
Voting Rights in Kentucky

Felons Who Have Completed All Terms of Their Sentences Should Have the Right to Vote

**Kentucky Advisory Committee to the
United States Commission on Civil Rights**

September 2009

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The United States Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; submit reports, findings, and recommendations to the President and Congress; and issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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Letter of Transmittal

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to the U.S. Commission on Civil Rights

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The Kentucky Advisory Committee submits this report, *Voting Rights in Kentucky: Felons Who Have Completed All Terms of Their Sentences Should Have the Right to Vote*, as part of its responsibility to study and report on civil rights issues in Kentucky. This report by the Committee was unanimously approved by a vote of 10 yes and 0 no, with no abstentions.

It is the opinion of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights that persons previously convicted of a felony who have completed all terms of their sentence and made full restitution should be entitled to having their right to vote restored.

Kentucky's lifetime voting ban for persons convicted of a felony is established in the State's Constitution. That restriction, adopted in 1891, was primarily motivated by a concern to safeguard the electoral process—not to restrict the voting rights of tens of thousands of individuals who today stand convicted of a felony.

Although former felons may have their voting rights restored through executive pardon granted by the Governor, the process has been politicized and has varied greatly in its application dependent upon the Administration. The granting of executive pardon is not subject to any established law, statute, or regulation. It should be.

The optimal solution to this problem is through the adoption of a Constitutional Amendment automatically restoring voting rights to former felons. In the absence of the adoption of a Constitutional Amendment, however, current practices and procedures with respect to the restoration of voting rights for former felons in Kentucky must be standardized, not only to de-politicize the process but also to ensure that the large number of former felons returning to civilian life can become contributing members to society.

To that purpose, the Kentucky Advisory Committee to the U.S. Commission on Civil Rights calls upon the Governor to initiate a review of the executive pardon process, and to work with the Legislature as necessary to put in place by statute, rule, and/or regulation an established process to be followed that will be fair, just, expeditious, and non-political in granting ex-felons in the State of Kentucky the right to vote.

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Note: Regina Gomez was a member of the Kentucky Advisory Committee at the time of the adoption of this study and during the preliminary stages of the research.

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Contents

Introduction	1
Ex-Felon Disenfranchisement in Kentucky Extends Back More Than 100 Years	2
Kentucky One of Only Nine States With Lifetime Voting Ban for Former Felons	2
Restriction on Ex-Felon Voting Rights Established in State Constitution	5
Former Slave States Used Ex-Felon Statutes To Disenfranchise African Americans, But Kentucky Statute Enacted Without Racial Animus	8
Racial Animus Absent in Kentucky's Adoption of Ex-Felon Voting Statute	8
Ex-Felon Statutes Adopted in Many Southern States To Disenfranchise African Americans	12
Kentucky Constitution Allows for Executive Clemency Estimated 185,000 Citizens Currently Disenfranchised	15
Kentucky Constitution Allows For Ex-Felons To Have Civil Rights Restored Through Executive Pardon	15
Estimated 185,000 Persons Are Disenfranchised in Kentucky	16
House Bill 70 Proposes Vote To Amend Constitution Regarding Ex-Felon Voting Rights	18
General Support in State for Restoration of Voting Rights for Ex-Felons	19
Findings	22
Recommendation	23
Appendix 1 - Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort, on the Eight Day of September 1890, to Adopt, Amend, Change the Constitution of the State of Kentucky; Suffrage and Elections Regarding Restoration of Voting Rights for Ex-Felons	24

Tables

Table 1: Restrictions on Voting Rights for Ex-Felons for States With Lifetime Bans	3
Table 2: Restrictions on Voting Rights for Ex-Felons for States Without Lifetime Bans	4
Table 3. Number of Applicants for Executive Pardon, Number of Persons with Civil Rights Restored, Percentage of Successful Applicants 1999-2007	16
Table 4. Kentucky Felony Inmate Population by Class in 2008	17

Introduction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency charged with the responsibility to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin. Addressing voting rights issues has been a central mission for the Commission since its establishment in 1957. In the 1960s the work of the Commission was instrumental in passage of the Voting Rights Act of 1965. Most recently, the Commission addressed the Voting Rights Act in a briefing held October 2005 and in its statutory enforcement report for FY 2006.¹ Five years earlier in 2001, the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential elections.²

State advisory committees are established in each of the 50 states to advise the Commission and study important civil rights issues in their states. In keeping with the Commission's historical attention to voting rights, the Kentucky Advisory Committee to the U.S. Commission on Civil Rights (Committee), at a meeting of the Committee in August 2008, decided to examine the issue of ex-felon voting rights in Kentucky. Ex-felons in the state are denied the right to vote, even after completion of their sentence. The percentage of those disenfranchised are disproportionately minority, and Kentucky is one of only nine states in the nation that have a permanent ban on ex-felons having the right to vote.

In examining this issue, the Committee appointed a sub-Committee to examine the specific history of the state's ex-felon disenfranchisement Constitutional ban, as well as government and private studies of ex-felon voting disenfranchisement to include the Federal Commission on Election Reform. As part of its study, the Committee obtained data from the U.S. Department of Justice and the Kentucky Department of Corrections regarding incarceration and recidivism rates, and did an independent analysis of ex-felon disenfranchisement statutes among the 50 states and the District of Columbia. In addition, opinions on ex-felon voting rights were solicited from individuals and organizations, and comments were received during an open comment period.³

This report is a statement of the Committee's sentiment regarding ex-felon voting rights in Kentucky. The report is narrowly limited in scope to an examination of the right to vote by ex-felons in Kentucky, and does not extend to the restoration of other civil rights such as the right to serve on a jury nor to other issues regarding the re-entry of ex-felons to society, e.g., barriers to employment. Nor is this study an examination of the judicial system and any alleged racial bias in arrest, prosecution, or sentencing.

¹ U.S. Commission on Civil Rights, "Reauthorization of the Temporary Provisions of the Voting Rights Act," February 2006 at <http://www.sccr.gov/pubs/067006VRAbrief524.pdf> and <http://www.usccr.gov/pubs/051006VRASatReport.pdf>.

² U.S. Commission on Civil Rights, "Voting Irregularities in Florida During the 2000 Presidential Election," June 2001.

³ Two public comment periods were announced in the Federal Register. The first comment period was from October 15, 2008, through November 30, 2008. The second comment period was from April 1, 2009, through May 15, 2009.

Ex-Felon Disenfranchisement in Kentucky Extends Back More Than 100 Years

Kentucky is one of only nine states that has a lifetime voting ban for persons convicted of a felony. The state's restriction on ex-felon voting rights is established in section 145 of the state Constitution, adopted in 1891. The permanent voting ban also applies to those convicted of treason and bribery in an election.

Kentucky Is One of Only Nine States With Lifetime Voting Ban for Former Felons

Kentucky is one of just nine states in the nation that has a lifetime voting restriction on ex-felons. The state is not unique, however, in having some ex-felon voting rights restriction, as all but two states currently restrict or deny the right to vote to ex-felons in some fashion.⁴ In addition to the nine states with lifetime bans, 39 other states and the District of Columbia also have restrictions on ex-felon voting rights, but the restrictions are not lifetime bans. The lifetime bans, however, are not necessarily permanent, as there are opportunities for certain ex-offenders to have their right to vote restored.

As a result of ex-felon voting restrictions nationwide, it is estimated that about 4.65 million Americans, or one in 50 adults, is prohibited from voting because of a current or prior felony conviction.⁵ Moreover, there is no uniform, national standard regarding ex-felon voting rights among the 50 states. Prohibitions range from allowing incarcerated persons the right to vote to non-pardonable lifetime bans for certain felony convictions.

In seven of the nine lifetime banning states, including Kentucky, an executive pardon by the Governor can restore voting rights of an ex-felon. The process of executive clemency is not uniform across these states, however. For example, Governor Tom Vilsack of Iowa has issued an executive order that grants executive clemency to offenders who have completed their court-imposed sentences.⁶ In Arizona and Nevada only repeat offenders need to obtain executive clemency to have voting rights restored, while first time offenders have their voting rights restored. In Tennessee, the lifetime ban is reserved for those felons convicted of specific violent crimes, such as murder or rape. (See Table 1.)

In Mississippi, the state legislature has the authority to restore voting rights to ex-felons, but the measure requires a two-thirds vote. In Florida, the 4-member cabinet comprises a Clemency Board, which has discretion to restore voting rights and other civil rights to ex-felons. In 2007, at the urging of Governor Charlie Crist, the Florida Clemency Board elected to automatically restore voting rights for many ex-offenders. Under the new rules for clemency, when an ex-offender in Florida completes his/her sentence, the Parole Commission reviews the eligibility of the person for his/her eligibility for restoration of civil rights. After review, the Parole Commission places the ex -felons into one of three categories. Ex-felons placed in Level-1 status, i.e., those who have committed less severe offenses. They constitute about 80 percent of all released felons and are eligible for automatic restoration of civil rights. (See Table 1.)

⁴ Maine and Vermont have no restrictions on the voting rights of felons, even allowing incarcerated prisoners the right to vote.

⁵ See Report of the Commission on Federal Election Reform, "NATIONAL COMMISSION ON FEDERAL ELECTION REFORM (Sept. 2005), *supra* note 18 (hereafter referred to as Election Reform Report).

⁶ On July 4, 2005, Governor Tom Vilsack issued an executive order automatically restoring the vote to offenders who have completed their court-imposed sentences.

Table 1: Restrictions on Voting Rights for Ex-Felons in States With Lifetime Bans

Vote by Legislature Restores Voting Rights	Executive Pardon Restores Voting Rights	State Cabinet Required to Restore Voting Rights
Mississippi ¹	Iowa ² Alabama ³ Arizona ⁴ Kentucky ⁵ Nevada ⁶ Tennessee ⁷ Virginia ⁸	Florida ⁹

Note 1. Right to vote may be regained by two-thirds vote of both legislative houses. MISS. CONST. art. XII, §253.

Note 2. Right to vote may be regained by action of the Governor. IOWA CONST. art. IV, §16.

Note 3. Persons convicted of serious violent offenses and sex offenses must apply to the Board of Pardons and Parole for a Pardon. ALA. CODE §15-22-36.1 (2009) except for treason and impeachment.

Note 4. Repeat offenders, including federal offenders, must apply for judicial restoration or pardon.

ARIZ.REV.STATE.ANN. §§ 13-906, 13-908.

Note 5. Right to vote may be regained by action of the Governor. KY. CONST. §145.

Note 6. Persons with more than one conviction, and persons convicted of Class A and violent Class B offenses must either petition the Board of Pardons Commissioners for a pardon, or seek restoration of civil rights in the court in which they were convicted. NEV. REV. STAT.ANN. § 213.090(West 2009).

Note 7. Persons convicted of murder, rape, treason or voter fraud are permanently ineligible to vote unless pardoned. TENN. CODE. ANN. § 40-29-204.

Note 8. Right to vote regained by action of the Governor. VA. CONST. art. V, §12.

Note 9. Authority to restore voting rights to ex-felons vested with state Cabinet. FL. CONST. art. IV §8.

Source: Kentucky Advisory Committee.

Despite the possibility of clemency, the effect on the voting population of lifetime disenfranchisement statutes is significant. According to the National Commission on Election Reform, one-third of the people presently denied the right to vote because of a felony conviction have completed their sentences. Further, ex-felon disenfranchisement statutes disproportionately affect African Americans, as nearly 7 percent of black Americans cannot participate in the electoral process because of a felony conviction. In addition, it is estimated that the disenfranchisement rate in the nine states that permanently deny voting rates is 5.1 percent—a rate three times that of the states that impose no disability beyond the period of incarceration, probation, and parole.⁷

Among the 39 states without lifetime bans, 13 states restrict the right to vote of incarcerated persons, but the right to vote is returned upon release from prison. These states are located in all parts of the country with the exception of the South, and include: Hawaii, Indiana, Illinois, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. Five states prohibit individuals from voting both while they are incarcerated and/or while they are on parole. Again, these five states are located in different parts of the country with the exception of the South and include: California, Connecticut, Colorado, New York, and South Dakota.

⁷ Election Reform Report, pp. 40-1.

Table 2: Restrictions on Voting Rights for Ex-Felons in States Without Lifetime Bans

No Prohibitions On Voting	Incarcerated Individuals Can Not Vote	Incarcerated Individuals and Persons on Parole Can Not Vote	Ex-Felons Prohibited from Voting Until Sentence is Fully Complete	Ex-Felons Prohibited From Voting Until Specified Years Have Elapsed After Sentence
Maine	Hawaii	California	Alaska	Delaware ¹
Vermont	Indiana	Colorado	Arkansas	Nebraska ²
	Illinois	Connecticut	Georgia	Wyoming ³
	Massachusetts	New York	Kansas	
	Michigan	South Dakota	Idaho	
	Montana		Louisiana	
	New Hampshire		Maryland	
	North Dakota		Minnesota	
	Ohio		Missouri	
	Oregon		New Jersey	
	Pennsylvania		New Mexico	
	Rhode Island		North Carolina	
	Utah		Oklahoma	
			South Carolina	
			Texas	
			Washington	
			West Virginia	
			Wisconsin	

Note 1. Persons convicted of certain serious offenses (murder, manslaughter, bribery or public corruption, sex offense) are constitutionally barred from voting unless pardoned or five years after expiration of sentence, whichever may first occur.. DEL. CONST. art. V, § 2.

Note 2. The right to vote is restored automatically two years after completion of sentence, including and period of parole. NEB. REV. STAT. § 29-112 (2009).

Note 3. First-time non-violent felony offenders can apply for a certificate that restores voting rights five years after successful completion of sentence, but all others must apply to Governor for either a pardon or a restoration of rights. WYO. STAT. ANN. Ann. § 7-13-105(b)(2009).

Source: Kentucky Advisory Committee.

The most prevalent ex-felon voting prohibition among the different states is the denial of the right to vote until the entire sentence is completed, to include terms of parole, probation, and all court-ordered restitution. Eighteen states have this limitation: Alaska, Arkansas, Georgia, Kansas, Idaho, Louisiana, Maryland, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington, West Virginia, and Wisconsin. In three states, Delaware, Nebraska, and Wyoming, ex-felons are prohibited from voting until a specified period of years after they have completed their prison term. In Delaware, however, persons convicted of certain serious offenses are constitutionally barred from voting unless pardoned; and in Wyoming only first-time non-violent felony offenders have their right to vote restored, and must formally apply for a right to vote certificate. (See Table 2.)

