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What Impact is Felony Disenfranchisement Having on Hispanics in Florida?

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WHAT IMPACT IS FELONY DISENFRANCHISEMENT HAVING ON HISPANICS IN FLORIDA?

by

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ABSTRACT

This research produces original empirical estimates of Hispanics in Florida's Dept. of Corrections (FDOC) and uses those estimates to measure the impact felony disenfranchisement is having on Hispanics in Florida. Research institutions find that data on Hispanics in the criminal justice system, particularly in Florida, is either lacking or inaccurate. This research addresses this problem by applying an optimal surname list method using Census Bureau data and Bayes Theorem to produce an empirical estimate of Hispanics in FDOC's data. Using the Hispanic rate derived from the empirical FDOC analysis, the rate of Hispanics in the disenfranchised population is estimated. The results reveal that FDOC systematically undercounts Hispanics (and overcounts Whites) by nearly 8 percent—i.e., there are over 2.5 times more Hispanics in FDOC data than actually reported by FDOC. However, even when applying the upward adjusted rate of Hispanics to the disenfranchised population, Hispanics are still underrepresented and less likely to be disenfranchised than their White and Black counterparts in Florida. This research provides an accurate up-to-date state of the data with respect to Hispanics in FDOC; it applies a surname method which other researchers can use to address lacking or inaccurate data on Hispanics in the criminal justice system; and it calls into question research that relies on FDOC's inaccurate race data. Taken together, these findings might facilitate answers to many pressing questions on felony disenfranchisement in Florida and its impact on the political process.

DEDICATION

I dedicate this thesis to the millions of Americans who have been silenced because of a
felony conviction and to every person that has come into contact with the criminal justice system
and had his or her race or ethnicity subjectively misclassified. I hope that my work helps ensure
that you do not go unnoticed, uncounted, or unheard.

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CHAPTER ONE: Introduction

The Urban Institute recently called the lack of accurate data on Hispanics in the criminal justice system "alarming." (Urban Institute, 2016).[1] In most states, data with respect to Hispanics is lacking or, even worse, inaccurate and thus misleading. This research reveals that in Florida, FDOC systematically undercounts Hispanics. Contradicting the numbers reported by FDOC, empirical estimates produced in this research show that there about two and a half times more Hispanics in FDOC than reported in its data. FDOC's inaccurate race data have serious, negative implications, particularly with respect to research on felony disenfranchisement.[2]

The controversial 2000 Presidential Election reignited debates over felony disenfranchisement and the impact it has had on electoral outcomes. Researchers conclude that without Florida's felony disenfranchisement, Vice President Gore would have carried the State of Florida by more than 30,000 votes and thus changed the electoral history of the US. (Uggen & Manza, 2002). Burch refutes those findings concluding that the 2000 Presidential Election would not have been overturned because most ex-felons in Florida are White males who would have overwhelmingly supported President Bush. (Burch, 2012). The calculations used by Burch,

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[1] The term "Hispanic" herein means Hispanic or Latino/Latina. The author does not take position on which term is superior. The primary use of "Hispanic" as opposed to "Latino/Latina" in this research is solely for consistency with FDOC and Census data which use the term "Hispanic".
[2] FDOC categorizes "Hispanics" (known as an ethnicity) and Blacks and Whites (known as races) under one category (i.e., "race"). Therefore, the term "race" when used herein refers to race and ethnicity. The author uses the term "race" simply for consistency with FDOC data, which is at the center of this research.

however, are sensitive to racial make-up and rely on FDOC's inaccurate race data. Burch did not consider Hispanic ex-felons in the calculations because the group was too small according to FDOC reported data. This research shows that there were an estimated 8 percent more Hispanics (and a corresponding 8 percent less Whites) than those initially considered by Burch. Therefore, this research calls into question the accuracy of Burch's calculations and possibly the conclusion that disenfranchisement in Florida did not reverse the outcome of the 2000 Presidential Election.

Moreover, while data collection on Hispanics continues to be an issue, the methods employed in this research are helpful for researchers and practitioners. Methods with which to correct for inaccuracies with respect to Hispanics in the criminal justice system is needed, especially in areas that are sensitive to racial make-up. A surname approach commonly used in the political redistricting and apportionment arena provides us such a tool and is used herein. If the data being analyzed includes surnames, empirical estimates of Hispanics in that population can be determined through an optimal surname list using Census data. This research employs this method and in Chapter Three explains how an optimal list is created and applied to analyze FDOC data. Future research can benefit from this method by producing empirical estimates on Hispanics in cases where data is either missing or questionable.

Furthermore, data estimates on the rate of Hispanics disenfranchised because of a felony conviction are extremely limited. (Democracy Imprisoned, 2013, p. 2). Nonetheless, conventional wisdom posits that felony disenfranchisement (like other criminal justice issues) disproportionately impacts African Americans and Hispanics. (Democracy Imprisoned, 2013, p. 2). It is assumed that because Hispanics are more likely to be impacted by the criminal justice

system than their White counterparts, they are also more likely to be disenfranchised. (Democracy Imprisoned, 2013, p. 2). This argument is generally based on assumption—not data—because such data is wanting in Florida.

Only one report ("MALDEF Report") attempts to fill the gap with respect to Hispanics and felony disenfranchisement. (Demeo & Ochoa, 2003). The authors of the MALDEF Report note that "the most commonly referenced reports in the felony disenfranchisement field make general references to Latinos being disproportionately affected…but do not provide overall national numbers or data broken down by state." (Demeo & Ochoa, 2003, p. 2). Therefore, the MALDEF Report analyzed the top 10 States with the highest and/or fastest growing Hispanic populations in 2001. Florida is included in the research. According to the MALDEF Report, Hispanics in Florida are not disproportionately affected by felony disenfranchisement despite the fact that Florida has one of the largest Hispanic populations, one of the largest prison populations, and one of the strictest felony disenfranchisement laws in the country. (Demeo & Ochoa, 2003, pp. 7-8).

The MALDEF Report authors acknowledge that their data has drawbacks. (Demeo & Ochoa, 2003, p. 5). Because they analyzed multiple states, they sought data uniformity to make true comparisons. To that end, they relied on data from the Bureau of Justice Statistics (BJS) and each State's Department of Corrections (DOC). (Demeo & Ochoa, 2003, p. 5). One of the problems they encounter in unifying the data is that states either classify Hispanics differently or fail to accurately classify them at all. The authors explicitly state that with respect to Latinos, the information collected by the DOCs were "suspect and incomplete." They conclude that research with more reliable data is in order. (Demeo & Ochoa, 2003, pp. 2, 14, 22). The finding that

Hispanics are underrepresented in Florida's disenfranchisement population needs to be reevaluated, because the MALDEF Report made use of FDOC's race data. At any rate, because the findings in the MALDEF Report are over 13 years old, updated research on its findings is warranted to determine whether they still hold true.

Interestingly, the findings herein confirm what the MALDEF Report discovered over a decade ago—Hispanics are still underrepresented in Florida's disenfranchised population. Moreover, although the MALDEF Report is silent on how it specifically arrived at its Hispanic rate in Florida, the empirical surname approach used in this research produced very similar rates (between 10 – 12 percent Hispanic). This research continues the efforts initiated by the MALDEF Report (the first study of its kind) and updates its findings. Chapter Three provides current empirical estimates of Hispanics in FDOC's records and, thereby, the disenfranchised population. As stated in the MALDEF Report, "[w]ithout such data, it is difficult to propose a strategy for addressing Latino disenfranchisement on either the national or state level." (Demeo & Ochoa, 2003, p. 2).

This research reveals the current state of the data with respect to Hispanics in FDOC and, by extrapolation, the disenfranchised population. Producing current and accurate race data contributes to the academic body of knowledge and helps inform policy makers and the public. An accurate understanding of how disenfranchisement impacts particular communities can have a mobilizing effect. For example, members of certain White communities may be inclined to support criminal justice reform when made aware that they are more likely than Hispanics to be imprisoned or disenfranchised in Florida. Likewise, members of the Hispanic community may be motivated

to support reforming Florida's disenfranchisement policy when made aware that their community is doubly impacted by the fact that legal residents, like disenfranchised ex-felons, cannot vote causing Hispanics to experience a significant reduction in their collective voice.

At any rate, the mere finding that FDOC significantly undercounts Hispanics is alarming and demands data collection reform by FDOC. FDOC should allow individuals to self-identify their race/ethnicity and publish data on Hispanics in their annual report, which is in line with the recent proposals outlined by the Urban Institute and with the practices employed by the Census Bureau. (Urban Institute, 2016).

