

Foreword to the 2012 electronic edition of this document

In Spring 2008, I sought work related to voter registration for the upcoming presidential election. I'd become familiar with the non-partisan Progressive Leadership Alliance of Nevada (PLAN) during my time as a writer for Las Vegas *CityLife*. So I asked if they had any relevant positions lasting through October.

Indeed, they needed help. They were launching an effort in the wake of a letter sent by the Clark County Election Department to a list of people with felony records. The letter warned ex-felons that they might face charges for attempting to vote without proper paperwork. The complex wording alarmed and confused some of the recipients.

Obtaining the necessary records from various correctional entities was a daunting process. PLAN stepped in to assist individuals in navigating it. We ultimately helped more than 400 potentially affected people. Our group was certain that many more could have been helped—had there not been so many barriers.

At the end of the four-month project, I had the idea of writing this report. It details the difficulties of Nevada's re-enfranchisement process. Recommendations for making that process easier are included as well. As a result of working with PLAN and the Nevada Secretary of State's office during the 2008 election season, Clark County later updated their election website with clear and complete information.

The work was rewarding at the time, but looking back it is even more so. I'm proud of the success I had connecting diverse individuals with their constitutional freedom. Plus, I'm glad I could leave a paper trail that helped lay groundwork for improvements to the voter registration system.

I'd like to thank my coworkers at PLAN during this project for their support and providing a great working environment. I'd also like to thank the Culinary Workers Union Local 226 for the grant that funded my role!

--Meredith McGhan, July 2012

Voting Rights Restoration Efforts in Nevada

2008



by Meredith McGhan



(Note: This 2012 PDF version of the document is the result of recovering the text with OCR. It also includes editing for clarity, without changing the statistics or meaning.)

Abstract

In 2008, the Progressive Leadership Alliance of Nevada (PLAN) initiated a project to help register qualified ex-felons to vote in the general election.

Roughly 180 individuals registered to vote with direct help from PLAN, while approximately 125 received counseling and then registered on their own. Only a quarter of the 400-plus people PLAN worked with could not register—due to having a dishonorable discharge, or felony from an ineligible state.

Despite these efforts, a few potential voters slipped through the cracks. This was due to several barriers newly eligible ex-felons face:

- ◆ Lack of knowledge of AB 55 (Assembly Bill 55), a recent law affecting voting rights
- ◆ Varied interpretations of the law by election officials
- ◆ Difficulty acquiring out-of-state records
- ◆ Lack of full cooperation and communication by some agencies

This document outlines the voter restoration project. It details the challenges faced by both PLAN and the ex-felons who were helped. It also recommends how to streamline the relevant procedures for future elections.

Felony Disenfranchisement in Nevada

Felony disenfranchisement is the practice of stripping voting rights from citizens who have committed a felony. Across the country, approximately 5.3 million ex-felons have lost the right to vote. These policies have prevented a full 13 percent of African-American citizens from being able to help elect leaders—the core right and responsibility of a democratic society.

State laws drive felony disenfranchisement. In Nevada, more than 20,000 people with a felony record could not vote until 2004. As of this writing, most of these citizens have been re-enfranchised due to a new state law: Assembly Bill 55 (AB 55).

This bill restored voting rights to ex-felons who were honorably discharged from parole, probation, or a prison sentence before July 1, 2003. People honorably discharged after that date faced stricter requirements. Only those who served sentences for single, nonviolent Class B, C, D, or E felonies had their rights restored.

In Nevada, ex-offenders remain permanently disenfranchised if:

- ◆ they have committed a Class A felony
(such as murder, sexual assault, or child abuse)
- ◆ they have committed a Class B felony with violence
(such as burglary or home invasion resulting in injury)
- ◆ they have committed multiple felonies of any class

Legal Interpretations

The language of AB 55 says that a person's rights are *automatically* restored if they were honorably discharged before July 1, 2003. Although much of the confusion surrounding AB 55 related to what "automatic" meant in this context, there were also challenges to what constituted an "honorable discharge". Some paperwork says *general discharge*, or *honorable without restoration of civil rights*.