Restriction on Ex-Felon Voting Rights
Established in State Constitution

Kentucky's State Constitution, adopted in 1891 and subsequently amended, bans former felons from voting unless they have received executive pardon from the Governor. Section 145 of the Kentucky Constitution reads:

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and in the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.
2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.
3. Idiots and insane persons.⁸

There were three earlier state Constitutions in Kentucky, none of which prevented ex-felons from the right to vote. The first Constitution, adopted in 1792, discussed the right to vote, and the only reference to a felony conviction restricting the right to vote concerned the right of voters to be free from arrest when they voted, unless they had committed a crime for which they were subject to arrest. Article III of the 1792 Constitution reads:

1. In elections by the citizens, all free male citizens of the age of twenty-one years, having resided in the State two years, or the county in which they offer to vote one year next before the election, shall enjoy the rights of an elector; but no person shall be entitled to vote except in the county in which he shall actually reside at the time of the election.
2. All elections shall be by ballot.
3. Electors shall, in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from them.⁹

In 1799, Kentucky adopted its second Constitution, repealing the first state Constitution. As in the first Constitution, there was no provision against former felons exercising the right to vote. Similar to the first state Constitution, the only reference to a felony was that voters were to be free from arrest going to or returning from the polls absent the commission of a crime. The second state Constitution, however, added a bar to voting by African Americans.

In all elections for Representatives, every free male citizen (Negroes, mulattoes, and Indians excepted), who at the time being, hath attained to the age of twenty-one years, and resided in the state two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector; by no person shall be entitled to vote except in the county or town in which he may actually reside at the time of the election, except as is herein otherwise provided. Electors shall in all cases, except treason felon, breach or surety of the peace, be privileged from arrest during their attendance at, going to, and returning from elections.¹⁰

⁸ KY. CONST. § 145.

⁹ KY. CONST. of 1792 § 3 (superseded in 1799).

¹⁰ KY. CONST. of 1799, art. II, § 8 (superseded in 1850).

In 1850 Kentucky adopted its third state Constitution, superseding the second Constitution of 1799. The primary purpose for the third Constitution was to amend representation in the legislature. With respect to voting rights, the new state Constitution established a 60 day residency requirement in the voter's precinct of residence, but as in the two previous Constitutions there was no explicit prohibition on the right of an ex-felon to vote.

Every free white male citizen, of the age of twenty-one years, who has resided in the State two years, or the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter; but such voter shall have been, for sixty days, next preceding the election, a resident of the precinct in which he offers to vote, and he shall vote in said precinct, and not elsewhere.¹¹

Voters in all cases, except treason felon, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.¹²

Ten years after the adoption of the state's third Constitution, the nation was engulfed in a Civil War between the Northern states and the Southern states. At the beginning of the Civil War, Kentucky was a divided state in terms of its loyalty and its ultimate alliance with either the North or the South hung in the balance and was the subject of intense political pressure from both sides. Though close in proximity to the North and increasingly interdependent with the region economically, Kentucky was a "slave state" and at the beginning of the war slaves comprised nearly 20 percent of the state's population. By heritage as well, Kentucky had close ties to the South as the ancestors of many Kentuckians hailed from Southern states like Virginia, North Carolina, and Tennessee.

As events unfolded and Southern states seceded from the Union in 1861, both the North and the South sought a formal alliance with the Commonwealth of Kentucky. The Governor of Kentucky, Beriah Magoffin, personally believed that a state had the right to secede, but still made repeated diplomatic efforts prior to open hostilities to avert war and prevent a disruption of the Union. With a similar sentiment, in the Spring of 1861 the state legislature passed a proposed Thirteenth Amendment to the Constitution that would have guaranteed slavery in states where it was already legal. Public opinion in the state, however, was turning to a formally pro-Union sentiment, and in special congressional elections held in June 1861 Unionist candidates won nine of Kentucky's ten congressional seats and the state remained part of the Union.

After the war, the First Reconstruction Act of 1867 mandated that to re-enter the Union, former Confederate states had to adopt new constitutions guaranteeing male suffrage without regard to race. To further strengthen voting rights for minorities, in 1870 Congress adopted the Fifteenth Amendment, which guaranteed an equal right to vote regardless of race, color, or previous condition of servitude. Kentucky was in a peculiar position. Though a former "slave state" Kentucky had not seceded from the Union, so the First Reconstruction Act of 1867 requiring a new state Constitution did not apply. Yet, the state Constitution as adopted in 1851 was now in violation of recent Amendments to the federal Constitution, and was therefore in need of revision. Complicating the situation further was the fact that the constitution of 1851 contained a stringent constraint on convoking of a Constitutional Convention, requiring the approval of a majority of those eligible to vote.

¹¹ KY. CONST. of 1850, art. II, § 8 (superseded in 1891).

¹² Ibid., Article II, Section 9.

As early as 1867, the Governor of Kentucky recommended to the legislature that the question of convening a Constitutional Convention for the purpose of revising the state's Constitution be put to a vote by the public. The legislature responded and in both 1871 and 1873 passed legislation "to take the sense of the people on calling a convention to revise the constitution." The proposition, however, did not garner the support of a majority of those eligible to vote, despite the public endorsement of both political parties.

The two major parties would continue to publicly endorse the call for a constitutional convention over the succeeding years. At last the constitutional requirement was deemed satisfied by a circumventive legislative act in 1886, which provided that those who came to vote in the general election in 1887 could be considered as the total entitled to vote. The measure received majority approval in 1887, and the same procedure was followed at the next election in 1889 and again won majority approval and a constitutional convention was convened in 1890, with Cassius M. Clay, Jr., elected president of the convention.¹³ The 1890 constitutional convention would adopt a new provision absent from the previous three state Constitutions, one that removed the right to vote from persons convicted of felony, as well as those persons convicted of bribery or treason, persons imprisoned at the time of the election, and insane persons.

¹³ See, Hamilton Tapp and James C. Klotter, "Kentucky—Decades of Discontent 1865-1900," Chapter XII, *The Constitutional Convention 1890-1891*, pp. 284-98 (Kentucky Historical Society, University of Kentucky Press, 1977).

Former Slave States Used Ex-Felon Statutes To Disenfranchise African Americans But Kentucky Statute Enacted Without Racial Animus

In recent years historical researchers have taken to an examination of the minutes and proceedings of state constitutional conventions looking for statements and sentiments of racial animus behind the adoption of ex-felon voting prohibitions. In the ensuing decades after the Civil War, ex-felon statutes were found to have been adopted in many Southern states for the expressed purpose of limiting the right to vote of African Americans. However, the adoption of an ex-felon voting prohibition by Kentucky during that period was done without a motive of racial animus, but rather out of a primary concern to ensure the integrity of the electoral process.

Racial Animus Absent in Kentucky's Adoption of Ex-Felon Voting Statute

The United States has a long history of voter exclusion and disenfranchisement on the basis of race. In the ensuing decades after the Civil War, despite clear prohibitions against race discrimination in voting, most former Confederate states adopted barriers that although neutral on the surface served to prevent many blacks from voting. Such barriers included poll taxes, literacy tests, grandfather clauses,¹⁴ additional residency requirements, registration harassment, and other intimidation tactics.¹⁵ As a result, voting rights continued to be a legal fiction for people of color in many parts of the South despite Constitutional protections.

Another tactic used in some states to deny African Americans the right to vote was the adoption of ex-felon statutes. Legal and historical scholars generally categorize arguments for ex-felon disenfranchisement statutes into four categories: (1) punishment for crime, (2) promotion of citizen character, (3) prevention of electoral fraud and the impeding of criminal interests, and (4) racial bigotry. The punishment and deterrence rationale argues that ex-felon disenfranchisement statutes deter future criminal activity. The citizen character argument supports the notion that eligible voters should have certain basic character traits. The concern over electoral fraud and criminal activity has as its basis that individuals bent on criminal activity, if left unchecked, will undermine the electoral process and will work to advance their criminal intentions under the guise of the political process.¹⁶

The fourth reason was simply racial animus. Similar to other former slave states in the second half of the 19th century following the Civil War, a state constitutional convention was convened in Frankfort, Kentucky, to re-write the state's Constitution, and at that convention proposed that ex-felons be banned from voting.¹⁷ The specific impetus for the Constitutional convention was ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, since much of the existing state Constitution adopted prior to the Civil War provided protection for slave ownership and was now at odds with the Federal Constitution.

¹⁴ "Grandfather" and "old soldier" clauses exempted from literacy tests and other voting restrictions anyone who had served in the United States or Confederate army or navy, their descendants, and anyone who had himself voted, or whose father or grandfather had voted before January 1, 1867.

¹⁵ The infamous 1964 murder and burial of the bodies of three civil rights workers in a partially constructed dam near Philadelphia, Mississippi, because of their work to register African Americans in Neshoba County is an example of retaliation against voter registration efforts.

¹⁶ See *inter alia* John Dinan, "The Adoption of Criminal Disenfranchisement Provisions in the United States: Lessons from State Constitutional Convention Debates," *Journal of Policy History*, vol. 19, no. 3, 2007.

¹⁷ States holding Constitutional Conventions between 1865 and 1900 to revise or re-write their Constitutions included: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.

The Kentucky Constitutional Convention of 1890 was held in a turbulent time, and there had been many changes in society since the last Constitution had been adopted in 1850. A long and bloody civil war had disrupted the nation; corporations had emerged as powerful entities; the railroads had brought dramatic changes in commerce; and waves of immigrants and migrations of people were swelling formerly sparsely populated parts of the country into dense urban areas. The Kentucky legislature had attended to these social and economic changes with legislation applicable to only a particular area or situation, but it was clear that the former Constitution was not suitable for an emerging industrial state with large urban concentrations of commerce. In addition, bribery, open vote buying, and public corruption were widespread concerns throughout the state, and just a few years before the convening of the Convention the State Treasurer had absconded with virtually all the money in the State Treasury.

It was in this atmosphere that the delegates gathered in Frankfort on September 8, 1890, to revise Kentucky's Constitution. Their resolve to prevent past abuses resulted in a Constitution that was much longer and contained more specific restrictions than any of the three previous state Constitutions. Breaking with the previous Constitutions, the delegates to the convention also adopted a disenfranchisement provision that prohibited any person convicted of a felony from the right to vote. However, in contrast to the racial animus that marked the enactment of ex-felon disenfranchisement statutes in other former slave states, the historical record suggests that the primary purpose for delegate support for the ex-felon statute was a concern over electoral fraud.¹⁸ The record of the proceedings of the 1890 constitutional convention assembled in Frankfort, Kentucky, and other contemporaneous accounts offer no evidence of an effort by the delegates or individual delegates to suppress the African American vote in the state.

In December 1890, the committee on elections reported to the committee of the whole and recommended that all males with established residency in the state be given the right to vote, with three exceptions: (1) Persons convicted of treason, bribery, or felony; (2) persons incarcerated in prison or jail; and (3) the insane. In their deliberations about suffrage, an examination of the proceedings and debates at the 1890 Convention show the assembly primarily interested in preserving the integrity of the electoral process and most of the debate centered around a shared concern of bribery in state and local elections.¹⁹ Delegate Blackburn summarized this position:

We are all agreed that the purpose of this discussion and this work is to protect the ballot-box from fraud and corruption. The Committee unquestionably had that purpose in view when they made this report, and the only difference between us is as to the best mode of accomplishing that purpose.²⁰

A further reading of the proceedings reveals that almost the entire debate surrounding the loss of the right to vote centered on bribery. Delegate after delegate rose to speak to their fellow delegates to be resolute about preventing fraud in the electoral process. As an example, Delegate Rodes so implored his fellow delegates with the following words:

¹⁸ See, "A Citizens' Guide to the Kentucky Constitution," Research Report No. 137, Legislative Research Commission, Frankfort, Kentucky, 2005.

¹⁹ See, "Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort, on the eight day of September 1890, to Adopt, Amend, or Change the Constitution of the State of Kentucky," Elections, Dec. 10, 1890, pp. 1883-1904 (hereafter referred to as Kentucky Convention Proceedings).

²⁰ Ibid., Delegate Blackburn, p. 1893.

Now, if there is any danger in the world to our institutions, it must grow out of impure elections. If the ballot-box is once thoroughly corrupted, it leads, of course, to misunderstanding. The people will not submit to corruption in their elections, if they can prevent it. Misunderstandings lead to collisions, collisions lead to bloodshed, bloodshed produces conflagrations, conflagrations produce earthquakes. You might say, if there is any thing in the world, out of which danger may arise to our institutions, it will come from this....Public sentiment is a great controller of our age, and if we have only a modicum of public sentiment-pure, incorruptible and undefiled, it will some time manifest itself. Corruption grows. It is a germ. The germ theory in this age is the one now pervading medical circles. Let this germ enter into social system, and it will grow and spread.²¹

Delegate Applegate reaffirmed the general Convention sentiment of concern about bribery and corruption in public affairs, and argued for using the Constitution to protect the citizenry.

We shall never succeed in elevating the ballot by statutory law, but we should throw it about all the protection that the Legislature can, and every means should be resorted to as possible to prevent bribery and corruption.²²

The record shows that it was an overriding concern with bribery and public corruption on the part of the delegates that prompted the convention to hold that the commission of a felony should forfeit one's right to vote. Delegate Applegate told the convention:

We are now at a period in history when we cannot afford to blink at crime...(and) the other classes of offenses named in the Constitution which we say shall disqualify a man have an effect upon society in every respect. Treason is so odious that we will convict a man for treason. All felonies affect individuals directly. So we need not entertain any apprehension about the Legislature passing wholesome laws to punish the offenses of felony, when a man is punished for an offense he has committed, which prescribes that he shall be disqualified from voting.

In this environment, Delegate Blackburn summarized the rationale for the felony disenfranchisement provision. It would not only maintain the integrity of the electoral process, but also serve as an inducement to advance a good citizenry.