Research and policy debates regarding felony disenfranchisement depend heavily on accurate race data. The next chapter, Chapter Two, explains how race became central to the issue of felony disenfranchisement and why Florida is at the center of the discussion. Felony disenfranchisement dates to the classical democracy of Athens. Race was not at the center of felony disenfranchisement for much of its existence; however, during the post-Civil War reconstruction era of the US, racially motivated felony disenfranchisement emerged. Ultimately, the U.S. Supreme Court has found almost every disenfranchisement law constitutional. So long as the law does not explicitly target a particular group, the law remains constitutional—disparate racial impact alone is not enough to render disenfranchisement unconstitutional. Therefore, the debate remains one of policy reform, rather than on its constitutionality. Policy debates over disenfranchisement commonly center around racial inequality and electoral outcomes. These two factors are most prevalent in Florida. Florida disenfranchises about a quarter of all disfranchised individuals in the US, one in five adult Blacks in Florida cannot vote. Meanwhile, Florida

continues to be a significant swing state.

Chapter Three explains the methods used to create an optimal surname list and its application. This research investigates the racial make-up of FDOC's reported data, which is the largest individual source regarding felons and ex-felons in Florida. The results reveal that there are more than two and a half times more Hispanics than reported by FDOC. These estimates are important in determining the racial make-up of Hispanics in the disenfranchised population. However, even after making the upward adjustments produced by this research, Hispanics are still less likely to be disenfranchised than Whites or Blacks in Florida.

Chapter Four discusses the implications of this research at length. The findings call into question research that relies on FDOC's inaccurate race data and warns future researchers to be aware of it. It explains how to use the surname approach employed in this research to compensate for inaccurate or lacking race data on Hispanics. The current state of FDOC race data is discussed providing voters and policy makers information that can empower them with respect to criminal justice reform and disenfranchisement debates. Caveats are explained and suggestions for future research are discussed before ultimately concluding.

CHAPTER TWO: History of Felony Disenfranchisement, Race, and Florida

Historical Origins of Felony Disenfranchisement

Supporters of felony disenfranchisement often point to the fact that the practice existed long before the US Civil War as evidence that it is not a racially motivated practice. It is true that felony disenfranchisement has been race neutral for much of its history; however, after the Civil War in the US, it became one of the legal methods used to suppress the votes of newly freed Black male slaves. Felony disenfranchisement has deep historical roots dating back to Ancient Greece. The classical democracy of Athens used "infamy" to deny criminals the right to vote or appear in court. Later, the Romans adopted Greek concepts and used the label of "infamous" as a merciful criminal sanction allowing criminals the opportunity to avoid legal punishment and maintain honor by exiling them and denying them the right to vote or hold office elsewhere. Roman influences subsequently spread through Europe. In England and France, the idea was known as "civil death" which was one of the harshest and, therefore, least used punishments. Indeed, England's label of "outlawry" and the use of "attainder" removed society's protection subjecting a person to unrestrained abuse by others, which included the taking of property and even killing. (Schall, 2006, pp. 54-55).

North American colonies, influenced by English common law, incorporated the use of civil disabilities through the practice of "attainder", "outlawry", and "infamy". (Pettus, 2005, p. 30). After the American Revolution some of the civil disabilities, such as "bill of attainder", were prohibited by the newly ratified U.S. Constitution. (U.S. Const. art. III, sec. 3, cl.2). However,

felony disenfranchisement was not abolished by the U.S. Constitution and continued to be practiced in certain states. Before the Civil War, 19 of 34 states disenfranchised felons in one form or another. (Pettus, 2005, p. 31). In addition to felony disenfranchisement, voting rights were also restricted by allowing suffrage only to White males who owned property, paid taxes, and met residency requirements. By mid-nineteenth century many property requirements were eliminated. With the decoupling of the right to vote from property ownership for White males came the emergence of mass democracy triggering an interest in disenfranchisement tactics by elites. (Manza & Uggen, 2006, p. 53).

The rapid growth of the polity concerned political elites throughout the US. They sought to keep the "undesirables" from the ballot; i.e., women, African Americans, immigrants, and criminal offenders. State laws either explicitly banned these individuals from voting or disenfranchised them with laws such as property requirements. For example, African Americans in New York had to own property to vote. (Manza & Uggen, 2006, p. 53). These restrictions were both racially and class motivated. However, of all the restrictions, felony disenfranchisement did not seem to be racially motivated prior to the Civil War, because African American were already legally disenfranchised by other means at the time. (Manza & Uggen, 2006, p. 54). Some scholars argue that the first significant wave of felony disenfranchisement took place during the two decades before the Civil War and was related to the mass increase of White male voting rights and the expansion of state-wide criminal justice systems throughout the country. (Manza & Uggen, 2006, p. 55).

However, after the Civil War, a second wave of felony disenfranchisement took place. This

time, it was predominantly intended to keep the newly franchised African American males from voting. Between 1865 and 1900, 19 states passed or amended felony disenfranchisement laws with focuses on crimes that African Americans were prone to commit. (Manza & Uggen, 2006, p. 55). Unlike many early disqualifying crimes, which were predominantly related to electoral trust (such as perjury, bribery, and corruption), the "new" disqualifying crimes included offenses such as "wife beating" and "vagrancy" which emancipated (male) slaves were believed to be more prone to commit. (Pettus, 2005, p. 35). The Mississippi Supreme Court revealed this very rationale in its infamous decision in *Ratliff v. Beale*, 20 So. 865 (Miss. 1896). The Court in *Ratliff* stated that African Americans were more prone to "furtive offenses than to the robust crimes of the whites" and agreed that their state disenfranchisement law was constitutional, because their State constitutional delegates "[r]estrained by the federal constitution from discriminating against the negro race [directly]…discriminated against its characteristics and the offenses of which its weaker members were prone."

During Reconstruction after the Civil War, states relied Section 2 of the Fourteenth Amendment to enact facially neutral, but racially motivated, felony disenfranchisement laws. Section 2, it is argued, gives States "affirmative sanction" to enact felony disenfranchisement. According to Section 2, if states deny eligible voters the franchise, they will suffer a reduced representation in Congress, except for the disenfranchisement of individuals found guilty of participating "in rebellion, or other crime." (U.S. Const. amend. XIV, sec. 2). States reasoned that because Section 2 did not penalize them for denying criminals the franchise, they were thus "affirmatively sanctioned" to disenfranchised voters who participated "in rebellion, or other

crime."

Felony Disenfranchisement in The U.S. Courts

In the nineteenth century, courts seemingly viewed the right to vote as a conventional right that could be granted or withheld by the states without fault. (Karlan, 2004, p. 1151). This jurisprudence shifted in the mid-twentieth century. Beginning with the Warren Court, the right to vote was arguably elevated to a fundamental right. (Karlan, 2004, pp. 1151-1152). After several cases that treated the right to vote as fundamental, the U.S. Supreme Court heard a challenge to California's felony disenfranchisement law in *Richardson v. Ramirez,* 418 U.S. 24 (1974).

In *Ramirez,* the Court held that California's disenfranchisement law was constitutional because Section 2 gives "affirmative sanction" to the states to disenfranchise criminals. Also, prior to *Ramirez*, the Court in *Trop v. Dulles,* 365 U.S. 86, 96-97 (1958) indirectly announced in a plurality opinion that felony disenfranchisement is a legitimate regulation of the franchise by the state, not a form of punishment. As such, felony disenfranchisement is presumptively constitutional whenever challenged. This means that the government must only show that it is pursuing a legitimate interest for its enactment—a very low standard in the realm of constitutional analysis.

The one case in which a disenfranchisement law was struck down is *Hunter v. Underwood,* 471 U.S. 222 (1985). In *Hunter*, the Court upheld the striking down of an Alabama disenfranchisement law because the law was explicitly intended to discriminate and thus not based on a legitimate purpose. The legislative record revealed that the law was intended to discriminate

on race. The *Hunter* decision turned on the fact that there was a record of explicit statements proving discriminatory intent. Unfortunately, such overt discrimination is uncommon today making it difficult to argue that a law is racially discriminatory despite obvious disproportionate racial impacts. Common court challenges try to point to disparate impact on communities of color to prove discriminatory intent; however, disparate impact alone has not been enough to strike down any disfranchisement law. Absent proof of explicit intent to discriminate, current U.S. Supreme Court precedent deems felony disenfranchisement constitutional. Therefore, until the Supreme Court changes its position, reform must be achieved through the political process.