Nevada's Secretary of State wanted to canonize the interpretation of these different wordings. In the midst of the 2008 voter restoration process, the Secretary's office issued a statement that only phrasings which explicitly used the word "dishonorable" would disqualify a voter. Yet some critics of the law claimed such a discharge should not prevent voting *if* the dishonorable label came only from inability to pay fines or restitution.

Hence an exception was made, whereby those ex-offenders could appeal to have their discharge changed to honorable. If they were willing to make restitution payments, then the Department of Parole and Probation would advocate to the court on their behalf. This exception was separate from AB 55, so it further complicated matters.

Letter from the Clark County Election Department

In 2004, ex-felons could register to vote in Nevada without any bureaucratic barriers. The word “automatically” in AB 55 was interpreted to mean they could simply register like anyone else. But when the 2008 election arrived, the Clark County Election Department (CCED) interpreted the law more conservatively. They embarked on a campaign to make ex-felons prove that their discharge was “honorable” before they could register.

The CCED wanted to locate the ex-felons in Clark County. So they contacted the Las Vegas Metropolitan Police Department (LVMPD) to see if they had a database of ex-offenders. Such a list was available, because all former offenders—regardless of what state their criminal history is from—must register for a felon card in Nevada.

The police department provided the data, and everyone on that list received a mailing from the CCED. This letter instructed recipients that when registering to vote, they needed to submit their discharge paperwork along with the registration form. If not, they were warned that they might be charged with another felony for voting.

The CCED's letter contained ambiguous language which reflected the confusion surrounding the interpretation of AB 55. Many ex-offenders had thought they could vote without problems, and were concerned about the strong wording. Others were unsure if their paperwork would qualify them.

PLAN's Voter Rights Restoration Program

PLAN had helped register ex-felons in 2004. They again stepped in to assist with what had become an even larger bureaucratic challenge.

On August 1, 2008—under a Freedom of Information Act (FOIA) order—the CCED gave PLAN contact information for the recipients of their letter. PLAN sent their own mass mailing to the roughly 2,100 people on the list. This communication attempted to clarify the wording of the CCED missive, and offered personal registration assistance.

Approximately 450 letters came back due to having a wrong address. A phone search of the remaining 1,650 names using the Voter Activation Network database resulted in about 350 invalid numbers. PLAN's final total for the CCED contact list stood at approximately 1,300. Of those, only about 400 responded to PLAN's letter.

It is unknown why more of the recipients did not reply. The remaining 900 or so may have registered on their own, or simply decided not to register. They might also never have received the letter, even though it was not returned.

Those who did communicate with PLAN said they were relieved to be contacted. Some said the CCED's information sounded threatening and the language was difficult and legalistic. Many interpreted it to mean they could not vote at all, ever again.

The widespread misinterpretation of the CCED's letter was just one issue that made voter restoration difficult. Many ex-felons had not kept their records or information about their sentencing. At the time of their release, the importance of keeping documents may not have been made clear. (Also, ex-felons had often wanted to put their incarceration experiences behind them by deliberately discarding the information.)

PLAN's primary task was to figure out which state or federal correctional entity had the client's discharge documents on file, and request them. The two most significant bureaucratic issues that made retrieving documents difficult were:

- ◆ Dealing with out-of-state records
- ◆ Communicating with the Nevada Department of Corrections (NDOC)

Out-of-State Record Search Problems

Nevada experienced huge growth in the early 2000s, and many residents had moved from other states. A number of the ex-felons who contacted PLAN had served time elsewhere. Sending for out-of-state records posed various challenges.

First, PLAN had to figure out where the client had served time. This often involved lengthy interviews with clients who had trouble remembering incarceration details. Once their jail or prison had been identified, PLAN had to try to reach the records department.

It would often take several attempts to contact an out-of-state correctional facility, and calling one phone number could result in being referred to several others. Sometimes the right person was reached and records were found. However, it often occurred that the records had been purged, lost, or were otherwise inaccessible.