I have no more interest in the work of this Convention than any other Delegate. It is a pride to do our work so as to meet the approval and endorsement of the people of this Commonwealth when we send it to them; and I do hope that, before we pass from this question, we will make it so clear and so unmistakably plain, that the humblest and simplest citizen in this Commonwealth may understand what the penalty shall be for every violation of the law. It occurs to me that that settles the question.²³

Not only is there an absence of racial animus as recorded in the proceedings, there are specific statements of race neutrality and other statements of support for civil rights. For example, speaking in support of the Constitution being amended to curtail bribery, Delegate

²¹ Ibid., Delegate Rodes, p. 1887.

²² Ibid., Delegate Applegate, p. 1888.

²³ Ibid., Delegate Blackburn, p. 1894.

Bullitt spoke about how the state had expelled the Ku Klux Klan from the state, referring to the group as a “poison.”

Here is an evil we all admit. We are all striving to get rid of the evil of bribery in elections. We are but human, and we have to deal with human methods....I do not care whether it is buying a witness, or by excusing him from punishment because he testifies... We do excuse one conspirator who testifies against another conspirator for the protection of society. In the Ku-Klux law we had to use it—it was the only remedy to reach the disease, and after the system was adopted to allow witnesses to go scot-free, we worked out of this State the Ku- Klux business, and it could not be reached until that was done.²⁴

Recent allegations and federal charges against local officials for election fraud in the state offer modern day support for the convention delegates’ concern about election fraud on the part of public officials. In 2008, the Associated Press reported on a case of alleged widespread bribery of voters in Clay County that had been ongoing over the past several decades.

Folks in the hardscrabble town (of Manchester) tucked into the Appalachian hills do not seem to have much hope when they talk about the latest bunch of officials accused of masterminding crooked county elections. Residents say votes could be bought for years, underscored by the March indictment of eight officials accused of rigging elections in Clay County. Federal prosecutors say they were part of a scheme to extort undisclosed amounts of cash allegedly used to bribe voters at the polls....

“Politics in Clay County have been crookeder than a barrel of fish hooks,” said Ronnie Cottongim, a 60-year-old disabled coal miner. “When people are trying to make ends meet, they’ll do whatever they can to put groceries on the table...”

Public corruption cases are not a novelty in Manchester. In 2007, a former longtime mayor, an ex-assistant police chief and two former city councilmen were sentenced to prison in another corruption case. Among those charged in the most recent case are a judge known for his toughness and a school superintendent.... They are accused of being ‘political bosses’ who recruited candidates and then tried to swing elections in their favor. Those two, along with a county clerk accused of doling out cash to voters at the polls, have pleaded not guilty. Five alleged accomplices also pleaded not guilty....

Many say buying and selling votes has simply been a way of life in eastern Kentucky, and Clay County has hardly been immune. Little has changed over time—except, perhaps, the tactics. “Used to, you could see them shell the money out in the open, right at the polls,” said Carl Hubbard, 75, a retired farmer and coal truck driver. “They kind of hide it now.”

Authorities say elections have not been ‘clean’ in Clay County for years. Prosecutors claim that longtime judge Russell Cletus Maricle and school Superintendent Douglas C. Adams led a group that recruited slates of candidates and then tried to rig elections in their favor in 2002, 2004 and 2006.

While his fellow defendants were released after arraignment, Maricle was ordered to stay in jail until trial.... Federal officials alleged at the detention hearing that Maricle had tried to sway a witness testifying before the grand jury investigating the case....

²⁴ Ibid., Delegate Bullitt, p. 1897.

Clay County Clerk Freddy Thompson allegedly provided money for election officers to buy votes, the indictment claimed. Thompson also told election officers how to change votes at the machines, it said. Some voters were bribed at the voting booths, the indictment said, and some officials allegedly told voters to use booths incorrectly so they could go back and change the tallies.

Doug Abner, a community activist and senior pastor at the nondenominational Community Church in Manchester, has prayed for years with his congregation for “God to expose the darkness” of the manipulated system. But he knows clearing out corruption won't be easy. “We have an element of people who don't think there's even a problem with selling or buying votes,” he said. “Obviously, when you get in that shape, you're headed in the wrong direction.”²⁵

Ex-Felon Statutes Adopted in Many Southern States To Disenfranchise African Americans

In contrast to the Constitutional proceedings in Kentucky, explicit racist language and motivations are observed in the proceedings, minutes, and commentary at other late 19th century Constitutional conventions of other former slave states with respect to the adoption of ex-felon voting prohibitions. These conventions include: Alabama, Florida, Mississippi, Virginia, South Carolina, and even Oregon in the far west.

In 1901 Alabama adopted a Constitutional criminal disenfranchisement provision. Article VIII, §182, of the state Constitution provided for the disenfranchisement of persons convicted of certain enumerated felonies and misdemeanors, including “any crime involving moral turpitude.” The president of the convention, John Knox, made it clear at the start of the convention that the dominant purpose of the assembly was “to establish white supremacy in the State.”²⁶ Another delegate, John Fielding Burns, made it clear that his intent in adding numerous specific crimes to the list of disqualifying offenses was to target African Americans.²⁷

In 1984, when county registrars in the state disenfranchised individual African Americans under §182 because they had previously been convicted of presenting worthless checks, the aggrieved citizens brought action in federal court on a claim that the misdemeanors encompassed within §182 were intentionally adopted to disenfranchise blacks on account of their race.²⁸ The case ultimately went before the Supreme Court, and in a unanimous opinion the Court found that the disenfranchisement of blacks was a major purpose for the convention at which the Alabama Constitution of 1901 was adopted, and that the section as applied to misdemeanants violated the Fourteenth Amendment.²⁹

Similar to Kentucky, both Mississippi and South Carolina held constitutional conventions late in the nineteenth century, Mississippi in 1890 and South Carolina in 1895. Both conventions modified their criminal disenfranchisement provisions in ways that contemporaneous accounts indicate were clearly motivated by racial animus, primarily by expanding the list of disqualifying

²⁵ Bruce Schreiner, “Election Fraud Case Stirs Disgust in Clay County,” Associated Press, Apr. 13, 2009.

²⁶ John Dinan, “The Adoption of Criminal Disenfranchisement Provisions in the United States: Lessons from State Constitutional Convention Debates,” *Journal of Policy History*, vol. 19, no. 3, 2007.

²⁷ *Ibid.*

²⁸ *Hunter v. Underwood*, 471 U.S. 222 (1985).

²⁹ *Id.*

crimes to include crimes for which African Americans were thought to be more prone to prosecution.³⁰

Regarding the Mississippi Convention of 1890, the Mississippi Supreme Court in *Ratliff v. Beale* noted: “Restrained by the federal constitution from discriminating against the negro race, the (Mississippi) convention discriminated against its characteristics, and the offenses to which its weaker members were prone... Burglary, theft, arson, and obtaining money under false pretenses were declared to be disqualifications, while robbery, and murder, and other crimes in which violence was the principal ingredient, were not.”³¹ As for the South Carolina convention of 1895, a delegate moved to add to the to the list of disenfranchising, crimes that included housebreaking, receiving stolen goods, fornication, sodomy, assault with intent to ravish, miscegenation, incest, and larceny, and to strike out theft and the middle class crime of embezzlement. The conventioners agreed, as they did to another member’s proposal to include wife-beating. Murderers, however, were allowed to vote.³²

The historical record shows Florida, too, using ex-felon statutes to limit the franchise of African Americans. Immediately after the Civil War, Florida initially refused to allow blacks to vote and denied African Americans the right to vote in its 1865 Constitution. The following year, Florida also rejected the 14th Amendment and established additional crimes, including a new, expansive type of larceny, in order to address the altered condition of free blacks living in the state. It was only in 1868 that the state convened a second post-war constitutional convention, which ultimately guaranteed universal suffrage to all males, including blacks. However, although the 1868 constitution did comply with the First Reconstruction Act of 1867 and guaranteed universal suffrage to all males, Section 4 of the Constitution contained a provision for the disenfranchisement of ex-felons.³³

In 2000 a class action suit was filed in federal court in *Johnson et al v. Governor of Florida* on behalf of all Florida citizens who had been convicted of a felony and had completed all terms of their incarceration, probation, and parole but who were barred from voting under the state’s felon disenfranchisement law. The 11th Circuit noted in *Johnson* that a reasonable fact-finder could conclude that a discriminatory animus was behind the felon disenfranchisement provision adopted in 1868. In particular, the court noted that the 1868 constitutional convention proposed a new suffrage article that automatically disenfranchised those persons convicted of infamous crimes while restoring suffrage to ex-Confederates. Then, at the last moment, the delegates substituted yet another, arguably even more stringent suffrage article that changed the disenfranchisement provision’s scope from infamous crimes to all felonies and specifically enumerated in the list of crimes that of larceny, which the 1865 legislature had expanded to

³⁰ In a discernibly different temper from Mississippi, the delegates at the Kentucky Convention demonstrated a concern that an ex-felon voting prohibition statute might serve to have an unintended effect in the future, i.e., the legislature might at its discretion declare any certain crimes felonies or high misdemeanors with the intent to limit the franchise of certain citizens. An amendment was offered and rejected that would have limited ex-felon disenfranchisement to the ‘felonies as now defined by law.’ In the end, the delegates acted to allow the Legislature the latitude to define a felony, and with it the exclusion from the right of suffrage. See Kentucky Convention Proceedings, pp. 1883-1904. ³⁰

³¹ *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896).

³² J. Morgan Kousser, “The undermining of the first reconstruction: lessons for the second,” working paper, California Institute of Technology, Pasadena, CA, p. 35 at <http://resolver.caltech.edu/CaltechAUTHORS:20090814-110251466> (last accessed April 14, 2009).

³³ Section 4 provided: No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights.

address the emancipation of blacks.³⁴ In 2007, at the urging of Governor Crist, the Florida Clemency Board issued revised rules of executive clemency for ex-felons. All released non-violent offenders may now have an executive order issued that automatically and immediately grants a restoration of civil rights signed by the Clemency Board without a hearing. All other individuals not determined to be Level-1 or Level-2 must petition the Clemency Board to have their civil rights restored.³⁵

³⁴ *Id.*

³⁵ FLA. PAROLE COMM'N, RULES OF EXEC. CLEMENCY §5E (2007).

Kentucky Constitution Provides for Executive Clemency Estimated 185,000 Citizens Currently Disenfranchised

The Kentucky Constitution allows for ex-felons to have voting rights restored by executive pardon. It is estimated that approximately 185,000 persons are currently disenfranchised in the state of Kentucky. Legislation has been introduced into the General Assembly that proposes the electorate vote to amend state Constitution to implement a simplified process for the restoration of civil rights to eligible felony offenders.

Kentucky Constitution Allows For Ex-Felons To Have Civil Rights Restored Through Executive Pardon

Despite the state Constitutional ban on voting rights for persons convicted of a felony, persons convicted of a felony may again obtain the right to vote. Section 145 of the Constitution allows a convicted felon who has completed his or her sentence to apply for an executive pardon in order to have his/her civil rights restored. For many years, the process to apply for an executive pardon was considered an unwieldy and cumbersome process. Reacting to such concerns, in 2001 the state Legislature passed legislation intended to expedite the process as well as increase the number of persons having their voting rights restored. The new legislation required the state Department of Corrections to “implement a simplified process for the restoration of civil rights for eligible felony offenders.”³⁶

The legislation had an immediate impact, and in the two years following its passage the number of persons who had their civil rights restored sharply increased to more than 1,000 in each of the next two years. In 2003, under new policies instituted by former Governor Ernie Fletcher, additional requirements were established for ex-felons for having their civil rights restored. The new procedures required all applicants, as part of the application, to submit: (1) a written statement, (2) three character references, and (3) a processing fee.³⁷ In addition, the new procedures required that the application be presented to prosecutors, both in the jurisdiction where the applicant lives and where the felony was committed, for an opinion on whether voting rights should be restored.³⁸

After implementation of the new policies the number of former felons regaining the right to vote fell to just over 250 per year, and the average approval rate for requests for clemency plummeted from 99 to 28 percent.³⁹ (See Table 3.) In March of 2008, Governor Steve Beshear issued an executive order that removed some of the previously instituted requirements in the application process. Under the new revised executive order, convicted felons who have fulfilled the requirements of their sentences no longer have to pay a fee, write an essay, or secure three character recommendations in order to receive an executive pardon. In addition, the new executive pardon process requires notification to prosecutors only in the jurisdiction where the felony was committed. Upon issuance, the administration's general counsel began applying the new process to a backlog of more than 1,500 applications left over from the previous administration, as well as to newly submitted applications.⁴⁰

³⁶ KY. REV. STAT. ANN. § 196.045 (1)(2009).

³⁷ KY. DEPT. OF CORR., POLICIES AND PROCEDURES § 27-26-01.

³⁸ League of Women Voters Report.

³⁹ Press Release, Governor Steve Beshear, “Governor Beshear Helps Restore Rights to Kentuckians,” March 4, 2008.

⁴⁰ Ibid.

Table 3. Number of Applicants for Executive Pardon, Number of Persons with Civil Rights Restored, Percentage of Successful Applicants 1999-2008

Year	Number of Applicants for Executive Pardon	Number of Persons with Civil Rights Restored	Percentage of Applicants Successful
1999	unavailable	699	unknown
2000	unavailable	572	unknown
2001	unavailable	958	unknown
2002	unavailable	1,278	unknown
2003	1,202	1,193	99.2
2004	1,108	316	28.5
2005	640	253	39.5
2006	717	274	38.2
2007	617	255	41.3

Source: Kentucky Department of Corrections and Secretary of State.

In announcing the changes to executive pardon policy, Governor Beshear stated, “This is not about being tough on crime. It is about treating people fairly and welcoming back people trying to put their lives together again and become good citizens.” Secretary of State, Trey Grayson added, “The ability to vote is a primary right and privilege afforded to Kentuckians. Finding an efficient way to restore voting rights to individuals who successfully pay their debt to society offers them a positive opportunity to fully participate. Today’s actions balance our responsibility to seek restitution for our communities and families with our moral obligation to forgive.”⁴¹

Estimated 185,000 Persons Are Disenfranchised in Kentucky

It is estimated that about 185,000 persons are barred from voting in Kentucky due to a prior felony conviction.⁴² That translates into 1 of every 17 voting-age persons, or 6 percent of the state’s adult population, that are ineligible to vote. Moreover, more than 90 percent of the disenfranchised population is not in prison, but living in the community; and 70 percent of these persons have completed all the terms of their sentence.⁴³

In addition to affecting a large segment of the voting population, the disenfranchisement of former felons in the state has a disproportionate impact on African Americans. While blacks are only about 7 percent of the state’s population, more than 30 percent of Kentucky’s total prison population is African American. Kentucky’s disproportionately high rate of incarceration of African Americans in turn results in a high rate of disenfranchisement, as presently 1 of 4 African American adults in the state is ineligible to vote.⁴⁴

⁴¹ Ibid.