Felony Disenfranchisement as a Policy Issue

Felony disenfranchisement has always been a policy issue. It has either been enacted or reformed through the political process. With policy changes being the primary means for reforming felony disenfranchisement, research on electoral and racial impact is commonly conducted to determine whether the issue merits reform. Accordingly, research reveals that an estimated 6.1 million people in the U.S. are disenfranchised due to a felony conviction; i.e., 2.5 percent of the voting age population (or 1 of every 40 adults). (The Sentencing Project, 2016, p. 3). Furthermore, over 50 percent of the entire disenfranchised population consist of individuals who have completed their sentence and reside in one of twelve States that disenfranchise individuals after the full completion of sentence. (The Sentencing Project, 2016, p. 3).

Most notably, Florida accounts for over a quarter (nearly 1.5 million) of the entire disenfranchised population nationally. (The Sentencing Project, 2016, p. 3). The growing number

of disenfranchised citizens in the US raises serious concern for many. Mass disenfranchisement suppresses the collective voice of non-disenfranchised citizens and goes against the democratic ideal of equal and universal suffrage. In a mass democracy, citizens depend on the mobilization of their voting blocs. If large numbers of individuals from a voting bloc are disenfranchised, the collective voice of the non-disenfranchised in that voting block is diminished rendering disenfranchisement a practice that not only silences felons, but also non-felon citizens.

Race/Ethnic Impact of Felony Disenfranchisement

The magnitude of felony disenfranchisement is starkest when considering the impact it has on the African American community. The proportion of disenfranchised voting age African Americans is more than four times greater than that of non-African Americans—one in 13 are disenfranchised nationally. In Florida, more than one in five African Americans is disenfranchised. (The Sentencing Project, 2016, p. 3). Measuring the impact that felony disenfranchisement has on the Hispanic community, however, has proven to be more elusive for experts.

Conventional wisdom posits that Hispanics constitute a significant portion of the criminal justice system, but specific estimates are scarce and inadequate. (The Sentencing Project, 2016, p. 3). The MALDEF Report, the one report measuring the impact of felony disenfranchisement on Hispanics, states, "[d]espite the national statistics in the criminal justice field, there is inadequate data with respect to Latino incarcerations." (Demeo & Ochoa, 2003, p. 2). The MALDEF Report further highlights that felony disfranchisement reports tend to only make general references about Hispanics without specific national or state data. (Demeo & Ochoa, 2003, p. 2). The MALDEF Report issued its 2003 report analyzing the ten most Hispanic/Latino relevant states precisely

because of the lack of data in an area that is politically important for Latinos,. (Demeo & Ochoa, 2003, p. 4). Particularly interesting was the MALDEF Report's finding that in Florida, despite being home to one of the largest Hispanic populations and strictest disenfranchisement laws, Hispanics were less impacted than their White (non-Hispanic) counterparts in their 2001 estimates. (Demeo & Ochoa, 2003, pp. 7-8).

Political Impact of Felony Disenfranchisement

Policy debates over felony disenfranchisement has triggered research investigating the impact that felony disenfranchisement has had on electoral outcomes (i.e., whether disenfranchisement is politically consequential). This type of research is most sensitive to accurate race and demographic data because it relies on answering two counterfactual questions: (1) what would be a particular group's turnout; and (2) what would be that group's vote preference. (Uggen & Manza, 2002, p. 783). Because the felon group in question cannot vote, estimates are derived from voters with similar socio-demographic characteristics. Hence, race/ethnic accuracy is very important in answering these counterfactuals. Inaccurate race/ethnic measures can lead to inaccurate demographic selection and estimates. For example, if race/ethnic measures show that 50 percent of felons in a given state are White, then the turnout and vote choice for similarly situated White voters must be considered to extrapolate their turnout and vote preference; however, if the 50 percent group was inaccurately measured and actually consisted of 20 percent Hispanic, the counterfactual results for the 50 percent group will potentially be inaccurate since White and Hispanic turnout and vote preference differs.

Disenfranchisement research and policy debates center around Florida because of its significant racial impacts and the possible influences it has on electoral outcomes. The problem, however, is that much of the research relies on FDOC's race data, which is questionable. In its most recent report, FDOC housed over a hundred thousand inmates of which 47.5 percent were reported White, 48 percent were reported Black, and the other mere 4.5 percent consisted of "Other" (which includes Hispanics). (Florida Departmenet of Corrections, 2013-2014, p. 28). Therefore, as of 2013, Hispanics made up less than 5 percent of the Florida's prison population according to FDOC while in the State of Florida Hispanics make up 23 percent of the State's population. (Brown & Lopez, 2013). This means that in a state with one of the largest Hispanic populations and with over a hundred thousand inmates, Hispanics account for less than five thousand of its prisoners. The significant low number of Hispanics reported by FDOC prompts concerns about the accuracy of FDOC's Hispanic classifications. If FDOC is misclassifying Hispanics, then FDOC's race data is inaccurate and is thus negatively impacting research which relies on it.

Research on Florida's felony disenfranchisement is strongly dependent race data. Using socio-demographic characteristics, Uggen and Manza show that without ex-felon disenfranchisement Vice President Gore would have won the 2000 Presidential Election. (pp. 786-787, 792). On the other hand, subsequent research by Burch relying on FDOC's race data contradict Uggen and Manza's findings. Burch concludes that most felons in Florida are White

and, as such, would have supported President Bush during the 2000 Election rendering Florida's disenfranchisement immaterial to the outcome. (Burch, 2011) (Burch, 2012). The importance of race data is evident from these researchers' work. In both cases, the challenges of measuring Hispanics were present. Uggen and Manza used an African American/non-African American dichotomy because, according to them, there was little survey evidence on Hispanic voters in the south. (p. 784). Burch, on her part, explicitly states that the majority of felons in Florida are White (non-Hispanic) based FDOC data and that her calculations are sensitive to that demographics' vote preference. Additionally, Burch (2012) decided to not consider Hispanic offenders in her research because the number of Hispanics based on FDOC data was too small and more likely to vote for the Republican party either way (p. 14). Additional research by Burch on subsequent Presidential Elections also focus on Florida and relies on FDCO data. (Burch, 2011).

Overall, accurate FDOC data is important to the disenfranchisement literature. If the data is inaccurate, the conclusions might be inaccurate. This is particularly true when it comes to Hispanics. A shift in their vote preference has been taking place in Florida from the Republican Party to the Democratic Party since the 2008 Presidential Election. In 2008, the Democratic Party edged out the Republican Party on registered Hispanic voters. (Krogstad, Lopez, & Lopez; Democracy Imprisoned, 2013). Hence, research on Florida's felony disenfranchisement practice might need to consider Hispanics in the calculations for the results to be conclusive. The problem in Florida is that FDOC, the common source for felon data, is not producing reliable estimates regarding Hispanics. It is inaccurately reporting a very small number of Hispanics. Therefore, research on the actual size of Hispanics in FDOC's data and, by extrapolation, the disenfranchised

population is needed to help resolve this problem. The following chapter will discuss the surname

method used to produce empirical estimates of Hispanics in FDOC and explains the results.

CHAPTER THREE: Methods, Analysis, and Results

Guiding Research Questions and Methods

Arguably the only thing worse than having no data is having bad data. This chapter discusses the surname method employed in this research to addresses the inaccurate race data problem found in FDOC with respect to Hispanics. This approach enables one to determine whether FDOC is accurately classifying Hispanics and tells us what is the actual estimate of Hispanics in FDOC. Hence, the method herein serves not only to prove or disprove FDOC's classifications but also produces the empirical estimates necessary to make comparisons among racial groups. These empirical estimates provide rough estimates with which to measure the disenfranchisement population with respect to Hispanics in Florida.

The objective of this research is to address the need for accurate data on Hispanics in the criminal justice system including Florida's disenfranchised population. To this end, this research contributes empirical estimates on Hispanics in Florida's correctional system (FDOC) to empower researchers, policy makers, and the public. This research seeks to (1) produce accurate estimates of Hispanics in FDOC for others to access and (2) use those estimates to measure the impact of felony disenfranchisement on Hispanics in Florida. In pursuit of this objectives, the following two research questions guided this research:

(1) What is the empirical estimate of Hispanics in FDOC's data (and does FDOC data reflect the results)?

(2) Using the empirical estimates of Hispanics in FDOC's data, what impact is felony disenfranchisement having on Hispanics in Florida?