With certain states, an issue surfaced that if the client had not kept their papers, they did not have their case ID number. In a Catch-22, the papers could not be retrieved without the number on the papers. This blocked a few people from being able to get their documents because the facility would only accept a case ID—not a social security number or name—for record searches.

Finally, some states required payment for document searches. Because of economic hardship, some individuals could not afford to pay for the search. When necessary, PLAN did so on their behalf.

In-State Record Search Problems

PLAN also faced challenges specific to dealing with Nevada's own correctional entities. For ex-felons who had been supervised on parole or probation (P&P) in Nevada, the process was simple. The Department of Public Safety—which administers P&P—proved cooperative.

However, the Nevada Department of Corrections (NDOC) was much less cooperative than P&P. The NDOC deals with dates of discharge from prison when parole or probation is not necessary. They habitually failed to communicate with PLAN in a clear or timely manner. A number of records from them arrived at the PLAN office after the election.

All inmates in Nevada's prison system go through the NDOC regardless of whether they are released on parole or probation, so the NDOC was PLAN's first point of contact. If their records showed the inmate had been released to P&P, that department was next.

PLAN made an initial contact with the NDOC for instructions about how to get records and the type of records needed. The department responded by saying former inmates needed to sign a "release form" to receive their records. They failed to provide such a form or give any other instructions. PLAN called and emailed NDOC for clarification, but did not receive a response.

PLAN devised its own release form, but getting records from the NDOC remained problematic. The NDOC would respond to the release form by sending back a "Letter of Incarceration". When the individual tried to use this document, the registrar of voters would not accept it. They said they needed an official "Certificate of Discharge" stating the former inmate's civil rights had been restored.

After discovering the documents the NDOC was sending were not the correct ones, PLAN revised the request form. The revision asked for the "Certificate of Discharge" and "Restoration of Civil Rights" forms. On October 11, PLAN re-submitted a request to the NDOC for all clients who had signed a release. The NDOC ultimately replied to this request with proper documents *after* the election.

The Affidavit Regarding Felon Status

Clearly, acquiring discharge documents had to be made easier. The legal counsel of the Culinary Workers Union Local 226 asked the Secretary of State to issue an affidavit. The affidavit would be accepted in lieu of discharge papers by the voting registrar, and this motion was granted on September 11, 2008.

PLAN continued to order discharge papers as a security measure because of the following problems with the affidavit:

- ◆ It did not specify if the date the ex-felon should provide was of conviction or release
- ◆ Its legal language was difficult for registrants to understand
- ◆ It had to be notarized, creating an extra step
- ◆ Not all Nevada county election officials accepted it
- ◆ It was based on an arguable reading of the law
- ◆ Registrants did not always remember details of their conviction
- ◆ The affidavit was not approved in time to register everyone eligible

Recommendations

Navigating the various bureaucracies involved in the 2008 voter restoration effort in Nevada led to awareness that a number of policy changes should be implemented. Organizations involved in voting rights should:

- ◆ Urge legislators to revise AB 55 for simplicity and ease of implementation by all Nevada correctional entities.
- ◆ Urge legislators to pass laws enforcing timely cooperation with document requests on the part of all correctional entities in the state.
- ◆ Make familiarity with AB 55 a standard part of training for voter registration workers.
- ◆ Arrive at a common understanding of the law between voter registration workers and county election officials.
- ◆ Implement ex-felon voter restoration as part of re-entry programs regardless of whether an election is imminent for time to complete the process.
- ◆ Revise the Affidavit Regarding Felon Status for clarity and to refer directly to AB 55 to eliminate concerns about fraud by signing it.

Conclusion

The 2008 voter restoration effort in Nevada was undertaken by PLAN and other organizations that were committed to re-enfranchising all eligible ex-felons. However, it fell short of its goals. Roughly 2,100 people were originally contacted by the CCED. PLAN was able to track the outcomes of only about 20%. Had the efforts started earlier, with all entities cooperating fully, that number would have been higher.

However, on the positive side, this project helped hundreds of people. It also ultimately provided a framework for streamlining the process. In the future, Nevada's ex-felons may face fewer barriers when registering to vote.