⁴² M. Manza and C. Uggen, “Locked Out: Felon Disenfranchisement and American Democracy,” New York: Oxford University Press (2006), Table A 3.3.

⁴³ Ibid.

⁴⁴ Ibid.

Table 4. Kentucky Felony Inmate Population by Class in 2008

Felony Offense	Percentage of Current Prison Population
Capital Offense	4%
Class A	3%
Class B	17%
Class C	31%
Class D	41%

Source: Kentucky Criminal Justice Council

Kentucky has three types of crimes: felonies, misdemeanors, and violations. The voting prohibition for a criminal offense only applies to felonies. Felonies are criminal offenses with penalties greater than one year in prison, and in Kentucky are broken down into four classes, A, B, C, or D.⁴⁵ Felonies include violent crimes, such as murder, malicious wounding, armed robbery, and rape and capital offenses as well as crimes for which the death penalty may be imposed. Felonies also include other, less violent crimes, such as drug possession and property crimes such as burglary, larceny, and fraud. The vast majority of felonies and felony convictions in Kentucky are not for violent crimes.

Misdemeanors are crimes with a maximum sentence of no more than one year in Jail. Misdemeanors are divided into two classes: A and B. Class A misdemeanors carry a sentence of 90 days to 1 year, while Class B misdemeanors provide a sentence no greater than 90 days. Class A misdemeanors are the most prevalent and the most serious, and include such crimes as possession of marijuana, shop lifting, assault and battery, and misdemeanor bad check writing. Also, some serious traffic offenses, for example driving under the influence or driving on a suspended license, can also rise to the level of a Class A misdemeanor. Violations are the least serious of the three types of crimes. Persons charged with violations are usually cited for minor traffic offenses, failure to follow city or county ordinances, and alcohol intoxication in a public place.

It should be noted that not all persons convicted of a felony are incarcerated. On average, approximately two-thirds of all persons convicted of felony crimes are sentenced to a period of confinement; the other third are sentenced to probation with no jail or prison time. Apart from incarceration, persons convicted of felony crimes may also receive a variety of other punishments as part of their sentences. Approximately one quarter of all persons convicted of a felony are required to pay a punitive fine; another 15 percent are required to pay a restitution fine, and about 5 percent are required to perform some sort of community service.

The vast majority of inmates incarcerated in Kentucky prisons for a felony offense, almost 3 out of every 4 prison inmates, were convicted of Class C or Class D felonies. These individuals constitute 31 and 41 percent respectively of the prison inmate population. Class B felons are 17 percent of the state's inmate population and Class A felons are 3 percent, while persons convicted of capital offenses are 4 percent. (See Table 4.)

⁴⁵ See KY. REV. STAT. ANN. § 532.020 (2009) for a designation of offenses.

House Bill 70 Proposes Vote To Amend Constitution Regarding Ex-Felon Voting Rights

Since 2001 and the passage of KRS 196.035, there has been no new legislation directed at the executive pardon process. However, in recent sessions of the General Assembly legislation has been proposed to submit to the voters an amendment to Section 145 of the Constitution that would allow for certain ex-felons to vote upon completion of their sentence. As proposed, House Bill 70 would automatically restore the voting rights of ex-felons upon completion of sentence, except for persons convicted of intentional homicide, sexual crimes against minors, or manslaughter in the first degree.⁴⁶

Proposed:

Section 1: Section 145 of the Constitution of Kentucky be amended to read as follows (changes underlined):

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction of treason, or any felony which includes as an element of the offense the intentional killing of a human being not done under the influence of extreme emotional disturbance for which there exists a reasonable explanation or excuse, sexual contact with a minor, sexual intercourse, or deviate sexual intercourse, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon. Persons convicted in any court of competent jurisdiction of any other felony shall operate as an exclusion from the right of suffrage until expiration of probation or final discharge from parole or maximum expiration of sentence, but persons hereby excluded may be restored to their civil rights earlier by executive pardon.

2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

3. Idiots and insane persons.

Section 1. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

In 2008, the legislation overwhelming passed in the House by a vote of 80 yes, 14 no, 0 abstentions, and 6 not voting. It was referred to the Senate, where it was not given a hearing. In 2009, the legislation was again introduced, and again passed by a wide margin in the House: 83 yes, 14 no, 0 abstentions, and 3 not voting. In the Senate, the bill was referred to the State and Local Government Committee.

⁴⁶ H.R. 70, Reg. Sess. (Ky. 2008).

General Support in State for Restoration of Voting Rights for Ex-Felons

A poll conducted by the University of Kentucky Survey Research Center in 2006 indicates that a majority of Kentuckians favor a restoration of voting rights for ex-felons. The survey of 901 adult citizens asked respondents if they supported the restoration of the right to vote for convicted felons who have completed their sentences, including probation and parole. Among the respondents, 56 percent favored restoring the right to vote for ex-felons, while 40 percent were opposed and 4 percent were undecided.⁴⁷

In Kentucky, the American Civil Liberties Union (ACLU) and the League of Women Voters have made support for ex-felon rights a priority issue. Michael Aldridge, executive director of the ACLU Kentucky, told the Committee:

Voting is a fundamental rights and a civic duty. As the U.S. Supreme Court stated in its landmark 1964 decision *Reynolds v. Sims*, 'the right to vote freely for the candidates of one's choice is of the essence of a democratic society, and any restrictions on the right strike at the heart of representative government. ...Felony disfranchisement runs counter to the goal of public safety. Restricting voting rights does not prevent crime, provide compensation to victims, or help people released from prison re-integrate into their communities. In contrast, voter participation actually *increases* public safety: research has found that people with criminal records who vote are half as likely to be re-arrested as their non-voting counterparts.

Voting also demonstrates an individual's commitment to the institutions of American democracy, and people who have completed their sentences should be encouraged to participate in the life and concerns of their communities by, among other things, exercising their right to vote. ...The swell of applications, particularly in the run-up to the 2008 presidential election, indicates that there is significant interest among disfranchised individuals in civic participation. This phenomenon is borne out by research. In a 2006 study of disfranchised individuals in Kentucky, more than half of respondents had voted prior to their convictions, and more than two thirds of those who had not previously voted expressed interest in voting. Despite this interest, hardly any of the respondents had a correct understanding of the rights restoration application process. People with past criminal records should be encouraged to rejoin their communities as full and productive citizens. Reforming Kentucky's disfranchisement law to simplify re-enfranchisement would do just that.⁴⁸

Teena Halbig, president of the League of Women Voters of Kentucky, expressed a similar unqualified support for full restoration of voting rights for ex-felons. Halbig told the Committee, that "not only does the League of Women Voters of Kentucky hold that former felons should have voting rights, but the national League of Women Voters and all of the 850

⁴⁷ University of Kentucky Survey Research Center, "The Summer 2006 Kentucky Survey." The survey had a margin of error of ± 3 percentage points.

⁴⁸ Michael Aldridge, letter to the Kentucky Advisory Committee to the U.S. Commission on Civil Rights, Nov. 17, 2008, Southern Regional Office files.

local affiliates came to that consensus position four years ago and have as an official position of the organization 'to restore voting rights to all ex-felons.'"⁴⁹

In addition, Carl Wedekind, executive director of the American Probation & Parole Association headquartered in Lexington, Kentucky, recently affirmed the importance of restoring the right to vote to ex-felons.

As the executive director of the national association that represents the probation and parole agents who supervise more than 4 million people across the country, I understand the importance of connecting people released from prison with positive institutions in the community, including employment, education, housing, and also voting. There is absolutely no credible evidence showing that continuing to disenfranchise people after they have returned to the community serves any legitimate law enforcement purpose. To the contrary, when people feel they have a stake in their community they are less likely to engage in antisocial behavior. We would all be better served if people living in the community have both the rights and obligations expected of all citizens?⁵⁰

Some public persons, however, have reservations about an automatic restoration of voting rights for ex-felons. For example, John McCarthy, assistant to former Governor Ernie Fletcher expressed support for ex-felons having the right to vote, but was hesitant about allowing voting rights restoration to be automatic although he did believe the process needed to be depoliticized. McCarthy told the Committee,

On the issue of voting rights for ex-felons, I think generally that if a person is going to be a contributing citizen, and be a part of society, and work and pay taxes then the right thing to do is give that person the right to vote. So I am in favor generally of allowing ex-felons the right to vote. But that said, I do not think the state Constitution needs to be amended, nor do I believe that the restoration of voting rights for ex-offenders should be automatic. Voting is both a privilege and a right that is given to a citizen, and in a society one must follow the rules or there are consequences.

It is my position that a person who has been convicted of committing a felony should have to go through some application process to regain his or her rights. I also understand that the restoration process has recently changed and that three letters of recommendation are no longer required. I think that is a mistake, and that the requirement of letters of recommendation should be a part of the application process. Ex-felons are persons who made bad choices, and they should have to demonstrate to the general society that there are others in the community willing to stand and vouch for them as they make their return to society before their rights are fully restored. After doing something that is wrong, one has to earn the people's trust, and letters of recommendation are a way of doing this.

I also believe that the process for executive clemency should also be as un-political as possible. Presently, the executive clemency process in Kentucky is governed by only executive order. When I worked for Governor Fletcher, I encouraged him to put together a 3-person panel of former judges to make recommendations to the Governor about granting executive clemency. That, I thought, would take the politics out of the process. The Governor at the time was reluctant to implement that proposal out of distaste for expanding the bureaucracy, but some other process might be useful. Presently, there is

⁴⁹ Teena Halbig, interview by Simajah Jackson, Southern Regional Office, U.S. Commission on Civil Rights, Feb. 25, 2009, Southern Regional Office files.

⁵⁰ Carl Wedekind, "Restoring felons' right to vote sensible, fair," Lexington Herald-Leader, Mar. 23, 2008.

neither a statute nor a regulation that must be followed, and I think it would make for a better system if there was at least a regulation to be followed.⁵¹

In support of voting rights for ex-felons, solicited comments by the Committee from the Kentucky Council of Churches, the Catholic Conference of Kentucky, and the African Methodist Episcopal Church were united in their support for allowing ex-felons to vote. Nancy Jo Kemper, executive director of the Kentucky Council of Churches, told the Committee that “ex-felons should have their voting rights restored because it helps restore people. It is a rehabilitation process. Ex-felons have paid their debt to society, and they—like any other person—deserve this right as any other member of society.”⁵²

Rev. Troy Thomas, pastor of the St. Paul African Methodist Episcopal Church, said that he believed that “if ex-felons have completed their time of sentence then their voting rights should be restored.” He also added that he thought the current executive pardoning procedure was biased as it had a mostly negative effect on African Americans.⁵³

Rev. Patrick Delahanty, associate director, Catholic Conference of Kentucky, expressed a similar view citing the catechism of the Catholic Church. “The Catechism of the Catholic Church teaches that voting is a moral obligation, and the United States Catholic Bishops in a policy statement regarding criminal justice have called for former felons to have the right to vote. Responding to the guidance of the bishops, the Catholic Conference of Kentucky has consistently advocated for changing Kentucky’s antiquated Constitution so the right to vote is automatically restored when the term of the court sentence are completed. The current executive pardoning procedure is open to arbitrary decision-making and should be removed.”⁵⁴

During the comment period of this study, members of the public also provided comments to the Committee regarding ex-felon voting rights. All were in support of ex-felons being provided the right to vote. The comment of Jerry Newmorning was typical of many comments received by the Committee. “My younger brother passed away a few years ago. Mike, that was his name, was a former felon. After he got out of jail he did his best to stay out of trouble. But the one thing that ate at him was that society would not really forgive him and restore his voting rights. I am not saying that it was this along thing that pushed him back to drugs. But is was one the things that kept him feeling like an outsider.”⁵⁵ Mike Barry, from People Advocating Recovery, was more direct in his support for ex-felon voting rights. “Ex-felons should have the right to vote because they have paid their debt to society. They have been reintegrated into society and are paying taxes as other citizens, so they should therefore have the same rights as other citizens.”⁵⁶

⁵¹ John McCarthy, interview by Peter Minarik, Apr. 10, 2009, Southern Regional Office, U.S. Commission on Civil Rights, Nov. 11, 2008, Southern Regional Office files.

⁵² Nancy Jo Kemper, interview by Simajah Jackson, Southern Regional Office, U.S. Commission on Civil Rights, Nov. 11, 2008, Southern Regional Office files.

⁵³ Troy I. Thomas, interview by Simajah Jackson, Southern Regional Office, U.S. Commission on Civil Rights, Feb. 2, 2009, Southern Regional Office files.

⁵⁴ Patrick Delahanty, interview by Simajah Jackson, Feb. 25, 2009, Southern Regional Office, U.S. Commission on Civil Rights, Nov. 11, 2008, Southern Regional Office files.

⁵⁵ Jerry Newmorning, letter to the Kentucky Advisory Committee to the U.S. Commission on Civil Rights, Nov. 17, 2008, Southern Regional Office files.

⁵⁶ Mike Barry, letter to the Kentucky Advisory Committee to the U.S. Commission on Civil Rights, Apr. 1, 2009, Southern Regional Office files.