To answer these questions, an empirically based Hispanic surname list derived from the Census Bureau is used. Every individual in FDOC's data that is on the list is coded 1 and changed to Hispanic; every individual not on the list is coded 0 and remains with FDOC's original classification. Additionally, any individual who is coded 0 (i.e., not on the list), but which FDOC originally classified as Hispanic is changed to "Unknown" to avoid overcounting Hispanics.

Creating an Empirical Surname List:

The Census Bureau publishes a list of all surnames with their reported racial/ethnic composition which can be used to reliably estimate racial and ethnic makeup of large samples. (Edwards, 2015, p. 181). The size of the surname list is important. If the list is too small, it undercounts Hispanics (type 2 error); and if the list is too large, it overcounts Hispanics (type 1 error). Therefore, the surname list must be of "optimal" size to cancel out its under- and overcount. An optimal list is called such because it includes the optimal number of names in which type 1 and type 2 errors offset; i.e., errors are not avoided, but rather off-set. (Grofman & Garcia, 2015). Grofman and Garcia used Bayes Theorem to produce a table showing the number of surnames needed to create an optimal list which can be used if one has a rough estimate of the Hispanic population that will be analyzed. (See Table 2). For example, a population with roughly a 10 percent Hispanic population call for an optimal list which includes the top 3,685 Hispanic surnames with more than 300 instances in the 2010 Census.

One can quickly notice that having a rough estimate of the size of Hispanics in the population is essential and can be difficult to ascertain. Grofman and Garcia explain how a pair-wise surname ratio can be helpful to produce the rough estimate necessary to use the table.

(Grofman & Garcia, 2015). The names must meet the following three criteria: (a) one name must be heavily Hispanic and the other heavily non-Hispanic; (b) both names must be common names; and (c) each name has a nontrivial occurrence rate among the opposite ethnicity. (Grofman & Garcia, 2015, p. 1525). For this research, GONZALEZ and ANDERSON are the pair of names used. GONZALEZ is the Hispanic name and ANDERSON is the non-Hispanic name. Their ratio between these two names is about 1.07 using the 2010 Census count in which Hispanics make up about 17 percent of the population. (See Table 1). Getting a count of these two names from FDOC's data produces a ratio of about .95. Because the FDOC ratio is slightly lower than the Census ratio, the rough estimate of Hispanics in FDOC is slightly lower than the Census rate; i.e., about 15 percent. (See Table 2).

Applying the 15 percent rough estimate derived from the surname ratio to the Grofman and Garcia table, the optimal surname list used to analyze FDOC includes the top 4,704 Hispanic names with greater than 300 instances in the 2010 Census.[6] The 2010 Census surname list data is publicly available from their website and can be downloaded as an excel file by the public.

Table 1: Pairwise Name Ratio for GONZALEZ and ANDERSON

POPULATION	NAMES	COUNT	RATIO	HISPANIC FRACTION
2010 Census	Gonzalez	841,025	1.07	≈ 17%
	Anderson	784,404		
FDOC Data	Gonzalez	1,481	.95	≈ 15%
	Anderson	1,535		
Source: FDOC January 207 and Census 2010				

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[6] Surname list used herein available upon request.

Table 2: Grofman and Garcia Table--Size of Optimal Surname List to Treat as 100% Hispanic Based on 2010 Census

Estimated Hispanic Percentage (fraction)	Optimal Number of Surnames (cutoff)	Prop of How Hispanic Surnames at Cutoff Point
.05	2620	90.1%
.10	3685	82.26%
.20	5724	24.27%
.30	8525	7.04%
Source: Source: Grofman Bernard and Garcia Jennifer R.. Election Law Journal: Rules, Politics, and Policy. September 2014, 13(3): 375-393. doi:10.1089/elj.2013.0190.		

FDOC Data

FDOC's data used in this research is also publicly available on their website and can be downloaded as an Access file without request. This data provides basic individual information, including FDOC's race classification for each inmate, parolee or probationer, and releasee. FDOC data consists of three major groups: (1) inmates (known as "Active" in FDOC's database); (2) probationers and parolees (known as "Offender" in FDOC's database); and (3) releasees (known as "Release" in FDOC's database).

FDOC's race classification consists of either Hispanic only, Black only ("B"), White only ("W"), American Indian or Pacific Islander only ("I"), Asian or Pacific Islander only ("A"), or All

Others/Unknown only ("U").[8] Hence, FDOC uses race to encompass both race and ethnicity. Furthermore, FDOC's race classification is "either/or" meaning an individual is either White or Hispanic, but not both—i.e., an individual is either White alone or Hispanic alone.

Steps of Analysis Regarding FDOC Data

The following are the multiple steps used to apply the surname list to FDOC data and to analyze the results using SPSS:

1. Frequency distribution of FDOC's data on "race" is conducted to get a pre-analysis racial make-up of FDOC. The frequency analysis is done for all FDOC groups together and for each of the three groups individually.

2. The optimal surname list is then employed to reclassify all individuals on the list in FDOC data to Hispanic ("H"). All other individuals were left with their original FDOC classification except for those that FDOC originally classified as Hispanics but who were not on the list. To avoid overcounting, all individuals originally classified as Hispanic by FDOC that did not appear on the list were reclassified to "All Other/Unknown" ("U").

The application of the surname list is done by re-coding all the surnames on the list with the variable 1 and all names not on the list with variable 0. The list is then merged with FDOC's data on last name. All the names on the list that are found in FDOC's data appear with the variable 1 in the merged list. With the variable 1 as the identifier, all names with variable 1 are reclassified to H; and all names without variable 1 are left alone or changed to U if previously classified as H.

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[8] The term "alone" denotes that a person can only be classified into one category. For example, person a cannot be both White and Hispanic in FDOC, so that person is either White alone (non-Hispanic) or Hispanic alone (non-White or non-Black).

3. After the surname list is applied and merged, a frequency distribution is conducted to measure the change (if any) with respect to the racial make-up of FDOC. The adjusted data is termed "empirically adjusted" and the pre-adjusted data is termed "FDOC reported."

Steps of Analysis Regarding Florida's Disenfranchised Population

The following are the subsequent steps used to measure the impact of felony disenfranchisement on Hispanics in Florida:

4. The empirical rates from the empirically adjusted FDOC data is extrapolated and used to estimate and measure the racial make-up of the disenfranchised population in Florida. This is done by multiplying the extrapolated rates by 1.68 million (which is the reported disenfranchised population in Florida).

5. The estimated number of disenfranchised individuals for Hispanics, Whites, and Blacks is then divided by their respective Florida populations (derived from the Census) to make comparisons among these groups.

Analysis and Results

The following are the results, which answer the two guiding research questions posed by this research:

Answering Question #1: What is the empirical estimate of Hispanics in FDOC's data (and does FDOC data reflect the results)?

The empirical estimates produced herein reveal that Hispanics make up nearly 12 percent of FDOC's data, which contradicts the estimated 4 percent rate reported by FDOC. The results

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show that FDOC systematically misclassifies Hispanics about two thirds of the times. Analyzing FDOC's three sub-populations separately show that FDOC undercounts Hispanics in each of these populations at about the same; therefore, the undercount is not stemming from any one sub-population. The empirical adjustments cause an increase of nearly 8 percent in the Hispanic population and a corresponding drop of about 8 percent in the White population. (See Table 3). Therefore, FDOC's Hispanic undercount is due in part to its incorrect classification of Hispanics as White (non-Hispanic).

Table 3: All FDOC Populations (Inmates, Supervisees, and Releasees--Pre- and Post-Analysis)

	FDOC Reported: All Populations			Empirically Adjusted: All Populations		Percent Difference
Race	Count	Percent		Count	Percent	
Asian	126	.0%		121	.0%	0%
Black	249686	40.7%		245746	40.0%	-0.7%
Hispanic	24471	4.0%		71702	11.7%	+7.7%
Indian American	565	0.1%		529	0.1%	0%
Unknown	1968	0.3%		7657	1.2%	+0.9%
White	337295	54.9%		288356	47.0%	-7.9%
Total	614111	100.0%		614111	100.0%	
Source: FDOC January 2017						

When FDOC's data is disaggregated and analyzed separately by (1) its inmate population, (2) its parole and probation population, and (3) its released population, the evidence shows that there are still more than two and a half times more Hispanics than actually reported by FDOC. In the inmate population, FDOC reports 4.1 percent Hispanic, while the empirical estimate show it is actually 10.8 percent Hispanic—a difference of over two and a half times. (See Table 4).

