

Voting Rights Restoration Efforts in Nevada

2008



by Meredith McGhan

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(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.)

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 its recipients.

Obtaining the necessary records from various correctional entities was a daunting process. PLAN stepped in to help individuals navigate 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. I ended the report with recommendations for making that process easier.

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. 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.

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

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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.

Ultimately, about a fourth of the 400-plus people who contacted PLAN could not register—due to having a dishonorable discharge or felony from an ineligible state. Roughly 180 registered to vote with direct help. PLAN counseled approximately 125 individuals who registered on their own.

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

1. Lack of knowledge of the new law
2. Differing interpretations of the law by different election officials
3. Difficulty acquiring out-of-state records
4. Lack of full cooperation and communication of all involved entities

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

The New Law: Assembly Bill 55

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

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).

The bill restored the right to vote 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 voting rights restored. The following categories of ex-offenders remain permanently disenfranchised in Nevada:

1. people who have committed Class A felonies such as murder, sexual assault, and child abuse
2. people who have committed Class B felonies such as burglary or home invasion with violence
3. people who have committed multiple felonies of any class

The law's wording in regard to "automatic restoration" and "honorable discharge" is subject to varying interpretations. These differing interpretations contributed heavily to the difficulty in registering Nevada's ex-felons to vote in 2008.

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. In 2004, ex-felons registered to vote in Nevada without any bureaucratic barriers, because the law was interpreted to mean they could simply register like anyone else.

When the next election year arrived, the Clark County Election Department (CCED) had a more cautious interpretation of the word "automatically". The CCED wanted proof that discharge was honorable, so they sent a mailing to a list of ex-felons. This letter instructed them to submit their discharge paperwork along with their voter registration form.

The situation was further complicated by what constituted an "honorable discharge". Some papers say "general discharge", or "honorable without restoration of civil rights." The Nevada Secretary of State wanted to reduce confusion caused by these different wordings. During the 2008 voter restoration process, their counsel issued a statement that said anything that does *not* say "dishonorable" qualifies a person to vote.

Some dishonorable discharges had been simply because an individual could not pay fines or restitution. Critics of the law claimed a dishonorable discharge was unfair if the ex-offender was willing to pay but could not at the time of release.

Hence, an exception was made. An ex-offender could appeal to have the dishonorable discharge changed to honorable if they made restitution payments. The Department of Parole and Probation would advocate on their behalf with the court. This exception was separate from AB 55, so it added to the confusion.

The wording of the CCED's letter reflected the ambiguity and confusion surrounding the interpretation of AB 55. The letter warned recipients they might be charged with another felony if they voted without going through the voting registration process for ex-felons. Many recipients were disconcerted who had thought they could vote without problems. Others were unsure if their paperwork qualified them.

The Clark County Election Department's Letter

To identify recipients of their letter, the CCED used a list the Las Vegas Metropolitan Police Department (LVMPD) provided. The list contained names of individuals who had registered for a felon card. (In Nevada, all felons must have such a card, regardless of intent to vote.)

PLAN had helped register ex-felons in 2004, and again stepped in to assist people in navigating what had become even more of a bureaucratic challenge.

The CCED included a pamphlet in their letter that gave PLAN's contact information. On August 1, 2008, under a Freedom of Information Act (FOIA) order, the CCED gave PLAN the names and addresses of the roughly 2100 recipients. PLAN sent their own mass mailing offering registration assistance.

Approximately 450 letters came back due to having a wrong address. A phone search of the remaining 1650 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 1300. Of those, only about 400 responded to PLAN's letter.

It is unknown why more of the letter's recipients did not reply. Possibly, the remaining 900 or so may have registered on their own, decided not to register, or never received the letter (even though the letter was not returned to PLAN).

Those who did communicate with PLAN said the letter had a threatening tone and difficult, legalistic language. Many interpreted it to mean they could not vote at all, ever again.

Impediments to Acquiring Discharge Documents

The widespread misinterpretation of the letter, and resulting feelings of intimidation, was just one issue that made voter restoration difficult. In addition, ex-felons often understandably wanted to put their incarceration experiences behind them. Some 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 to them.

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:

1. dealing with out-of-state records, and
2. communication problems with the Nevada Department of Corrections (NDOC).

Out-of-State Record Searches

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 their records posed various challenges.

It would often take several attempts to reach the correct department. Calling one phone number could result in being referred to several others—only to find 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, and there was no way to resolve it.

Some states required payment for document searches that individuals could not afford. When necessary, PLAN paid for document searches.

In-State Record Searches

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 registrants 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 register, the registrar of voters would not accept this document. They said they needed an official "Certificate of Discharge" with documents 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. As of this writing (November 12, 2008, a week after Election Day) the NDOC has not replied.

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:

1. It did not specify whether the date was of conviction or release
2. Its legal language was difficult for registrants to understand
3. It had to be notarized, creating an extra step
4. Not all Nevada county election officials accepted it
5. It was based on an arguable reading of the law
6. Registrants did not always remember details of their conviction
7. The affidavit was not approved in time to register everyone eligible

Recommendations

Organizations involved in voting rights should attempt to clarify AB 55:

1. Urge legislators to revise it for simplicity and ease of implementation by all Nevada correctional entities.
2. Make familiarity with AB 55 a standard part of training for voter registration workers.
3. Arrive at a common understanding of the law between voter registration workers and county election officials.

Programs should implement ex-felon voter restoration as a regular part of re-entry, regardless of whether an election is imminent. This would allow additional time to complete the process.

Advocates should urge state legislators to pass laws enforcing cooperation on the part of all correctional entities in the state.

The Affidavit Regarding Felon Status should also be revised for clarity. Many of PLAN's ex-felon clients said the legal language of the affidavit confused them. For example: it is unclear whether the date on the affidavit is supposed to be the date of conviction or of discharge.

The affidavit should refer directly to AB 55. Because it did not, some clients would not sign it. They were afraid they would be committing fraud by signing a document that said they were re-enfranchised.

Conclusion

The 2008 voter restoration effort in Nevada was undertaken by groups committed to re-enfranchising all eligible ex-felons. However, it fell short of its goals. Roughly 2100 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 doubtless have been higher.

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