Findings

1. The most fundamental civil right of a citizen is the right to vote.
2. Kentucky is one of nine states that has a lifetime voting ban for persons convicted of a felony. The state's restriction on ex-felon voting rights is established in section 145 of the state Constitution, adopted in 1891. The permanent voting ban also applies to treason and bribery in an election.
3. The Kentucky Constitution allows for ex-felons to have their voting rights restored through executive pardon granted by the Governor. The granting of executive pardon, however, is not subject to any established statute or regulation and varies in its application dependent upon the Governor.
4. In the ensuing decades after the Civil War, ex-felon statutes were adopted in a number of states for the expressed purpose of limiting the right to vote of African Americans. In contrast to those actions, the adoption of the ex-felon voting statute by Kentucky during that period was done without a motive of racial animus and primarily out of concern to ensure the integrity of the electoral process.
5. As a result of the Constitutional ex-felon voting prohibition, it is estimated that approximately 185,000 persons in Kentucky are currently disenfranchised, and males and minorities are disproportionately affected.
6. Legislation has been introduced into the General Assembly that proposes the electorate vote to amend the state's Constitution to restore voting rights to most ex-felons who have completed all terms and conditions of their sentences.
7. Other states with Constitutional bans on ex-felon voting rights have undertaken efforts to restore voting rights to non-violent offenders. Similar to Kentucky, Florida has a Constitutional ban on ex-felons voting, and in 2007 the Governor of Florida with the concurrence of a majority of the Cabinet issued revised rules for executive pardon that automatically restore civil rights and voting rights to most ex-felons. Under the new rules, upon completion of their sentences, ex-offenders are reviewed by the state's Parole Commission. For non-violent offenders who have completed all terms of their sentence, a pardon is automatically granted that restores their civil rights without the need for a petition or hearing. Offenders determined to have committed more serious crimes must still undergo a formal petition and hearing process to have their rights restored.

Committee Recommendation

It is the opinion of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights that ex-felons who have completed all terms of their sentence and made full restitution should be entitled to having their right to vote restored.

Presently the executive clemency process in Kentucky is governed only by executive order, and there is neither statute nor regulation that must be followed by the Governor in the granting of clemency. To ensure that the right to vote—one of the most fundamental civil right of a citizen—is protected, that should be corrected.

Under the previous administration, a proposal was drafted—though not enacted—to de-politicize the process by the appointment of a 3-person panel of former judges to review clemency petitions and make recommendations to the Governor. Other proposals have been made to de-politicize the process.

Similar to Kentucky, Florida has a Constitutional ban on ex-felons voting. That state has revised its procedures for clemency so that beginning in 2007 non-violent offenders who have completed all terms of their sentence are automatically granted a pardon that restores their civil rights without the need for a petition or hearing.

The Committee does not recommend any specific procedure to de-politicize the process. The Committee does recommend, however, that—similar to Florida—the current process be regulated and standardized both to ensure the process is consistent from one administration to another as well as work to allow for the largest number of ex-felons to again have the right to vote and be restored to full citizenship.

To that end, the Kentucky Advisory Committee to the U.S. Commission on Civil Rights calls upon the Governor to initiate a review of the executive pardon process, and to work with the Legislature as necessary to put in place by statute, rule, and/or regulation an established process to be followed that will be fair, just, expeditious, and non-political in granting ex-felons in the State of Kentucky the right to vote.

Appendix 1 -- Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort, on the eight day of September 1890, to Adopt, Amend, or Change the Constitution of the State of Kentucky.

Suffrage and Elections

Saturday, December 6, 1890

The Committee reported and recommended to the Committee of the Whole the following:

Every male citizen of the United States of the age of twenty-one, who has resided in the State one year, and in the county six months, and the precinct in which he offers to vote sixty days, next preceding the election, shall be a voter in said precinct and not elsewhere; but the following persons are excepted and shall not have the right to vote:

Subsection 1. Persons who may be convicted in any Court of competent jurisdiction of treason or felony, or of such high misdemeanors as the General Assembly may declare, shall operate as an exclusion from the right of suffrage.

Subsection 2. Persons who, at the time of the election, are in confinement under the judgment of a Court for some penal offense.

Subsection 3. Idiots and insane persons.

Committee of the Whole

The CHAIRMAN. The Clerk will report the matter under consideration.

The CLERK. When the Committee arose the following amendment was being considered, being that proposed by the Delegate from Hopkins: "Amend section 1 of the report of the Committee by inserting in line 8, after the word "felon," these words, "bribing or receiving a bribe in the matter of the elective franchise."

Mr. McDERMOTT. As I am a member of the Committee and as I have no purpose, to make elections as pure as they can be made, I feel called upon to say that, in my judgment, though the gentleman has the very best motive, he is in danger of destroying the very reform he seeks to further. I say this with reluctance, because I have the highest respect for him, and for the motives that are prompting him; but this is a case of a man hurting his friends more than his enemies. If any one wanted to encourage the buying and selling of votes, he would like this sort of amendment to be put in the report. The statute now in place is complete, and in spite of this, bribery goes unpunished. The law is severe enough, but it is not enforced.; and it is not enforced because the Legislature has sought to punish both persons to the corrupt bargain, and has never been able to get testimony against either; and now you are not giving the Legislature any chance for trying experiments to correct the evil we deplore.

Before you tie up the Legislature completely, and hand us over to persons who thrive by corruption, you should be sure of your ground. It would be a pity to see this report hampered by language that cannot be understood by this House in all its bearings. I do hope that you will trust the

Legislature somewhat in this matter, when you find on the statute book evidence of the fact that the Legislature has given you laws enough, but you have not had evidence or public spirit enough to execute them.

Mr. STRAUS. In 1886 the Legislature passed a statute substantially embodying this section, thereby excusing one of the parties to the transaction from the penalties prescribed by law in consideration of his testifying against the other party. Since that time there have been several convictions for bribery, whereas, before that time there were none.

Mr. GOEBEL. How would the insertion of the words hamper the Legislature?

Mr. STRAUS. I do not know that the Legislature could exempt them from the penalties.

Mr. GOEBEL. The language of the section, as it now stands, is not that those who are guilty of treason or felony shall be excluded from the right of suffrage, but those who are convicted. Those words prevent the Legislature from providing that where one party testifies against the other he shall not be convicted.

Mr. STRAUS. There is a great deal of doubt about that. That may be the gentleman's construction of those words.

Mr. GOEBEL. It leaves it to the discretion of the Legislature to say who shall be convicted and who not.

Mr. McDERMOTT. Do you not know that you must deal with witnesses, and every witness, before he comes forward give testimony, must be satisfied that he is safe? Otherwise, do you not know that you not get them to testify under any circumstances?

Mr. GOEBEL. That is not the question. The provision of the Constitution says that persons who

are convicted of a specific crime shall suffer a particular penalty. How does that prevent the Legislature from saying this or that person, if he gives testimony, shall not be convicted?

Mr. McDERMOTT. Then you agree with the Delegate from Hopkins in part. The Delegate from Hopkins is trying to catch both, and you are giving, as an argument in support of his amendment, that the Legislature should discharge one.

Mr. GOEBEL. He is giving the Legislature power to provide that both shall be convicted, or either let off.

Mr. McDERMOTT. He says you shall punish both the giver and the receiver. You are differing from him motive, but agreeing in the language. The Legislature could not fairly disregard the Constitution which would seem to demand the punishment of the briber and the bribed.

Mr. BOURLAND. It is my purpose to detain the Committee but a few moments. The member of the Committee from Louisville seems to think that the reason we cannot convict a man for a violation of the election laws is from the fact that we have not that healthy public sentiment behind us that will enable us to reach the parties accused. It is my opinion that the action of the members of this Convention, in this matter, as representatives of the people of the State, will have a very great influence in molding public sentiment, and if we, as the representatives of the people, put the seal of our condemnation upon this pernicious practice, we will, to a very great extent, build up a healthy public sentiment in the minds of the people that will cause them to rise up in their might and declare that the pernicious practice of bribery at elections must and shall be stopped.

The distinguished and eloquent Delegate from the city of Lexington designated the effort that we are making here in this Convention to make the crime of bribery odious in the State of Kentucky as a spasm of virtue. I do not believe it is a mere spasm of virtue. I believe it is the reflection of a healthy public sentiment that is being built up in this State in advocacy of a pure ballot; and I believe the matter is of such vital importance that the members of the Convention cannot afford to put themselves on record against a measure calculated to purify the ballot. If it is necessary that the present law of the State in reference to bribery be incorporated into my amendment, in order to make it effective.

I am ready to accept that law as an amendment. If it is a fact that my amendment will deprive the Legislature of the power to enact laws of evidence necessary to establish the guilt or innocence of the parties accused, then I stand ready to accept an amendment from any gentleman which will accomplish the end so much desired, and let it take

the place of my amendment. I am desperately in earnest about this matter; and I feel that the health and perpetuity of our free institutions in this State and in the nation depend, to a very great extent, upon the purity of the ballot in the State and in the Nation. I believe that we, as the representatives of the people of the State of Kentucky, owe it to the people we represent, and we owe it to ourselves, to put ourselves on record as against the pernicious practice of indiscriminate bribery at national, State and county elections.

My purpose is to purify the ballot; and, if my language can be made stronger; if any gentlemen on this floor think the guilty parties can escape, and they can put into my amendment any thing that will perfect it and make it stronger, I stand ready to accept it. My motive is to purify the elective franchise, and to protect the people against the great wrongs being perpetrated by bribe-givers and bribe-takers in our State. I hope some gentleman will draw up an amendment embodying the principles set forth in the statute in reference to compelling either party to testify in prosecutions for a violation of these provisions; and, as I said before, I am ready to accept it as an amendment.

Mr. RODES. I regard this measure as one indicating the spirit of the Convention and of the age. In all movements of this kind, whether in making Constitutions or otherwise, there are certain significant signs appertaining to and attached to every body of this kind, which, in some way, indicate the age in which we live. Now, if there is any danger in the world to our institutions, it must grow out of impure elections. If the ballot-box is once thoroughly corrupted, it leads, of course, to misunderstanding. The people will not submit to corruption in their elections, if they can prevent it. Misunderstandings lead to collisions, collisions lead to bloodshed, bloodshed produces conflagrations, conflagrations produce earthquakes. You might say, if there is any thing in the world, out of which danger may arise to our institutions, it will come from this.

I deny, emphatically, that there is any reason or plausibility in the idea, if we put bribery and bribing in this Constitution, that there is any reason why we cannot enforce that law. The State is not only the parent, but the authoritative parent. It has the right to punish, and if we exercise the authority of a parent, and act the part of a tutor in administering discipline, and set forth a good moral basis for our action, it will, in and of itself, have a strong tendency to mould public sentiment. Public sentiment is a great controller of our age, and if we have only a modicum of public sentiment-pure, incorruptible and undefiled, it will some time manifest itself. Corruption grows. It is a germ. The germ theory in this age is the one now

pervading medical circles. Let this germ enter into social system, and it will grow and spread. Louis XIV, at one time, announced this great proposition, that he gave alms by spending liberally. Say, the great political economist, said that that principle was ruin reduced to a proverb. That shows that that age was marked by that characteristic. Out of that grew the immense corruption which at last culminated in that furor of eruption nearly one hundred years thereafter.

Do not let us be afraid to announce the proper principle. Let us lay down the law correctly; let us understand what we are doing. Is bribery corruption? Undoubtedly it is. Does it enter us a deadly poison into our system? It does. Does it injure our system? We all acknowledge it does. Then will you discriminate, and say one part is corrupt, and one part is incorruptible or pardonable? Will you allow one to go free, while you punish the other? Do not let your vote go down that way in this Convention. Let it go down broadly and emphatically. Public sentiment is rising to-day. The time will come when it does in the State of Kentucky as a tutor. The fundamental law is the guide of political sentiment; it is the standard by which you measure values, just like gold and silver. Make your yard-stick correct, and let your weights and measures be correct. Do not let them be false, if they are correct. Shape them correctly, and every thing has to be tested and tried by them; and you can leave it to Providence and the ripening of that high moral sentiment in the minds of men to attend to that; but if you fail, and, admitting all is corrupt, say that one part should be punished and the other part is licensed, you strike down a great deal of the confidence of the people.

We are now at a period in history when we cannot afford to blink at crime. We must protect the people. We cannot modify our feelings and convictions on these subjects. No man ever accomplished much in this age unless he had convictions, and when you have convictions act upon them. I admit the doctrine of expediency. I admit we should not always attempt to carry out the full letter of what we can carry out in part. We should not stick in the bark either, when we attempt to get rid of an evil of this kind, but we can, at all events, indicate, by our action here, what our moral convictions are upon this subject; and if we lay it down unmistakably in our Constitution, or our Conventional proceedings, that this is an evil, that it is dangerous, that it is corrupting, that it is disease concealed within the body-politic, let us make it known and assert it one way or the other.

No man ever had in his physical system a germ that lie did not have to throw it off, and any disease in the body-politic will kill it unless it is thrown off.

Now, we must try to throw it off, and how shall we do it? We have various methods and systems suggested to get rid of these germs of disease. The corruption has to come out. When the plague commences in your system it is there, and it will, eventually, like a corroding cancer, eat you up unless you can extract it. You must exercise a surgeon's power, or some other power incident to the moral medical profession, to get rid of it. This is an evil admitted by all, recognized by all, denounced by all, and now, shall we close one eye to one offense and open the other eye as to another, and say that our system, although injuring us, although corruption is glaring us in the face, yet, for some reason or other, we choose to say one part of it shall be passed over, connived at, while the other is absolutely denounced. I think, as I said before, we had better open both eye. I look the evil in the face, and march up to it and trust hereafter the consequences to providential signs and tokens as to what we shall do.

Mr. STRAUS. I cannot agree with the argument of the gentleman from Warren. While I agree with him in the germ theory, the question is how to get at this germ. Now, it is laid down by all tutors that we must kill the tissue in which it lives in order to destroy it. We all agree that bribery in elections is a very great offense against the body-politic. We all agree that it is a menace to our institutions.

Mr. ASKEW. Will the gentleman yield for an amendment?

Mr. L. T. MOORE. Read mine too.

The amendment offered by the Delegate from Boyd was read as follows:

Amend by adding: "But this shall not prevent the Legislature from exempting one or the other of the parties from punishment, for the purpose of obtaining evidence in such cases."

Mr. BOURLAND. I am willing to accept that amendment. The amendment offered by the Delegate from Scott was read, and is as follows: As an additional subsection to section 1:

"The Legislature shall pass laws for the punishment of bribery in elections, and may punish either the one who receives the bribe or the one who participates in making file bribe-one or both, as may be deemed most efficacious to suppress the evil ; and the laws on the subject shall remain in force till the General Assembly shall otherwise provide."