Table 4: FDOC Inmate Population (Pre- and Post-Analysis)

Race	FDOC Reported: Inmates			Empirically Adjusted: Inmates		Percent Difference
	Count	Percent		Count	Percent	
Asian	20	.0%		20	.0%	0%
Black	47947	48.1%		47269	47.5%	-0.6%
Hispanic	4049	4.1%		10777	10.8%	+6.7%
Indian American	88	0.1%		78	0.1%	0%
Unknown	319	0.3%		1263	1.3%	+1.0%
White	47184	47.4%		40200	40.4%	-7.0%
Total	99607	100.0		99607	100.0	
Source: FDOC January 2017						

In its released population, FDOC reports 3.5 percent Hispanics, while there are 10.7 percent Hispanics—again, a difference a greater than two and a half times. (See Table 5).

Table 5: FDOC Released Population (Pre- and Post-Analysis)

Race	FDOC Reported: Releases			Empirically Adjusted: Releases		Percent Difference
	Count	Percent		Count	Percent	
Asian	47	.0%		46	.0%	0%
Black	151756	42.7%		149561	42.1%	-0.6%
Hispanic	12556	3.5%		38020	10.7%	+7.2%
Indian American	326	0.1%		310	0.1%	0.0%
Unknown	926	0.3%		3472	1.0%	+0.7%
White	189859	53.4%		164061	46.2%	-7.2%
Total	355470	100.0		355470	100.0	
Source: FDOC January 2017						

In its supervised population, FDOC reports only 4.9 percent Hispanic, while the empirical estimate shows it is closer to 14.4 percent Hispanic—a difference also slightly greater than two and a half times. (See Table 6)

Table 6: FDOC Supervised Population (Pre- and Post-Analysis)

Race	FDOC Reported: Supervised			Empirically Adjusted: Supervised		Percent Difference
	Count	Percent		Count	Percent	
Asian	59	.0%		55	.0%	0%
Black	49983	31.4%		48916	30.8%	-0.6%
Hispanic	7866	4.9%		22905	14.4%	+9.5%
Indian American	151	0.1%		141	0.1%	0%
Unknown	723	0.5%		2922	1.8%	+1.3%
White	100252	63.0%		84095	52.9%	-10.1%
Total	159034	100.0%		159034	100.0%	
Source: FDOC January 2017						

In sum, empirical estimates show that FDOC is not accurately classifying Hispanics. Regardless of which FDOC population are analyzed the results were the same. The actual number of Hispanics in FDOC's data is consistently a little over two and a half times greater than that

reported by FDOC. This finding is important for two reasons: (1) the undercount proves to be systematic regardless of which population is considered, and (2) because it is systematic, conservative rough estimates of the Hispanic population in FDOC can be derived by simply multiplying FDOC's reported numbers by any number between 2.5 to 3.0. Future research should be conducted to determine why Hispanics are accurately classified nearly one third of the times (but not the other times). This may reveal what FDOC is doing that is causing correct classifications nearly one third of times and can possibly lead to the implementation of best practices throughout FDOC for better data collection.

Answering Question 2: Using the empirical estimates of Hispanics in FDOC's data, what is the impact that felony disenfranchisement is having on Hispanics in Florida?

According to the results in this section, there are nearly 180,000 Hispanics disenfranchised in Florida. Compared to their White and Black counterparts, however, Hispanics are less likely to be disenfranchised. Applying a Hispanic rate of 10.7 percent to the 1.68 million disenfranchised Floridians reported by the Sentencing Project reveals that about 179,760 Hispanics are disenfranchised; i.e., 5.2 percent of Florida's Hispanic adult population (VAP) and 7.3 percent of its adult citizen population (CVAP). As significant as these rates are, they are lower than those of Whites and Blacks in Florida.

It should be noted that the answer to this question, Question 2, is less empirically certain than the answer to Question 1. Extrapolating the empirical racial estimates from FDOC and applying them to the disenfranchised population comes with the caveat that not all disenfranchised felons have gone into FDOC and thus may not be totally reflective of the disenfranchised

population. There might be more Hispanics that are disenfranchised but that do not make it into FDOC and as such are not captured in the FDOC rates used herein. Therefore, the racial make-up of the disenfranchised population might differ slightly from FDOC's racial make-up. Nonetheless, every single person in FDOC's inmate and released populations has been disenfranchised and could reasonably produce reliable racial estimates of the disenfranchised population. FDOC records account for most felons in Florida and, therefore, could be used to make reasonable inferences about the felon population in Florida.

It must also be noted that FDOC's supervised population includes non-felons (and a large number of duplicates from FDOC's released population) so this group's rate was excluded from the estimates.[9] This group also produced that largest estimate of Hispanics (i.e., over 14 percent) compared to the other two groups, so excluding it would produce a more conservative estimate of Hispanics at a rate of 10.7. The rate used (10.7 percent) comes from the rates in FDOC's inmate and released populations. By only using the inmate and released populations, this research ensures that the extrapolated rate comes from groups that are exclusively felons and, therefore, have absolutely been disenfranchised. The downside of using the conservative rate in this research is that the White rate is lower and the Black rate higher then it ought to actually be. The ultimate findings that Hispanics are less likely to be disenfranchised than Whites and Blacks (and that Blacks are more likely than Whites and Hispanics to be disenfranchised) would remain the same with or without the conservative rates: a higher White rate (i.e. 47 percent) will only re-affirm that

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[9] The probationer and parole data includes some offenders who are supervised, but who have not been completely adjudicated felons.

Hispanics are less likely to be disenfranchised than their White counterparts; and a lower Black rate (i.e., 40 percent) would not change the finding that Blacks are overrepresented in the disenfranchised population and more likely to be disenfranchised than Hispanics and Whites.

Table 7: Estimates of Florida's Disenfranchised Population by Race Relative to VAP and CVAP

Estimates by Race of the 1.68 million Floridians Disenfranchised*						
Race	Extrapolated Rate from FDOC (Inmates & Releases)	Estimated Number of Disenf. by Race	Voting Age Population (VAP)**	Prop of VAP Disenf. by Race	Citizens of Voting Age Population by Race**	Prop of CVAP Disenf. by race
Hispanic alone	10.7%	179,760	3,486,955	5.2%	2,462,345	7.3%
White alone	43.3%	727,440	9,269,155	7.8%	9,002,190	8.0%
Black alone	44.8%	752,640	2,230,965	33.7%	1,990,530	37.8%
*Sentencing Project (2016) **Census Data, 2015						

In addition to being less impacted than Blacks or Whites, Hispanics are also underrepresented in relations to their own statewide population. Hispanics make up about 23 percent of Florida's population, but only about 10 – 12 percent of the disenfranchised population. This is true even when only the Hispanic adult citizen population is considered. (See Table 7). Moreover, Hispanics' underrepresentation is even lower than Whites' meaning that Hispanics are

less likely than Whites to be disenfranchised in Florida. (See Table 8). Although these findings contradict conventional wisdom (that Hispanics are disenfranchised at higher rates than Whites), they are in line with the findings revealed in the MALDEF Report (2003). Future research should be conducted to investigate why Hispanics appear to be less impacted by felony disenfranchisement than their White and Black counterparts. The explanation might be that Hispanics do have larger numbers of disenfranchised felons, but they are not entering FDOC and thus not captured in the extrapolated rates used herein.

Table 8: Ratio of Disenfranchisement Rate to CVAP, VAP, and Total Population

Race	Prop of Total Pop	Prop of Total VAP	Prop of Total CVAP	Estimated Disenfranchisement Rate	Ratio
Hispanic	23.7%	22.3%	17.6%	10.7%	.45, .48, .60
White Alone	56.2%	59.0%	64.6%	43.3%	.77, .73, .67
Black Alone	15.5%	14.2%	14.2%	44.8%	2.90, 3.15, 3.15

However, although Hispanics are underrepresented in the felony disenfranchised populations, they are still doubly impacted at rates greater than the White and Black populations in Florida. Hispanics have the highest rate of legal residents (who cannot vote) in Florida—only adult citizens can vote. Hispanics in Florida, relative to their Black and White counterparts, have the largest difference between its voting age population (VAP) and its citizen of voting age

population (CVAP). There are nearly 3.5 million Hispanics in Florida, but on election day they can only speak as a community of about 2.5 million (i.e., a reduction of nearly a million individuals), while the 9.2 million Whites in Florida can speak as a community of 9 million and the 2.2 million Blacks can speak as a community of nearly 2 million—felony disenfranchisement notwithstanding. (See Table 10). With nearly a million Hispanics adults already unable to vote due to legal status, adding another estimated 180,000 individuals to that group because of felony disenfranchisement significantly diminishes the collective voice of the Hispanic community in Florida. Therefore, if one adds the reduction of 1 million Hispanics who cannot vote to the estimated 180,000 disenfranchised Hispanics, the cumulative effect is 1.18 million individuals who are silenced on election day—a greater cumulative effect that that experienced by either the White or Black community in Florida.

