of a crime shall retain the right to vote by early voter absentee ballot in a primary or general election at the person’s last voluntary residence during the term of the person’s commitment under a sentence of confinement provided the person otherwise fulfills all voting requirements.”); ME. CONST. art. II, § 4 (“The Legislature under proper enactment shall authorize and provide for voting by citizens of the State absent therefrom in the Armed Forces of the United States or of this State and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient.”); *see also* Lewis, *supra* note 119.

¹³² Lewis, *supra* note 119.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Maine, Quickfacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/ME> (last visited Feb. 14, 2022) (reporting Maine’s population as 94.4% white); *Vermont, Quickfacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/VT> (last visited Feb. 14, 2022) (reporting Vermont’s population as 94.2% white).

¹³⁶ Lewis, *supra* note 119.

¹³⁷ *See generally* U.S. COMM’N ON CIV. RTS., *supra* note 9; *see also* Behrens et al., *supra* note 22.

Black voting bloc.¹³⁸ Today, Alabama’s state constitution still provides a mechanism for those convicted of crimes of “moral turpitude” to be stripped of their right to vote.¹³⁹ However, in 2017, Alabaman lawmakers enacted the Definition of Moral Turpitude Act, which defines exactly which crimes disenfranchise offenders.¹⁴⁰ Before passage of the Act, the counties were able to determine which crimes fit the definition of moral turpitude in their jurisdiction on individual bases.¹⁴¹ This often led to discrimination against African Americans who applied for restoration of their voting rights.¹⁴²

Crimes such as low-level possession of marijuana are no longer considered crimes of moral turpitude, which means an offender with such a charge does not have his right to vote suspended.¹⁴³ Offenders in Alabama still need to complete their prison sentence and all forms of supervision before they are eligible to apply for restoration of their voting rights.¹⁴⁴ However, this move represents a significant shift in policy for a racially motivated state that has historically been opposed to criminal justice reform efforts.

4. Florida

In 2018, Florida residents voted to amend the state’s constitution to allow people with felonies to vote.¹⁴⁵ The action taken by the bipartisan voters in the state sought to overturn laws that had been in place since the Reconstruction Era.¹⁴⁶ The amendment, however, excluded individuals who had convictions for murder or sexual assault.¹⁴⁷ This amendment would provide voting eligibility to over one million Florida residents with criminal

¹³⁸ See JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, *supra* note 30, at 12-13 (“The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination Being prostrated by the effects of the war, and unable to take up arms in their own defense, in some portions of this State, white men, greatly in the minority, it is said, resorted to stratagem—used their great intellect to overcome the greater numbers of their black opponents.”).

¹³⁹ ALA. CONST. art. VIII(b), § 177 (“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.”).

¹⁴⁰ Definition of Moral Turpitude Act, H.B. 282, 2017 Leg., Reg. Sess. § 17-3-30.1 (Ala. 2017) (providing a list of crimes that constitute acts of moral turpitude).

¹⁴¹ *Voting Rights Restoration*, AM. CIV. LIBERTIES UNION OF ALA. (May 1, 2018), <https://www.aclu-alabama.org/en/voting-rights-restoration>.

¹⁴² *Id.*

¹⁴³ Ala. H.B. 282.

¹⁴⁴ See generally U.S. COMM’N ON CIV. RTS., *supra* note 9.

¹⁴⁵ FLA. CONST. art. VI, § 4.

¹⁴⁶ Nina Totenberg, *Supreme Court Deals Major Blow to Felons’ Right to Vote in Florida*, NPR (July 17, 2020, 5:00 AM ET), <https://www.npr.org/2020/07/17/892105780/supreme-court-deals-major-blow-to-ex-felons-right-to-vote-in-florida>.

¹⁴⁷ *Id.*

records.¹⁴⁸ The effort was halted by the state legislature, which passed a statute requiring persons with felony convictions to pay all restitution and fees associated with their crime before they were allowed to vote.¹⁴⁹ Some critics of the statute liken the legislation to poll taxes from the Jim Crow era.¹⁵⁰ When challenged in court, the Federal Court of Appeals for the Eleventh Circuit upheld the Florida law.¹⁵¹

When advocacy groups gathered donations and offered to pay fines and restitution for felons, to allow them to vote, it caused great tension with opponents of the amendment.¹⁵² Most who were against advocates paying the restitution fees alleged the action represented a crime under Florida law.¹⁵³ Florida lawmakers rejected the action and noted that it was important for inmates to pay the fines themselves.¹⁵⁴ Advocates highlighted that the opponent's argument was in direct contradiction to the state's argument in court which was that if persons with felony convictions were unable to pay, they had family and friends who could assist them with making the payments.¹⁵⁵

The approaches in Vermont, Maine, Alabama, and Florida highlight the variations in policy that different states have in response to collateral consequences and set an example for other states to pursue. Following is a discussion of the different recommendations and proposals for lawmakers at the federal and state levels.