Mr. STRAUS. We are not here in my judgment, to deal with the abstract proposition, as advocated by the Delegate from Warren. Everybody agrees that bribery in an election is wrong; everybody feels that it is a deadly germ that has fastened itself on the body-politic. Everybody agrees we should kill that germ, in some way or other; we only differ as to the method. We ought, therefore, to deal with this

question in a practical way. The Delegate says the briber is just as bad as the man who takes the bribe. In the abstract, that is true. But the question is, how can we prevent bribery in elections? What is the practical way? Mr. Buckle says, it is not the part of a statesman to anticipate the future, but to deal with the practical present, and that is the question before us.

The argument of the Delegate from Warren would apply equally to a proposition to repeal the sixth section of the statute, which is conceded by everyone to be the most wholesome statute ever passed in Kentucky. That section, which was passed in 1886, excuses the briber and compels him to testify, and yet, under the argument of the distinguished Delegate from Warren, that section should be repealed, because, as he says, one is as bad as the other.

Now, the Delegate from Hopkins will not agree with him. They are in direct conflict with each other. He has accepted the amendment, by which it would seem that he is in favor of the sixth section of the statute, which excuses the briber in order that the State may procure testimony so as to prevent this great offense against the elective franchise. Having accepted that amendment, he has conceded the whole argument, because if you read the report of the Committee further on we provide that the Legislature shall pass all needful laws for the suppression of bribery. Not only do we seek to provide that a man shall be punished for that offense, but in section 7 of the report we say:

"Every person shall be disqualified from holding any office of trust or profit for the time for which they shall have been elected, who shall be convicted of having given, offered or promised any money, or other thing of value, to procure his election. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or such high misdemeanor as may be prescribed by law. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or other improper practices."

The only question we have to deal with is this: Shall we go tie the hands of the Legislature as to prevent them from dealing with the practical question of securing testimony upon which convictions can be had? We may stand here for ages and indulge in glittering generalities and denunciations of the crime of bribery, but unless we provide some practical way to reach this germ, we accomplish nothing. The question before us is a question of method, not a question of principle.

Everybody agrees with the distinguished gentleman from Warren in the abstract, but, as a practical proposition, it would repeal the very best

statute on the books against bribery, and I hope all the amendments will be voted down. Some think the bribe-giver is the worse man; others the bribe-taker. However that may be, let us leave it to the Legislature to enact laws that will insure the prosecution and conviction of persons charged with these great offenses against the elective franchise. I am not prepared to say which is the worse. In the abstract, one may be as bad as the other; but, as a practical proposition, no man can contend that the bribe-giver is as bad as the bribe-taker, but we are dealing with a practical question, and we ought not to hamper the Legislature in ferreting out this great evil and providing adequate remedy for it. Mr. JONSON. I am surprised at the arguments of the Delegate from Bullitt. What would be the result of it?

Mr. GOEBEL. I would like to offer an amendment, so that the gentleman can discuss this while he is on the floor. Amend, by adding at the end of subsection 1 the following:

"Persons giving testimony against others in prosecutions for bribing or receiving a bribe, shall be exempt from the penalty here denounced."

Mr. JONSON. The idea that a man who would deliberately go into the market and corrupt five thousand, or a hundred thousand citizens, is less an offender than the poor wretch who accepts the bribe, is perfectly monstrous. That is the position gentlemen occupy on this floor. They come boldly and announce that proposition. Will he tell us that, when the archfiend entered into Paradise and tempted our mother with the apple, that he was less an offender than she? Yet, that is the position they occupy. Away with it. It is not the poor, insignificant, illiterate wretch who, perhaps, for a morsel of bread, will sell his vote, that is the danger to our community, but it is a man with great wealth at his back, and power and influence, that is the portentous danger looming up.

Go upon the streets of this city today, and what do you find? You find intelligent gentlemen in the capital city of the State so familiarized with vice that it is bruited abroad that bribery is open-handedly walking the streets today. I have heard it in the hotels, I have heard it on the street, and have heard no denial of it; and yet, we are told, that the testimony on which to correct this vice and punish the criminal is to be filched out of the consciences of these debauched wretches themselves. I never heard of such a proposition entering the mind of any intelligent attorney on earth, that you have to resort to the slums and cesspools of corruption to get testimony to correct society.

Mr. WHITAKER. Today that suffrage is a matter of merchandise—a matter of business. Now, as that is the present state of affairs, do you not think it would be proper to buy witnesses upon which to

punish other offenders? The buying of witnesses is exempting them from the punishment of the same crime that the other man commits.

Mr. JONSON. I have heard, all of my life, that you must fight the devil with fire, but I have never recognized the sentiment, and I could not advise the great Commonwealth of Kentucky to go into subornation of perjury. If, in the future, the Commonwealth of Kentucky should engage in that business, I would come to the conclusion that at that time we had lost our liberty.

Mr. MOORE. I would like to ask the gentleman a question. Have you ever had any experience or observation in the purchase of votes?

Mr. JONSON. I must say that I never have.

Mr. MOORE. Those who have know there are but two parties to the transaction, one the purchaser and the other the seller. Unless you make terms with one of them, how can you secure the conviction of the other?

Mr. JONSON. I am not familiar with bribing or taking; and I say, as an abstract fact-not only as an abstract fact, but as my experience as a lawyer-that whenever you come to deal with these corrupt parties, and get one of them who has violated the law to testify against the other, and put him upon the witness stand, he will violate the law again, and swear to protect himself and his associates. There are few exceptions to that rule. If the proposition is true, that no one under the sun, except those two, are cognizant of the fact, and in condition to testify as to it, you will never reach the evil by tempting either. I had not intended to say any thing, having expressed my views on this subject yesterday; but it is passing strange to me, that gentlemen of great intelligence in these matters, and especially those standing here and telling us they have seen this thin?, are willing to connive at it in some degree. It is a connivance. I agree with the Delegate from Warren, that we should open both our eyes and look the evils squarely in the face like men that we say we are.

Mr. APPLGATE. I do not suppose that it is the province of the Convention to determine, this morning, which is the guilty party, the one who offers, or the one who takes the bribe. The question the Convention is trying to solve, is how can we purify our ballots? I do not believe that there is a gentleman in this Convention who is not anxious to know how to solve that problem. I take it for granted that everyone here is willing to concede it is one of the great evils of the day, and it needs no argument to convince us that something should be done. A mind which is so distorted as to believe that bribery is right, is not worthy of an argument. Let it alone in its darkness. As this clause of the Constitution is framed, and as the amendments proposed to-day would leave

it as to the question of bribery, it would be as sounding brass and tinkling cymbals if the Legislature did not vitalize it and set it in operation. Every person convicted of the offense has a certain penalty imposed on him. Everyone knows you cannot have a conviction until there is a common law or statutory penalty for that offense. Until the Legislature provides a penalty for bribery, there can be no conviction for bribery.

Mr. BRONSON. I presume that the Delegate is thoroughly familiar with the decision of the Court of Appeals of Kentucky in the case of Commonwealth vs. Jones, which is in effect this: That even if you undertake, by amendment to this Constitution, to make a self-acting law that it would be construed that such law could not be enforced until after judgment of conviction; so that if you do incorporate into the Constitution the amendment offered by the gentleman, "that whoever receives, or gives a bribe, directly or indirectly, should be disqualified from suffrage and office." Under that decision, which is approved by the highest Courts in the country, it will not be operative until after trial, judgment and conviction.

Mr. APPLGATE. That is the point I was proceeding to, and thank the gentleman for the suggestion and for the reference to the decision. If the Legislature is so debased that it would not reserve upon the statute book the existing laws or provide better ones for punishing bribers, then our Constitutional provision is inoperative. If the Legislature comes up to the standard of the morals of the people whom we represent, it will preserve that law or give us a better one, and we should trust it, that it, from time to time, as experience teaches it, will give us such laws as it thinks in its wisdom will accomplish the result desired. Bribery in the elective franchise affects only the people directly, and until the people are prepared, and the Legislature is ready to give us a law upon that question, there would be no controversy about bribery. We have seen enough of it, and the Legislature has already acted in that direction, and given us a good law. There would be no reason for such law, except abuses in that line.

Now, the other classes of offenses, named in the Constitution, which we say shall disqualify a man, have an effect upon society in every respect. Treason is so odious that we will convict a man for treason. All felonies affect individuals directly. So we need not entertain any apprehension about the Legislature passing wholesome laws to punish the offenses of felony, when a man is punished for an offense he has committed, which prescribes that he shall be disqualified from voting; but there is no motive in punishing a briber, except that bribery is demoralizing to the body-politic; and whenever a

Legislature, influenced by popular sentiment, as it has been in the past, to punish it, it will devise and pass the laws its wisdom will deem advisable.

We shall never succeed in elevating the ballot by statutory law, but we should throw it about all the protection that the Legislature can, and every means should be resorted to possible to prevent bribery and corruption. It matters not to me whether you say the giver or the taker is the greater offender. We want to be in a position in which we can punish either, as the Legislature may see fit. We know what the language reported by the Committee means. It has been carefully considered by them and compared with existing statutes, and decisions of the Court of Appeals construing those statutes, and we know the Legislature has absolute power to do what they have done. This line of decisions and this experience began with the inability to punish gambling, which the people in this State a good many years ago attempted to do. But it was not until the Legislature provided that one of the parties to the transaction might be exempted, if he gave evidence against the other, that they succeeded in punishing them. Do not let us, by hastily considered amendments and by ill-advised amendments, mar the provision of the Constitution under which we propose to live.

If the Legislature would refuse to punish under this provision of the Constitution, it would refuse to enact a law giving vitality to it. I would support any measure to suppress bribery; but are we not tying up the Legislature? Are we not putting in language that will be the subject of judicial construction. The report (section 7) says the Legislature shall do these things. And should we not better leave it that way than to tie on to it this proposed amendment, and destroy the vitality and force of it? It is for this reason that I will vote against the amendment—not that I am against the spirit of it, for I am heartily in accord with that spirit; but I believe the Legislature can and will accomplish all that is practicable to be accomplished under this provision; and it is a well-considered and worded report, and do not let us destroy it. One suggestion is made: that this crime may become so prevalent that the election officers and supervisors may have to call to their assistance men who are skilled in detecting crime, known as detectives. They may have to practically engage with the violators of law, in the perpetration of these offenses, in order to expose it; and we do not want to limit the Legislature so that these men themselves would have to suffer the penalty. I do trust that the Committee's report will remain intact, for I believe it is most effectual.

Mr. BIRKHEAD. What amendment is it that proposes to tie up the hands of the Legislature?

Mr. APPELEGATE. I mean all of them. They have not been so carefully considered as this report

has been. They are all hastily drawn.

Mr. ASKEW. I have sent up to the Clerk's desk to be read an amendment saying that the laws we have now shall remain in force until the Legislature enacts other laws.

Mr. APPELEGATE. Can they not repeal them?

Mr. ASKEW. No, sir; I say they shall remain in force until they provide others.

Mr. APPELEGATE. But they can provide ineffectual ones. That whole thing will depend on whether we have a good Legislature or a corrupt Legislature. All changes are dangerous. We do not know how the Courts will construe them. Why not stand where we are safe?

Mr. MACKOY. Does not the Constitution, in distinct terms, say that the Legislature shall pass laws with reference to this subject?

Mr. APPELEGATE. Yes; and so does this report.

Mr. MACKOY. No, sir.

Mr. APPELEGATE. Why, here it is.

"Every person shall be disqualified from holding any office of trust or profit for the time for which they shall have been elected, who shall be convicted of having given, offered or promised any money, or other thing of value, to procure his election. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or such high misdemeanor as may be prescribed by law. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or other improper practices."

Mr. MACKOY. Does it refer in express terms to this offense of bribery?

Mr. APPELEGATE. Yes, sir; it is the seventh section I have just read. It seems to me, that when the Committee have brought in such an excellent report, and after it has considered it for several weeks, we should be careful as to what we change.

Mr. GRAHAM. It seems to me that this proposition has resolved itself into the germ theory. If there is a germ in it, somebody has injected it into the body-politic. And I think it was not in or among the people. Now, the question is, who induced it? I say the man who had the germ first did it. The man who had the germ and inoculated it, he is the guilty felon. We all agree as to that. Now, America when formed was formed by men of purity, patriotism, philanthropy and economy. We all agree that Jefferson, Washington and their co-workers formed a good government, and it was designed by them that it should be perpetual in that form, uncontaminated. But a healthy government did not satisfy a certain class of men, and, in order that it might be changed into a corrupt and venal government, they brought the germ with them, and that that germ is money.

You may talk about whisky and dry goods and other things, but the bottom of the whole evil is money. If one man does a thing, and another man has it done, who, I want to know, is the guilty man? You drag out the poor fellow who receives the money, and make an example of him, and say that he is rotten and corrupt. I tell you, the corruption is higher up. Now, if I wanted to inject small-pox virus into a man; I have the germ in my pocket, and I say, I will give you five hundred or a thousand dollars if you will let me inject this into you, so that you can propagate the disease and let the whole government have it. and I can get rich.

Now, take the President here; he has these germs, and he starts it floating among the people, and inoculates them with it; but he does not go down among the people himself. He hires a man standing high, and he steps down to do the work. He says to him, I want to inoculate you; and that man goes down and goes to the boss, and he proposes to inoculate him. With what does he inoculate him? Nothing but that germ which was injected from the highest circles. He starts that germ, and distributes it among the voters. He got it from a high place .. Now, you all see the drift of that.

Mr. APPLGATE. Will you allow me to ask a question?

Mr. GRAHAM. I am like brother Rodes; I would rather tell you things than to answer your questions. There is one class of men here who say you should catch the serf, the poor fellow who permits himself to be bought. This thing of buying votes is like the small-pox virus, it is injected all along the line; and here you are after the last poor fellow. You should punish the fellow who is high up, and send him to the Black Hole of Calcutta, or to the Siberian mines, and make him work forever because of the outrage he does. I have no doubt that some of the men in this grand body, if I am properly informed, have done this great wrong, and they are here today, unless they are lied on, by the same means, injecting that virus into the voter. I hope I have been wrongfully informed, that they have not been guilty of this great wrong; but if there are any of them here, I advise them to take an indefinite leave of absence, and, for God's sake, never come back. I tell you, you have to go to the high political circles to get at the infection. You talk about punishment. I tell you, you should put the man who injects the virus at hard labor, and under hygienic treatment, so that he will live a long time to suffer his just punishment. We want stringent laws and penalties, that men will be frightened at crime in high political circles. I tell you it is the money people who are the source of all corruption. There is no infection that can ever come into this great nation if you will keep the influence of money out of it. I

challenge contradiction in that saying. As I said yesterday, we are gathered here, and our combined wisdom, knowledge, intelligence and patriotism, should advise the best adequate means to catch the man who propagates the infection into the body-politic. This is true, and you cannot get behind it. You have this infection descending from the highest places, and you cannot stop it by dragging the poor devil who commits the less offense to punishment. You will have to go higher.