CHAPTER FOUR: Research Implications

<u>Impact on Previous and Future Research</u>

The most significant implication of this research is that it calls into question research which relied on FDOC's inaccurate race data and warns future researchers to consider FDOC's systematic undercount of Hispanics (and its corresponding overcount of Whites). This research shows that there are an estimated 8 percent more Hispanics (and a corresponding 8 percent less Whites) than that reported by FDOC.

Research by Burch argues that Florida's felony disenfranchisement did not impact the outcome of the 2000 Presidential Election; however, this conclusion must be reconsidered. Relying on FDOC's inaccurate race data, Burch (2012) concludes that felony disenfranchisement in Florida did not help President Bush win the election. Survey evidence indicates that White male ex-felons in Florida would have supported Vice President Gore at rates no greater than about 20 percent. (Burch, 2012, p. 18). According to Burch, Vice President Gore would have needed more than 36 percent of the reported White male ex-felon vote in order to reverse the Bush victory. (Burch, 2012, p. 17). The problem with Burch's finding is that it is sensitive to the number of White male ex-felons reported by FDOC which this research proves is inaccurate.

Two glaring factors prove to be caveats to Burch's calculations: (1) FDOC and Burch's undercount of Hispanics and (2) the corresponding overcount of Whites. Burch herself indicates concern about FDOC's data with respect to Hispanics, but fails to address it correctly. Burch

attempts to account for Hispanics in the same manner as this research, through a surname list, but commits the often cited mistake by using a surname list that is too small. (Grofman & Garcia, 2015, p. 1520). Burch reports using a surname list with only the top 632 Hispanic surnames. Not surprisingly, the number of Hispanics produced by Burch's list were too small for her calculations. (Burch, 2012, p. 14). The methods explained in Chapter Three show what an optimal surname list must include more than four thousand surnames, far from the mere 632 used by Burch. Burch ultimately excludes Hispanics from her research deeming the group to be too small. Chapter Three, however, shows that than there are two and a half times more Hispanics than initially reported.

It can be argued that regardless of FDOC misclassification, the Hispanic population in FDOC may have actually been proportionally smaller in 2000, thus justifying Burch's exclusion of Hispanics. However, running frequencies on individuals who were received in FDOC on or before November 2000 show that Hispanics still made up over 11 percent of FDOC's data at that time. Moreover, the 11 percent rate is very similar to the 12.4 percent rate reported by the MALDEF Reports (2003) just 24 months removed from the 2000 Election. (Demeo & Ochoa, 2003). Not surprisingly, when analyzing the pre-December 2000 data, the White population also drops by a corresponding 8 percent consistent with the drops shown earlier in Chapter Three. (See Table 9).

Table 9: All FDOC Populations Pre-December 2000 (Pre- and Post-Analysis)

Race	FDOC Reported: Pre-Dec 2000			Empirically Adjusted: Pre-Dec 2000		Percent Difference
	Count	Percent		Count	Percent	
Asian	20	.0%		18	.0%	0%
Black	42208	44.4%		41475	43.7%	-0.7%
Hispanic	2524	2.7%		10689	11.3%	+8.6%
Indian American	108	0.1%		102	0.1%	0.0%
Unknown	315	0.3%		695	0.7%	+0.4%
White	49784	52.4%		41980	44.2%	-8.2%
Total	94959	100.0		94959	100.0	
Source: FDOC January 2017						

Burch assumes that excluding Hispanics does not change the findings that Bush would have carried Florida. Burch reasons that excluding Hispanics only benefits Gore, not Bush, because most of Florida's Hispanics supported Bush. (Burch, 2012). A mere majority per se, however, is not enough to discount a group from the calculations. Indeed, Burch admits that Gore would win with only 40 percent of the White male ex-felon support; i.e., Bush loses even with a majority in that scenario. Even if Hispanics may have supported Bush, the margin of Hispanic support for Bush in Florida would be different and predictably slimmer than the White support.

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Burch notes, that in 2004 Bush carried only 56 percent of the Hispanic vote in Florida meaning, notwithstanding third party candidates, over 40 percent of Hispanics voted for the Democratic candidate. (Burch, 2012, p. 10). Because Hispanics' vote preference are different than that of Whites it follows that even though Hispanics may have supported Bush they still merits some consideration in the calculations to ensure more robust findings.

However, more concerning than excluding Hispanics is that they might have actually been included as part of the White population in Burch's calculations, because of Burch's use of FDOC's inaccurate data. Based on the findings in Chapter Three, the number of White felons that Burch calculates may have an 8 percent "contamination". This research shows that when empirical adjustments are made, the White population systematically drops by an estimate of 8 percent. Thus Burch's White population might be inflated by 8 percent. It is important to note that although Hispanics may have supported Bush, they would not have done so at the same rate as White males. Therefore, nearly 8 percent of the group that Burch considers to be White males may actually be Hispanics constituting a different vote preference and serving as a caveat to Burch's findings.

This research does not contend that a Gore victory will be proven by correcting for the misclassifications of Hispanics in the White category and including Hispanics in the calculations. Instead, this research simply brings to light the fact that the calculations were based on an undercount of Hispanics and an overcount of Whites. Removing the 8 percent of misclassified Hispanics from the White group and considering the possible Hispanic support for Gore may or may not change Burch's ultimate finding: that Florida's felony disenfranchisement did not affect the outcome of the 2000 Presidential Election. Nonetheless, future research should be conducted

applying an optimal surname list to Burch's data to ensure accurate calculations with respect to both White males and Hispanics.

Empirical Tools and Estimates for Future Research

The goal of this paper is not merely to call into question previous research, but rather to help future researchers avoid the pitfalls of using FDOC's inaccurate race data. One of the exciting findings of this research is that FDOC's misclassification is systematic. There are a little over two and a half times more Hispanic than that reported by FDOC in almost every respect. Therefore, a quick conservative estimate of Hispanics in any FDOC population can be obtained by simply multiplying FDOC's reported number by 2.5. Additionally, whatever the difference is between FDOC's reported number and the adjusted number can be deduced from the White population to get a rough estimate of the White population in FDOC's data as well. Chapter Three shows that every increase in the Hispanic population was coupled by an almost identical decrease in the White population.

An empirical approach, not a rough estimate, should always be used to produce reliable estimates. The methodological surname approach discussed in Chapter Three enables researchers to produce empirical estimates with respect to Hispanics using Census data. Because the Census Bureau does not issue best practices on how to create a surname list, this section will explain steps for creating an optimal surname list again—this can be a valuable tool for researchers dealing with inaccurate race/ethnic data. (cf. Chapter Three).

The surname approach is one that comes to us from the redistricting and apportionment

arena where it is used to measure the Hispanic population of a given district. (Grofman & Garcia, 2014). Burch (2008) herself used a surname list to estimate the size of Hispanics in the disenfranchisement population of Florida; however, she did not use an optimal list to offset type 1 and type 2 errors. Burch's surname list was in fact too small. It should be noted that at the time of Burch's research, the literature used herein on surname lists had not been published and thus not available to Burch at time. (Grofman & Garcia, 2015) (Grofman & Garcia, 2014).

To produce empirical estimates, one must create an optimal surname list that offsets both type 1 and type 2 errors (i.e., offsets over and undercounts). The creation of an optimal list follows a few steps. First, a rough (non-empirical) estimate of the proportion of Hispanics in the population that will be analyzed must be determined. Once the rough estimate is obtained, the Grofman et. al. table for the 2010 Census is used to determine how large the surname list must be (i.e. what the cut-off point should be). (2015). With a cut-off point in hand, an optimal list is created using the most Hispanic names in the Census that have over 300 hundred counts. The surname list is then used to classify all individuals (in the data being analyzed) who are on the list as Hispanics while removing any pre-Hispanic classification for individuals not on the list. A frequency analysis of the newly adjusted data is then conducted to view the empirical estimate Hispanics in the analyzed data.