IV. RECOMMENDATIONS AND PROPOSAL

Legislators across the United States should use a combination of constitutional analysis, interpretation of relevant case law, and a fiscal responsibility approach to invalidating laws that impose collateral consequences, especially those tied to voting and employment restrictions. Considerable support for reform exists across the political spectrum. In the 2020 presidential election, both Joe Biden's and Donald Trump's platforms included measures to reform the criminal justice system and provide relief

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Michael Scherer, *Mike Bloomberg Raises \$16 Million to Allow Former Felons to Vote in Florida*, WASH. POST (Sept. 22, 2020), https://www.washingtonpost.com/politics/mike-bloomberg-raises-16-million-to-allow-former-felons-to-vote-in-florida/2020/09/21/6dda787e-fc5a-11ea-8d05-9beaa91c71f_story.html.

¹⁵¹ *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020).

¹⁵² Totenberg, *supra* note 146.

¹⁵³ *Id.*

¹⁵⁴ Greg Allen, *Bloomberg Adds \$16 Million to a Fund that Helps Florida Felons Get Chance to Vote*, NPR (Sept. 24, 2020, 4:01 PM ET), <https://www.npr.org/2020/09/24/916625348/bloomberg-adds-16-million-to-a-fund-that-helps-florida-felons-get-chance-to-vote>.

¹⁵⁵ *Id.*

for individuals with criminal records.¹⁵⁶ The realization that current policies are unreasonable and fail to serve their supposed purposes has created a rare opportunity for bipartisan support for sweeping reforms.

Conservative and progressive legislators alike should agree that, due to the staggering impact on the nation's budget, the cost of punitive measures coupled with the negative impact that unemployed citizens have on states' and the nation's economy is cause for immediate action.¹⁵⁷ The ability to save the United States between fifty-seven and sixty-five billion dollars per year in lost output from unemployed or underemployed citizens seems to provide the impetus for bipartisan support.¹⁵⁸ Additionally, access to employment and voting have strong linkages to civil rights that have been long regarded as among the most fundamental in our form of government.

A. Recommendations for the Federal Government

The federal government should take immediate action to limit the imposition of collateral consequences for offenders at the state and federal levels.¹⁵⁹ One way to achieve that goal would be to pass the For the People Act, which aims to remove voting restrictions on persons with criminal convictions.¹⁶⁰ Doing so would improve the integrity of elections by expanding the electorate to those who have historically been denied access. Given the impact that collateral consequences have on millions of Americans' ability to participate in the political process, new legislation has the potential to provide relief for these citizens. In enacting both the Second Chance Act and the First Step Act, the government discussed the rising costs of incarceration and its impacts on the country.¹⁶¹ That same appeal could be made for the passage of the For the People Act.

Removing these types of restrictions could have a significant effect on the nation's economy and make the statement that the United States is truly committed meet the ideals articulated in the Declaration of Independence. Our Founding Fathers' promise of life, liberty, and pursuit of happiness¹⁶² is

¹⁵⁶ *The Platinum Plan*, DONALD J TRUMP, https://cdn.donaldjtrump.com/public-files/press_assets/president-trump-platinum-plan-final-version.pdf (last visited Feb. 14, 2022); *see also Lift Every Voice: The Biden Plan for Black America*, BIDEN HARRIS DEMOCRATS, <https://joebiden.com/blackamerica/> (last visited Feb. 14, 2022).

¹⁵⁷ U.S. COMM'N ON CIV. RTS., *supra* note 9, at 5.

¹⁵⁸ *Id.*

¹⁵⁹ *See generally Collateral Consequences Inventory*, *supra* note 56 (listing the collateral consequences the federal government can impose).

¹⁶⁰ For the People Act, H.R. 1, 117th Cong. (2021).

¹⁶¹ *See generally* Second Chance Act of 2007, Pub. L. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 34 U.S.C.); *see also* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5195 (2018) (explaining the need for the legislation in the findings and purposes sections of both Acts).

¹⁶² THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

directly linked to one's ability to earn a living and participate in society at all levels. Removing restrictions specifically related to voting would improve the perceived integrity of elections and increase citizens' respect for our system of governance. Additionally, reform efforts of this nature would make a bold statement to the world that the United States is truly a free nation that holds liberty and justice in high regard.