Mr. J. L. PHELPS. I offer an amendment.

The amendment was read, and is as follows: "*Amend the amendment offered by the Delegate from Hopkins by striking there from these words: 'or receiving a bribe.'*"

Mr. BULLITT. I dislike to have to differ with my neighbor, the Delegate from Marshall, but I will ask him if, in the practice of his profession, they do not sometimes have to administer poison to get rid of severer poison? That seems to me is just what we do here.

Mr. GRAHAM. When you want to arrest any thing, you have to use a remedy more powerful, or you will not do it.

Mr. BULLITT. You administer poison to get rid of the poison?

Mr. GRAHAM. One neutralized the other.

Mr. BULLITT. That is a good lesson to instruct the Convention. Here is an evil we all admit. We are all striving to get rid of the evil of bribery in elections. We are but human, and we have to deal with human methods. It matters not what the religious or scientific theories may be. We are dealing with men, and we ought to take into consideration human experience in our efforts to get rid of it. We have tried by punishing both the buyer and seller of votes. The experience of twenty years shows that we have never secured a single solitary conviction; yet no man will doubt that bribery has gone on during the whole of that time. No convictions were ever attained until since we adopted the method of excusing one side. I do not care which side you excuse, whether you excuse the buyer or seller. I do know this, that, ordinarily, the buyer has a higher degree

of credit before the juries as a witness than the seller. You have to get the testimony either of the buyer or the testimony of the seller.

If we succeed in convicting some one, either the buyer or seller, we succeed in stopping the traffic. It would be well for us to convict both, if we could. Both ought to be convicted; but as we find it impossible to convict, unless we excuse one or the other, the only question for us to inquire is, which is the best for society to excuse? Which will furnish us the best witness? Will the seller be a better witness to

convict the buyer, or will the buyer be a better witness to convict the seller? If a gentleman who stands high in society were forced to testify that he bought a colored, or any other man, I think the jury would believe him, and would convict the seller. This evil is upon us. How can we eradicate it? It is to be eradicated for the benefit of society in the shape of punishment, not vengeance, because vengeance belongs not to man, but to God alone.

And when we punish, we punish for the benefit of society, and whoever we do punish, it is to redound to the benefit of society; and if we believe it does not redound to the benefit of society, we have no right to inflict the punishment. Then it is simply a practical question. How are we to meet it? We are to meet it by practical means. The only practical method is to punish one of them, and let the other go unpunished. As long as we say that they are both punishable, either can refuse to testify, and the Courts are powerless to force them to testify, not only under our State Constitution, but they are protected by the Federal Constitution from testifying against themselves. So that we are bound by those restrictions, and we cannot get around them. Hence, we are now to consider a practical method by which to reach it.

The only practical method to reach it is to excuse one or the other of the parties, because nobody knows, and nobody can testify truthfully in relation to it, except one or the other of the parties. As my friend here says, it looks a little bit like the Commonwealth is hiring witnesses. That may be. If the preservation of society requires that treatment, we will have to resort to it. I do not care whether it is buying a witness, by excusing him from punishment because he testifies; all Governments practice that system of bribery for their own protection. We do excuse one conspirator who testifies against another conspirator for the protection of society. In the Ku-Klux law we had to use it—it was the only remedy to reach the disease, and after the system was adopted to allow witnesses to go scot free, we worked out of the State the Ku-Klux business, and it could not be reached until that was done. So that these methods have to be resorted to sometimes for the benefit and relief of society. I think, if we have to pass any thing on the subject, let us adopt the amendment offered by the Delegate from Scott compelling the Legislature to pass laws. I am reminded that this is done in section 7 of the report, compelling the Legislature to pass laws that may seem to them most efficacious to eradicate the evil.

Mr. GRAHAM. You will agree that political bosses down on the street have money to buy votes. The price of votes is two dollars. You have twenty dollars and buy ten votes, five white and five black.

Which is the meaner, the negro who sells his vote or the white man who buys?

Mr. BULLITT. I think the white man who buys; but can we make as efficacious use of the negro man to convict the white, as the white to convict the negro? It matters not who we convict, so we convict one or the other. If we convict one or the other, that stops the evil. I am as anxious to break up the evil as any man in the State, and I hope that some measure will be adopted by the Convention that will eradicate the evil; and hope nothing be done in this Convention that will hamper the power of the Legislature to break it up. But, on the contrary, we will make it the coercive duty on the part of the Legislature to pass laws for the purpose of breaking it up.

Mr. AUXIER. We all agree that this practice of buying and selling votes exists. It is a condition, and not a theory, that confronts us. We have to deal with it practically, as with all other questions. I differ with the Delegate from McLean, when he objects to going into the slums for evidence to convict those guilty of a violation of the law. If an offense is committed in Mulberry street, in New York, you have to go into Mulberry street to get the evidence; and we all know that the Commonwealth's Attorney frequently, with the consent of the Judge, dismisses a prosecution as to one in order to procure testimony to convict the other. That is the practical way of destroying it. If we go among the sandbaggers, shop-lifters, bummers and sluggers of a city, we have to select from that character of men such witnesses as will testify against the other.

Therefore, there is a practical way of getting evidence, and, while we all admit this selling of the birthright, as Esau did, one of the greatest of crimes known to national existence, the selling of this inalienable right of self-government by one party and the buying of it by another, it is not necessary to designate which of the two is the greatest criminal, the buyer or the seller. The purchaser buys that which belongs to another for a price, and the seller, for a consideration given in money, sells his own inalienable and sovereign right to govern himself and help govern the State. Now, let us look at that for a moment. The question is met by the report of the Committee, as, I think, just as completely as need be, because it provides that a person who may be convicted in any Court of competent jurisdiction of treason or felony, or such high misdemeanors as the General Assembly may declare, shall operate us an exclusion from the right of suffrage.

I suppose the Committee drew that clause, knowing at the time the statute upon our books against bribery. This question is not a new one. Ample provision is made upon our statute books for the punishment of bribery, and I do not believe there

is a State in the Union that has better laws to suppress this iniquitous practice than there is on the statute books of Kentucky. Ample provision is made to punish those that buy and those who sell this high privilege and prerogative. It was said by one able writer, that the criminal law is public sentiment, and there never was a truer expression made by any law writer. Public sentiment is not in the direction of punishing people for this offense, and, although we may write clause after clause on the statute books, unless public sentiment is worked up to the enforcement of the law, it becomes a dead letter. If the amendment proposed by the Delegate from Hopkins is to be adopted, in my judgment, it certainly becomes necessary to adopt the amendment offered by the Delegate from Boyd, or the one offered by the Delegate from Newport, either one of which is good, but it does seem to me that this clause is just right as it is. If public sentiment was in accord with the statute, there would be no corruption or bribery in elections. It is not the fault of the organic law, or the fault of the Legislature. The fault is that the public sentiment is not up to it. Then, if the Legislature has done its work so well, and has not been in fault, why is it necessary to put any thing in the Constitution which would obstruct the Legislature in enacting these beneficial laws. The section, as it seems to me, is amply sufficient, and if we adopt the amendment of the Delegate from Hopkins, then the other amendment would necessarily have to follow, and, I think, it would be better to reject all the amendments and take the Committee's report as it is. Parties in *pari delicto* are frequently given immunity and suffered to turn State's evidence in order to secure the conviction of the guilty.

A vote being taken, the amendment of the Delegate from Russell was rejected.

The amendment of the Delegate from Hopkins was then read.

The CHAIRMAN. The motion would be in order.

Mr. MACKOY. I cannot see how the insertion of the words "bribing or receiving a bribe, in the matter of the elective franchise," will hamper the Legislature. They simply provide, that when there is a conviction for that matter, the person convicted shall not thereafter exercise the elective franchise.

Mr. KENNEDY. Does this aid the Legislature to any extent in passing laws?

Mr. MACKOY. I think it does.

Mr. KENNEDY. Will you tell me how?

Mr. MACKOY. It shows the Legislature what is the sense of this Convention in regard to the matter.

Mr. McDERMOTT. I would ask you whether subsection number 1 does not show what the sense of this Convention is ?

Mr. MACKOY. Certainly; but section 1 does not go as far as subsection 1 of section 1 will, if these words are inserted. Section 1 provides only that the Legislature shall pass laws in order that bribery may be prevented, and the Legislature may not make bribery a disqualification for the exercise of the elective franchise.

A vote being taken, the amendment of the Delegate from Covington was rejected.

A vote being taken, the amendment of the Delegate from Hopkins was adopted.

The READING CLERK. The next amendment in order is that proposed by the Delegate from Owsley:

Amend by adding in line 10 of first section, after the word "suffrage," at the close of subsection 1, these words: "*But after five years from his release, the General Assembly may restore the right of suffrage to said person.*"

A vote being taken, the amendment was rejected.

The READING CLERK. The next amendment is that proposed by the Delegate from Nelson: After the word "suffrage," in the tenth line, add these words: "*Unless restored to their civil rights by Executive pardon.*"

Mr. MACKOY. I think it is proper that I should call the attention of the Convention to a decision upon that point. We should, in my opinion, adopt the amendment of the Delegate from Nelson in order that there may be no doubt as to the effect of an Executive pardon. I know that in some cases the rule is stated very broadly in the language read by a member of the Committee from McCreary on Elections; but, at the same time, there is a difference of opinion upon that point, and the matter is too important to permit this Convention to leave it in any doubt whatever.

It is important that a person who has once been disqualified by conviction, if he has reformed—and we have instances of the complete reformation of persons who have suffered imprisonment in the penitentiary—should not be cut off from exercising the elective franchise, but should be left free to indulge the same aspirations and ambitions as those who have never been convicted. That the matter is in doubt, is evident from a decision in 24th Illinois, in the case of Foreman et al. vs. Baldwin; and I desire to read a portion of the decision in order that the Convention may see the view taken by that Court. A witness had been offered in the case, and objection was made to his testifying, upon the ground that he was not a competent witness, having been convicted of a crime; and the Court says:

'Upon the remaining point, the rejection of Katz as a witness, we are satisfied the Governor's pardon did not restore his competency. It could not over-ride

that express provision of the statute which declares, most emphatically, that each and every person convicted of larceny shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, of serving as a juror, and of giving testimony.'

The rule contended for by the defendant's counsel, that a pardon restores the competency, is limited to cases where the disability is a consequence of the judgment. But where the disability is annexed, by the express words of the statute, to the conviction, the pardon will not, in such case, restore the competency. It can only be done by act of the Legislature. At every session there are applications of this character.

In that case, the disability was in consequence of the statute. In this case, the disability is in consequence of the Constitution, and cannot be removed by the pardon of the Governor; and the pardon cannot restore the competency. No matter what may be the opinion upon the other side, the matter will, some time or another, come before the Court of last resort of this State for decision, if we leave the report of the Committee in its present condition, and adopt it. The amendment proposed by the Delegate from Nelson is short. It is well worded. It frees the question of all doubt, and it puts the matter where it should be.

Mr. STRAUS. I simply want to say, that the Committee investigated that question very thoroughly, and we did not run across the isolated case in Illinois during our investigation. I read from McCreary on Elections, and he refers to some forty-odd cases, in various States of the Union and in the Supreme Court of the United States, from which he deduces the following text:

"A general and absolute pardon granted by the Governor of a State, by virtue of power conferred upon him to grant the same, relieves the person to whom it is granted, not only from the punishment provided by his sentence, but from all the consequential disabilities of the judgment of conviction, and restores such person to the full enjoyment of his civil rights, including the right to vote."

He does not refer to the case cited by the gentleman, but does refer to some forty-odd cases in the Union, as well as to a case decided by the United States Supreme Court, in 16 Wall. These disabilities, that operate upon the party by virtue of the judgment, are part of the judgment; and whenever a pardon is granted, it restores a man to his civil capacities.

Mr. PUGH. As there seems to be some doubt, why is not the gentleman willing to accept an amendment that will obviate all question.

Mr. STRAUS. I do not think the matter is open to trouble, simply because you may find a stray case, here and there, in opposition.

Mr. MACKOY. Has the Court of Appeals of this State ever decided the question?

Mr. STRAUS. They have had no occasion to pass upon it.

Mr. MACKOY. I would ask the gentleman if the Court of Appeals is bound by the decisions of Courts of other States, which may turn upon different statutory or Constitutional provisions, and would it not be a new matter altogether if it came before the Court of Appeals of this State, and would the decisions of other Courts be binding upon the Court of Appeals of this State, or would they be any thing more than persuasive?

Mr. STRAUS. It would be impossible in the organic law of the State, to undertake to provide against every possible case decided (continuing to read):

"The power thus conferred is unlimited with the exception stated. It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions. Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offense, and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed an offense."

The Supreme Court of the United States says that, and all the authorities concur in that that Court did not find the Illinois case.

Mr. HARRIS. Have you examined those forty-odd cases and found in anyone of them where it is stated by the Court that the Governor can relieve from a disability imposed by the Constitution?

Mr. STRAUS. The Mississippi case, the Oregon case, and Michigan case, were all of them Constitutional cases.

Mr. MONTGOMERY. On yesterday I offered an amendment similar to the amendment of the Delegate from Nelson, and submitted some few remarks, giving my views upon this question, at which time I said that I thought this question to be, at least, a doubtful one, and gave it as my opinion that the Governor would not have the authority to relieve by

pardoning a party from a disability prescribed by the Constitution, unless that power was delegated in the Constitution. I made that statement without having consulted any authorities on the subject, and merely as my opinion. I have since that time very heartily undertaken to examine that question. I have had very little time and opportunity to do so; but, in my investigation, I have found enough on the subject to convince me that the question is sufficiently doubtful to require that it should be admitted in the Constitution. I find in the American and English Encyclopedia of Law the following:

"A pardon restores the party to all former right, and is said to make the witness a new creature, and give him a new capacity is the consequence of conviction and judgment. The pardon removes the incapacity only when it is a consequence of the judgment according to the common law, and not annexed to a conviction by express word but where the disability is annexed ["the conviction of a particular offense, by the express words of a statute, the general rule is that a pardon will not restore his competency. Thus, if a man be found guilty on an indictment for a felony at common law, a pardon will make him a good witness; but if he be convicted of perjury, or subornation of perjury, he will not be rendered competent by a pardon, if the statute expressly provides that he shall sever be admitted to give evidence in any Court of record."]