As noted earlier, before using Grofman's table, one must have a rough estimate of Hispanics in the population that will be analyzed. To obtain such a rough estimate, a pair-wise name ratio is helpful. It is obvious that one does not know with certainty the estimated proportion of Hispanics in the population that will be studied—that is the reason the population is being

studied in the first place. However, Groffman explains that this "chicken-and-egg" dilemma is resolved by going from a rough estimate to a certain estimate. The former is needed to use the Groffman table, while the latter is the empirical results derived from an optimal surname list.

The pair-wise name ratio consists of using a pair of names from the Census data with one name being heavily Hispanic and the other heavily non-Hispanic. Both names must be among the most popular names in the Census and have a relatively small rate of existence in the opposite ethnicity. Groffman and Garcia outline the following criteria as follows: (a) one must be heavily Hispanic and the other heavily non-Hispanic; (b) both must be common names; and (c) each has a nontrivial occurrence rate among the opposite ethnicity. (Grofman & Garcia, 2015, p. 1525). This research used GONZALEZ as the Hispanic name and ANDERSON as the non-Hispanic name satisfying all three criteria using the 2010 Census data.

A ratio between the two surnames is arrived at by dividing the numeric Census count of one name with the other. The ratio will then serve as a base number with respect to the proportion of Hispanics as reported by the Census. For example, between GONZALEZ and ANDERSON, the ratio in the Census is near 1.0 and the proportion of Hispanics in the Census is about 17 percent; hence, a ratio near 1.0 produces a rough Hispanic estimate of 17 percent. Therefore, if one goes into FDOC data and finds that the ratio between the number of GONZALEZ's and ANDERSON is larger than 1.0—for instance 2.0, then it can be roughly estimated that the Hispanics make up to be about 34 percent of FDOC's population. On the other hand, if it is less than 1.0 then the rough estimate must be less than the 17 percent. In this case, the FDOC name ratio is .95 (i.e., lower than the 1.0 ratio) and thus producing a rough estimate that is lower than the Census' 17 percent rate

(i.e., about 15 percent). Applying the 15 percent rough estimate to the Groffman and Garcia table, reveals that the optimal surname list with which to analyze FDOC must include the top 4,704 Hispanic names with greater than 300 instances in the Census data. Once the optimal surname list is created, one can adjust any available data to produce empirical estimates with respect to Hispanics. As mentioned in Chapter Three, the 2010 Census surname list data is publicly available from their website and can be downloaded as an excel file by the public.

It is incumbent upon researchers to avoid using FDOC's race data at face value without first accounting for its systematic misclassification of Hispanics. An optimal surname list helps alleviate this problem to render the data more reliable. Meanwhile, preliminary (non-empirical) rough estimates can be obtained by simply multiplying the FDOC reported Hispanic population by 2.5 times and making the corresponding reductions to the White population.

State of FDOC data with respect to Hispanics

The empirical results in Chapter Three provide the current state of FDOC data with respect to Hispanics and produces reliable estimates on the impact of felony disenfranchisement on Hispanics in Florida. Prior to this research, accurate estimates of Hispanics in FDOC's data was lacking. The MALDEF Report highlighted this problem back in 2003 and yet as of December 2016 the Urban Institute is still sounding the alarm on this issue. This research responds to this lack of accurate data on Hispanics in Florida—it can now be said with certainty that Hispanics make up about 10 – 12 percent of FDOC's reported population. The number is slightly higher (near 14 - 15 percent) when considering only FDOC's parole and probation population.

Interestingly, the empirical surname approach used here produced a rate nearly identical to that rate of Hispanics in the MALDEF Report. (2003). The MALDEF Report estimated that Florida's disenfranchised population was 12.4 percent Hispanic in 2001. As of January 2017, this research finds the rate to be around 10 – 12 percent as well. The MALDEF Report does not specify how it arrived at the 12.4 percent rate back in 2001—it may or may not have used an optimal surname list, but it does not say. In any case, the surname approach used in Chapter Three reaffirm the MALDEF Report's rate. The only significant change since the MALDEF Report is the increase of Hispanics in Florida. Hispanics made up about 19 percent of Florida's population in 2001, but now make up about 23 percent. This may explain the slight downward turn from the MALDEF Report's 12.4 percent to this research's 10 – 12 percent. It may be due to the increase in Florida's Hispanic population without a corresponding increase in the FDOC population. This may also explain why Hispanics proved to be less likely to be disenfranchised than their White counterparts in Chapter Three. The Hispanic population grew about 6 percent in Florida without a corresponding increase of Hispanics in FDOC, thus bring down their representation in FDOC in relation to its representation in Florida's general population.

This research brings the MALDEF report's findings up to date and provides a reliable estimate on the rate of Hispanics among the 1.68 million Floridians that are currently disenfranchised. As in the MALDEF Report, Hispanics are underrepresented in the disenfranchised community and are less likely to be disenfranchised than their White and Black counterparts. Hispanics are currently less likely than Whites to be disenfranchised by all accounts. This is true even when solely considering their citizen adult population (CVAP). This is a shift

from the findings in the MALDEF Report. The MALDEF Report found that citizen adult Hispanics were more likely to be disenfranchised than their White counterparts. However, the findings in this research estimate that citizen adult Hispanics are now less likely to be disenfranchised than their White counterparts in Florida.

In most be noted, however, that FDOC's records do not account for individuals who are convicted of felonies. Some are kept in local county jails or placed under local supervision. With the increase of municipalities taking steps to help residents avoid threats of deportation, many Hispanic felons might not be going into FDOC and thus not making it into FDOC records. It might very well be that large rates of Hispanics are being sentenced to local supervision and incarceration, rather than committed to FDOC. Therefore, to get a thorough assessment of Hispanics in the criminal justice system in Florida, future research should be conducted to empirically estimate the rate of Hispanics incarcerated and under supervision at the county level.

Policy Implications: Policy Makers, Advocates, and the Public

The findings in this research are extremely relevant to policy makers, advocates, and the public. Any issue that makes use of (or depends on) accurate race/ethnic data from FDOC will benefit from this research. Policy makers, as well as legislative delegations and caucuses, oftentimes hope to make data driven decisions with respect to their constituents. However, by using FDOC's inaccurate data, policy makers are making misinformed decisions. The results in Chapter Three equips policy makers with accurate data regarding Hispanics in FDOC. For example, knowing that one in every ten individuals in FDOC is Hispanic can lead to the funding

of programs and services that serves the Hispanic population in FDOC. Likewise, knowing that over 10 percent of the disenfranchised population in Florida is Hispanic may cause certain legislature to pay attention to the issue and support its reform. This research empowers law makers and criminal justice administrators in Florida with accurate data with which to make data driven decisions. Future research should be conducted to analyze from what county and region(s) are Hispanics in FDOC coming. It might be revealed that although Hispanics are about 10 percent of FDOC's population, a great majority are coming from a few counties causing legislatures from those areas to pay closer attention to criminal justice reform.

Furthermore, this research contributes to the policy discussion regarding the reform of Florida's felony disenfranchisement. A movement has been underway in Florida to place felony disenfranchisement on the ballot. Advocates are seeking to reform Florida's disenfranchisement law. Advocates are proposing an amendment that would eliminate permanent disenfranchisement (i.e., disenfranchisement for life absent clemency from the Governor) and trigger automatic restoration of civil rights upon the completion of all sentences and the satisfaction of all fines and costs. Individuals convicted of murder or rape are not covered by this proposal—they will remain permanently disenfranchised in Florida. (FRRC, 2017). The Florida Rights Restoration Coalition (FRRC) helped gather over 70,000 signatures triggering a recent review and approval by the Florida Supreme Court of the amendment's language. (Lemongello, 2017). If the issue goes on the ballot, the findings in this paper will help voters understand how disenfranchisement is affecting their community.

For example, while the conventional wisdom is that felony disenfranchisement

predominantly affects Black and Hispanic communities, Chapter Three shows that Whites in Florida are impacted at greater rates than Hispanics. White voters, like all other voters, will benefit from knowing how disenfranchisement is affecting their community. This is particularly true when one considers the fact that disenfranchisement not only impacts the disenfranchised, but also the community from which they come. Disenfranchisement does not simply silence the disenfranchised, it also diminishes the collective political voice of their community. Therefore, using the empirically adjusted data, future research should be conducted to investigate what communities (i.e., regions or counties) in Florida are most impacted by felony disenfranchisement.

