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Locked Up, Then Locked Out: The Case for Legislative—Rather Than Executive—Felon Disenfranchisement Reform

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A cohesive anti-felon disenfranchisement perspective has gained traction over the last two decades in America. Scholars have harshly criticized disenfranchisement provisions for their insulation and perpetuation of nonwhite marginalization a la Jim Crow. Other critics have also decried felon disenfranchisement for barring prior felons from full social integration. Still more critics point to how disenfranchisement provisions inequitably affect election outcomes. State leaders, recognizing the prevalent attitude against felon disenfranchisement, have taken significant measures to mitigate disenfranchisement laws—for example, some state governors have issued executive orders categorically re-enfranchising ex-felons. These types of actions are the focus on this Note. Certainly, unilateral executive action is efficient and has been effective in the short-term. However, this Note contends that there are distinct political efficacy and consent theory concerns that emerge when broad felon disenfranchisement reform comes from unilateral executive action. Moreover, this Note argues, gubernatorial action is by and large an inconsistent solution that ultimately fails to address the systemic civic deprivation of nonwhite communities. This Note concludes by proposing federal legislative action—specifically, the Democracy Restoration Act—as a more favorable method of felon disenfranchisement reform.

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