I find a good many references to sustain this text. I have not been able to hunt up the authorities and read them, but they are even here—some eight or ten from New York and Pennsylvania. I find further on that subject in the case of *Edwards vs. The Commonwealth* (17 Reporter, Va.). I have not found the reported case itself, but I find a syllabus in the third American and English Encyclopedia of Law, as follows:

"The effect of a pardon granted by the Governor is to relieve the accused of the punishment annexed to the offense for which he was convicted, and of all penalties and consequences, except political disabilities, growing out of the conviction and sentence." Edwards vs. Commonwealth, 17 Kept. (Va.), 286."

Mr. MUIR I ask leave to withdraw the amendment offered by me, and substitute language offered by the Committee in lieu of it, which is acceptable to me.

The CHAIRMAN. Without objection, it can be done.

The READING CLERK. The Delegate from Nelson withdraws the amendment offered by him, and in lieu thereof offers the following:

"But persons hereby excluded may be restored to their civil rights by Executive pardon."

The READING CLERK. The next amendment is that proposed by the Delegate from Covington, First District:

Amend by adding at the end of line 10, section 1: "Persons giving testimony against others in prosecutions for bribing or receiving a bribe shall be exempt from the penalty here denounced."

The READING CLERK. The next amendment is that proposed by the Delegate from Woodford as a substitute for subsection 1 of section 1:

Any person convicted by a Court of competent jurisdiction of giving or receiving a bribe at any election, or of corruptly making a false return of any election, of forgery, perjury, false swearing, or of any felony, as now defined by law, shall be disqualified to vote or hold office in this State, unless pardoned by the Governor. The General Assembly shall enact suitable laws to carry this section into effect.

Mr. BLACKBURN. With the indulgence of the Committee, I will try to give my reasons for offering the above as a substitute for the section as reported by the Committee. We are all agreed that the purpose of this discussion and this work is to protect the ballot-box from fraud and corruption. The Committee unquestionably had that purpose in view when they made this report, and the only difference between us is as to the best mode of accomplishing that purpose. I think there is a serious objection to the subsection as reported by the Committee. The wording is as follows:

"Persons who may be convicted in any Court of competent jurisdiction of treason or felony, or of such high misdemeanors as the General Assembly may declare, shall operate as an exclusion from the right of suffrage."

It is the uncertainty of the language employed in the report of the Committee to which I object. It occurs to me that that report, if adopted and made a part of our Constitution, fails to define the offenses which will debar one from the right of suffrage. It is a delegation, or an attempt on the part of this Convention to delegate, not only the power to the Legislature to define those offenses or to denominate them, but it is a delegation of that power so as to relieve this Convention of what, I believe, it is our duty to do. It is necessary, it occurs to me, that we should so discharge the duty required of us here, that when we return to our homes, to make a report to the people as to how we have discharged that duty, we will be able to give them a satisfactory answer to such inquiry as they may make of us.

Suppose, when this work is finished, so far as we are concerned, and submitted to the voters of Kentucky for their adoption or rejection, some citizen should ask you or any of us: "Well, what about our

franchise that we hold so dear, and is so held by all who love our form of government? What have you done about it?" "Here is our section," you say. "Well, but I do not exactly understand about these 'high misdemeanors.'" You answer: "That simply means we have delegated to the Legislature the duty of fixing that matter." "Then you do not know, you cannot tell me, when you are back from that Convention after the time you have been there, what act of mine it is that is to rob me forever of the most sacred right of an American citizen?" "No, sir, I have delegated that power to the Legislature." "Why, did you do it?"

Can it be, sir, that any Delegate here is willing to say, "I was afraid of the responsibility?" I take it not. Are we willing to admit that we were unable to vote on that question, and determine it in a plain and intelligible manner? I say not.

This Convention, with its wisdom and experience in legislative matters, can do what any Legislature in the Commonwealth of Kentucky may do. Therefore, we are cut off from that excuse, and we are unable to answer the citizen why it is we have left any doubt and uncertainty around this most sacred of all rights of an American citizen. I have no more interest in the work of this Convention than any other Delegate. It is a pride to do our work so as to meet the approval and endorsement of the people of this Commonwealth when we send it to them; and I do hope that, before we pass from this question, we will make it so clear and so unmistakably plain, that the humblest and simplest citizen in this Commonwealth may understand what the penalty shall be for every violation of the law. It occurs to me that that settles the question. I may be mistaken about that. I only submit it as the best I could offer.

It may be objected that the word "felony" may be changed by the Legislature. It was, for that reason I added there, "as now defined by statute or by law," and thereby the citizen will know whether he has committed such felony, or crime denominated by the Legislature as felony, as will rob him of this right of suffrage. He has but to turn to the statute of 1890, and to the decisions of the Court, as to what felony is now; and, if he has committed that offense, and is convicted of it, he loses his franchise. If it is not one of those crimes, this Constitution of ours guarantees and protects him in the right of suffrage. I hope the Committee will pardon me if I refer, for a moment, to their treatment of this question. They insist, now, that the Legislature must have some latitude; that we may safely trust the Legislature to fix this question. I remember a day or two ago, when this other provision was discussed with reference to this secret ballot system, and that, all must admit, is an experiment with us to-day, they would hear nothing

of that sort, but urged it should be fixed definitely and beyond question in this Constitution.

When some of us suggested we had, perhaps, better provide in this Constitution for a fair election, and leave it to the Legislature to try to see which was the best, try the secret ballot for three, four, five or ten years, and if they found that corruption still creeps in under it, and that it was a failure, they then could return to the *vira roce* system, or the Legislature might in their wisdom, and after experience, devise some other means of securing the ballot-box from fraud and corrupt practices. The Committee would hear nothing of that. They insisted that the secret ballot was right; that we should fix it in the Constitution, and it is questionable whether they will agree that the Legislature may change it after awhile, if they find this ballot system not only fails to do what they hoped it will accomplish, but absolutely be a cloak and shield for the very men who would violate the election laws of this Commonwealth. If it was right to put that in the Constitution, certainly we ought to define, as far as possible, and make plain those offenses, the violation of which shall forfeit to the citizen his right to vote.

Mr. STRAUS. I merely want to ask the gentleman, as I heartily concur in every thing he said, in what respect does his amendment differ from the amendment now adopted by the Committee? I understand the entire ground is covered in the Committee's amendment.

Mr. BLACKBURN. I think the difference is this; that the word "felony" is defined by law today, and therefore, my amendment does not leave it to the Legislature hereafter to denominate some act as felony, and thereby deprive a citizen of the right to vote.

Mr. STRAUS. I do not care to make any argument; but I think the entire ground has been covered in the Committee's report, as amended. The discretion of the Legislature, under that provision, "or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage." I have tried to get rid of that. It is an attempt to give a certainty, a fixedness to the provision, so that we may be able to tell the people what act will deprive them of the right of suffrage.

Mr. STRAUS. The gentleman's substitute reads, "felonies as now defined by law." Suppose there are quite a number of felonies made hereafter. Your provision would not cover them.

Mr. BLACKBURN. I take it there is no question now about what a felony is. I thought all you lawyers understood it. I have heard it so often explained that I thought I even understood it.

Mr. BRENTS. There is another difference between the report of the Committee and the

substitute offered by the gentleman from Woodford. The provision of the report leaves it to the Legislature to define what a "high misdemeanor" is, and with power to disfranchise all persons who may be found guilty of violating the law. The substitute removes that objection, and does not leave to the Legislature the right to disfranchise citizens of this Commonwealth for such offenses as they may prescribe.

The READING CLERK. The next amendment is that proposed by the Delegate from Washington:

Amend subsection 3 of section 1 by striking out the words, "idiots and insane persons," and substitute the following words: "Persons who are adjudged to be idiots or lunatics by a Court of competent jurisdiction."

Mr. McCHORD. The motive that prompted me to offer that amendment was this: It is a question to be determined, as to whether a person is a lunatic or idiot. The sanity of a person is always presumed; and shall election officers, while elections are going on, stop the election and hear proof as to the sanity or insanity of a person? In other words, to hold an inquest as to the sanity or insanity of the proposed voter.

Mr. BRONSTON. I would suggest to the gentleman a change in the phraseology, and say "have been," instead of "who are."

Mr. McCHORD. My idea in couching the amendment in that language was this: that a person may have been adjudged to have been a lunatic, but by a subsequent trial he may have been adjudged to be restored to his mental faculties. While a judgment of the Court is in full force and effect, adjudging him to be insane, he ought not to be entitled to vote, and that judgment should be conclusive. After having been restored by the judgment of the Court to his proper condition of mind, he would be entitled to vote, notwithstanding, by the previous judgment, he has been adjudged to be of unsound mind.

Mr. McDERMOTT. I do not think the amendment of the gentleman is necessary, and I hope it will not be adopted. This language, as used here, has been used again and again in other Constitutions exactly as it is here; and I wish to read, for the instruction of the Committee, without taking up any of their time unnecessarily, what Mr. McCreary on Elections says on this very section.

"The vote of an idiot or person *non compos mentis* ought not to be received; and, if such a person has voted, his vote may be rejected upon a contest, without a finding in lunacy. *Thompson vs. Ewing*. But the vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are merely enfeebled by old age, is not to be rejected.

When a vote is attacked on the ground that the voter who cast it was *non compos mentis*, it is necessary to establish satisfactorily, by competent evidence, the alleged want of intelligence; and the test would probably be about the same as in cases where the validity of a will is attacked on the ground that the testator was not of sound mind when it was executed. If the voter knew enough to understand the nature of his act—if he understood what he was doing—that is probably sufficient."

The better opinion seems to be, that idiots and lunatics are, by the common political law of England and this country, disqualified from voting. But these unfortunate persons are expressly excluded from the right to vote by the Constitutions of Delaware, Iowa, Kansas, Maryland, Minnesota, Nevada, New Jersey, Ohio, Oregon, Rhode Island, West Virginia, Wisconsin, and perhaps by other States.

These other States use the same language used by the Committee in this report. You ought to leave something to the judges or officers of election, and, I think, that you ought not to require in all cases that there should be an inquest of lunacy before an election. There are a great many lunatics never tried at all. Their families keep them at home, where they can protect them and look after them; and yet in an emergency, at an election, some man so afflicted might, if you put this in the Constitution, be allowed to vote. Hitherto they have been rejected, because it was the understanding that they were not competent to discharge their duties, and as the Constitution did not use any language similar to that offered by the gentleman from Washington, they would not have been received; but if you put in his words, will not persons whose minds are impaired be accepted at the polls as lawful voters, unless they have been previously decided to have been idiots or lunatics by a Court—and this when they are in fact utterly unable to tell what they are doing? I think, therefore, the amendment is unnecessary and unwise; that the language ought to be allowed to remain as it is. You let your judges of election decide on the question of age, and on the question of residence, and on many other questions of great importance; and, I think, you can safely trust them with this.

Mr. J. L. PHELPS. How would the Delegate have the judges of election to ascertain that question, that fact?

Mr. McDERMOTT. Like they do any other question of fact or law. The judges of elections are really judges, and are called upon to decide many complicated questions.

Mr. J. L. PHELPS. How would they ascertain the condition of the voter's mind?

Mr. McDERMOTT. By asking him questions, and by taking the testimony of the members of his

family, and the testimony of experts, or otherwise; and if you have registration in all the cities, and have small precincts in the country, as I believe you will have, there will be no trouble whatever in giving the judges of election time to decide these important questions.

Mr. J. L. PHELPS. Has it been the experience of the Delegate from Louisville that the ordinary judges of election would be capable of telling whether a man was a lunatic or not, if he, at the time, was in a lucid interval?

Mr. McDERMOTT. I have no doubt they could decide it, like they decide any other question. I am very sorry the gentleman from Russell did not advance these arguments in our Committee, of which he is a member, so that we might have had the benefit of his valuable assistance; but it seems we have lost it.

Mr. J. L. PHELPS. I desire to say to the Delegate that I am authorized by the saying of the wise man to change my mind. Solomon says a wise man changes often.

Mr. McDERMOTT. I am sorry the gentleman did not change his mind in time to enlighten the benighted Committee. It is a pity he did not devote a little study to this subject before the making of the report.

Mr. J. L. PHELPS. I would like to ask the gentleman if it is not a fact that I did offer suggestions to the Committee?

Mr. McDERMOTT. Undoubtedly, and all of them were very valuable, and as we relied on his unerring judgment and native shrewdness, we offered this report with the greatest feeling of security.

Mr. J. L. PHELPS. Did I not say in the Committee that there were some things in the report that I could not support in the Convention?

Mr. McDERMOTT. Yes; but the gentleman never gave us a note of warning of the fate to be visited upon us when he should arise and make an attack on this section. We felt that if there was one section which would receive the hearty support of the gentleman from Russell, and would be sustained by his great ability and carried through successfully by his efforts, it was this one section.

Mr. J. L. PHELPS. The gentleman has learned that idea by attending political conventions, which require a man to vote for a candidate of his party whether he is for him otherwise or not.

Mr. McDERMOTT. I do not understand the point exactly.

Mr. McELBOY. I understood the gentleman from Louisville to assume that the wording of this was taken from other Constitutions?

Mr. McDERMOTT. I did not say that. What I did say yesterday was, that whenever a gentleman offered any new proposition here, there were some other gentlemen on this floor who immediately, without a moment's hesitation, and apparently without a moment's thought, would rush up and grab a copy of the old Constitution and copy off some section of it and offer it as an amendment. I did not say that we should not study and profit by the Constitutions of other States; nor did I mean that we should condemn our own. All I beg for is fair consideration of new things. I had not expected, either, that the gentleman who has done so much thinking in this Convention would rise in defense of the idiots and lunatics of Kentucky. I do not know what he can mean, unless it is that he, too, is in favor of giving full latitude to the idiots and lunatics of the State. I do not know how many of them constitute the constituency which has the honor to send him here. (Laughter.)