Neither the Second Chance Act nor the First Step Act will resolve the problems that felons face when navigating collateral consequences. However, the government should build upon the congressional authority given in the For the People Act to include measures that prohibit the unreasonable imposition of restrictions on employment and professional licensing, create mechanisms for persons with felony convictions to access public housing and benefits, and make recommendations to states to provide for the full restoration of rights that are lost due to conviction. Even though efforts to challenge states' voting laws have been largely unsuccessful at the federal court level, the Supreme Court's holding in *Pataki* provides support for the belief that the Court would uphold this legislation.¹⁶³

B. Recommendations for States

States should begin by thoroughly assessing any statutes or constitutional provisions that impose collateral consequences on individuals with felony convictions. Additionally, they should focus on eliminating laws where criminal offenses bear no direct relation to the collateral consequence imposed. For example, there is no truly reasonable rationale for someone who was convicted of a felony to be barred from obtaining a barber's license—as they are in the State of Illinois—unless there was some connection from the conviction to the profession.¹⁶⁴ The two have no direct relationship with each other. In fact, due to the arbitrary nature of this law, former Illinois Governor Bruce Rauner signed House Bill 5973 in 2017 eliminating this restriction.¹⁶⁵ Other governors and state legislators should take similar decisive action. Where there is a direct relationship between the crime and the resulting collateral consequence, there could potentially be time limits on bans. A paradigm shift is required to overcome the notion that people who have committed crimes cannot reform their behavior and are perpetually a danger to society.

¹⁶³ *Baker v. Pataki*, 85 F.3d 919, 922 (2d Cir. 1996) (“[I]f Congress intends to alter the ‘usual constitutional balance between the States and the Federal Government,’ it must make its intention to do so ‘unmistakably clear in the language of the statute.’”) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)).

¹⁶⁴ 225 ILL. COMP. STAT. 410/4-7 (2018).

¹⁶⁵ H.B. 5973, 99th Gen. Assemb., Reg. Sess. (Ill. 2016).

Additionally, states should take the initiative to provide restoration of voting rights for persons with felony convictions. State legislators have the authority to set qualifications for suffrage within their jurisdiction.¹⁶⁶ One recommendation is that once a person has paid his or her debt to society, he or she should be allowed citizenship with the full scope of benefits that it entails. Doing this would show felons that they would be welcomed back into mainstream society and would be expected to participate the same as any other citizen. This could have a significant impact on society's perception of persons with felony convictions. Individuals who are allowed to fully participate in society are far more likely to appreciate societal laws and policies.¹⁶⁷ Therefore, the ability to choose elected officials and vote for laws that impact one's life should be extended to all who are expected to live and work in communities where those officials and laws govern.

Workable examples exist in states such as Vermont and Maine, albeit, these are examples of the most comprehensive reforms that could be made. However, for more palatable reforms, states could follow the lead of Florida and Alabama by enacting constitutional amendments that would allow individuals with felony convictions to regain their voting rights through a set of criteria, or an application process that formalizes full restoration. Additionally, Alabama's example of specifying which crimes constitute crimes of moral turpitude would set the stage for millions of felons to regain their voting rights throughout the rest of the states. These statewide changes have gained bipartisan support in even the least likely jurisdictions.

V. CONCLUSION

Collateral consequences that impose indefinite restrictions on voting rights and employment prospects are a stain on U.S. culture and represent relics of tattered history through discrimination and racism. The history of these political tools is proof that their existence is fraught with malice towards African Americans. Even if it is debatable whether all collateral consequences were born of ill intent, the fact that they are largely ineffective at serving any legitimate purpose should be a call to action for legislators to rid their respective codes of these relics.

Every level of the government should critically examine the history of laws that impose employment and voting restrictions of persons with felony convictions to identify discriminatory intent. If mal intent is found, the laws should be eliminated. Courts should decide any challenges to possible changes in favor of protecting the fundamental rights associated with voting and employment. The current interpretation of the Fourteenth Amendment

¹⁶⁶ U.S. CONST. art. I, § 4.

¹⁶⁷ Timm, *supra* note 127.

should be altered to offer greater protection for the rights of persons with felony convictions. State legislators have the greatest ability to make immediate change, and therefore the shift should begin at the state level. The federal government can and should act as well. The existence of these restrictions has had a negative impact on the national economy as well as the world's perception of the United States. It is difficult for the United States to present itself as the model of democracy, liberty, and fairness in the world if it is unable to take hold of these ideals in its own back yard.