Furthermore, although this research shows that Hispanics are underrepresented in FDOC and thus in the disenfranchised population, Hispanics are still doubly impacted. Hispanics tend to have the highest rate of legal residents (who cannot vote). Only citizens of voting age can vote. Hispanics in Florida, relative to their Black and White counterparts, have the largest difference between its voting age population (VAP) and its citizen of voting age population (CVAP). This means that even without felony disenfranchisement, the adult Hispanic community already experiences a reduction in its collective voice. There are nearly 3.5 million Hispanics in Florida, but on election day they can only speak as a community of about 2.5 million (i.e., a reduction of nearly a million individuals), while the 9.2 million Whites in Florida can speak as a community of 9 million and the 2.2 million Blacks can speak as a community of nearly 2 million—felony disenfranchisement notwithstanding. (See Table 10).

Table 10: Florida Census Data on VAP, Citizen, CVAP and Total Population

FLORIDA CENSUS DATA ON VAP, CVAP, AND CITIZEN POPULATION					
State	Race/Ethnicity	Total Population	Adult Population (VAP)	Citizen Population	Adult Citizen Population (CVAP)
Florida	Total	19,645,770	15,604,650	17,813,580	13,933,050
Florida	Not Hispanic or Latino	14,985,040	12,117,690	14,275,915	11,470,705
Florida	Black or African American Alone	3,055,240	2,230,965	2,785,830	19,90,530
Florida	Native Hawaiian or Other Pacific Islander Alone	10,710	8,205	9,570	7,165
Florida	White Alone	11,054,370	9,269,155	10,768,415	9,002,190
Florida	Hispanic or Latino	4,660,735	3,486,955	3,537,665	2,462,345
Source: Census Data, 2015 https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html					

With nearly a million Hispanics adults already unable to vote due to legal status, adding another estimated 180,000 individuals to that group because of felony disenfranchisement significantly diminishes the collective voice of the Hispanic community in Florida. Any amount of felony disenfranchisement compounds the already diminished collective voice of Hispanics. Awareness of the compounding impact that disenfranchisement has on the Hispanic community might motivate the Hispanic community to support disenfranchisement reform if it goes on the

ballot. If one adds the reduction of 1 million individuals to the estimated 180,000 felony-disenfranchised Hispanics, the cumulative effect is 1.18 million individuals who cannot vote; i.e., a greater cumulative effect than what is experienced by the White or Black community in Florida.

Reforming Data Collection in FDOC

Research and advocacy institutions are calling on the criminal justice systems throughout the country to reform the way it collects data with respect to ethnic minorities. The findings in this research substantiates the need for such reform, especially with respect to Hispanics/Latinos in Florida. However, collecting Hispanic data by itself is not enough—the data must also be accurately collected. This research shows that although FDOC collects data on Hispanics, it only classifies Hispanics correctly about two-thirds of the times. Data collection must include allowing individuals to self-identify their racial/ethnic category, as the Census does, to ensure reliability. The following are recommendations recently suggested by the Urban Institute which FDOC should implement:

- States should, at the very least, meet current Census Bureau standards and collect race and ethnicity data separately before combining them. This would result in more descriptive and accurate subcategories, such as "non-Hispanic white" and "Hispanic black."

- Data should be collected and publicly reported at least once every two years. This would provide more frequent data on Latinos, one of the nation's fastest-growing demographic groups.

- Race and ethnicity data should be self-reported, not determined by state employees. Self-identification would prevent people from being boxed into identities they do not claim as their own and is consistent with Census Bureau data collection standards.

- If states follow the federal government's proposed 2020 Census changes and combine race and ethnicity in one question, justice system–involved people must be allowed to check more than one box. And although states should, at a minimum, include a "Hispanic" or "Latino" category, Latinos are not a monolith. Many Latinos identify as mixed race, indigenous, or Afro-Latino. Hispanic or Latino ethnicities can be split further by country of origin (e.g., Mexican or Cuban). (Urban Institute, 2016).

Of all the recommendations listed above, the least costly and most immediate recommendation FDOC should implement is allowing individuals to self-report their race/ethnicity from available race/ethnic options, rather than having state employees subjectively determine people's race/ethnicity.

Caveats

Because this research accuses a government institution of producing misleading data, the findings in this research sought to be as conservative as possible to ensure that such accusation can withstand scrutiny. For example, the proportion of Hispanics in FDOC may be slightly higher if one considers hyphenated names. The Census removes hyphens from the names in its surname data and thus the surname list in this research did not include hyphens. When matching names on the surname list to the names in FDOC data, those with hyphenated names would not be matched.

Therefore, hyphenated names in FDOC's data that may have been Hispanics were not counted resulting in a possible undercount of Hispanics. Any undercount of Hispanics in this research, however, renders the findings conservative. Including more Hispanics would only prove that FDOC has misclassified Hispanics at even higher rates. Rough estimates of FDOC's data indicate that hyphenated names make up only between 1 and 2 percent of all reported names. This means that even if all hyphenated names were found to be Hispanics, it would increase the estimated rates of 10 – 12 percent Hispanic to about 12 – 14 percent at most.

FDOC data is the single, largest source accounting for felons in Florida. There are about 1.68 million disenfranchised felons in Florida and FDOC records account for about half a million felons in Florida. All other criminal justice entities in Florida with surname records available fall short of this number. Still, extrapolating from FDOC data to disenfranchised population has its limitations. For example, individuals released from prison are placed in FDOC's released data, but if the individual returns to prison, he or she is taken off the released data and placed back into FDOC's inmate data; therefore, release data by itself does not reveal all who have been released. Meanwhile, individuals who are released from prison on supervision (probation or parole), seem to be on both FDOC's release data and supervision data causing duplicates when considering those two groups together. Also, FDOC supervision data seems to include individuals who may not be on felony probation and those whose felony adjudication is withheld; therefore, FDOC supervision data includes non-felons rendering generalizations about felons from this group less certain. For this reason, this research solely used estimates from the inmate and released population, not the supervised population, when generalizing from FDOC data to the disenfranchised population.

FDOC's data does not have citizenship status in its root entries, so it is quite possible that the rate of disenfranchisement derived from FDOC data and extrapolated to the disenfranchisement part of the research may include non-citizens who could not vote either way. However, the same can be said of all the other groups. The Black and White population in FDOC may also include non-citizen individuals, so the comparisons among groups when determining over or underrepresentation will still be relatively consistent if non-citizens could be identified and extracted. Also, the impact of felony disenfranchisement is relevant even to non-citizen legal residents, because such individuals may be on the path to citizenship and yet will not be able to vote even if subsequently given citizenship.

Future Research

As noted earlier, there are a number of areas in which future research should be conducted. The findings in this paper call into question previous research which concludes that the 2000 Presidential Election was not affected by Florida's felony disenfranchisement. (Burch, 2012) Future research should be conducted applying an optimal surname list to Burch's data to determine whether Burch's findings still hold true.

Furthermore, because data is significantly lacking across the country with respect to Hispanics in the criminal justice system, future research should be conducted using the surname method wherever possible to ascertain empirical estimates of Hispanics. Of particular importance is conducting empirical estimates of local county jails in Florida to determine if the rate of Hispanics resemble that which is found in FDOC's records.

Also, future research should attempt to identify the region or county in Florida that is producing 10 – 12 percent of Hispanics in FDOC. If Hispanics are disproportionally coming from particular counties, legislatures from those areas might make criminal justice reform a priority when made aware of the fact. However, this should not be limited to Hispanics: identifying where all the other racial groups in FDOC are coming from should also be investigated to explore what particular regions or counties (and thus communities) are being disproportionately impacted by the criminal justice system. Lastly, future research should explore why and how FDOC accurately classifies Hispanics nearly one third of the times. There may be a best-practice in a region in FDOC that is producing accurate classifications and may serve as a model to be applied statewide.

Conclusion

The lack of data on Hispanics in the criminal justice system is a current problem for researchers, policy makers, and the public. More troubling is inaccurate data, which has the potential to mislead the public and compromise research findings. This problem is true in Florida where FDOC, the largest correctional system in the state, systematically undercounts Hispanics and overcounts White (non-Hispanics). FDOC's race data is used in felony disenfranchisement research, so inaccurate race data can lead to inaccurate findings in the disenfranchisement literature.

After the US Civil War, felony disenfranchisement became a racially motivated legal tool used to keep Blacks from voting. The Supreme Court, however, ruled that states have the regulatory power to disenfranchise felons and that disproportionate impact alone is not enough to

render felony disenfranchisement unconstitutional—there must be proof of overt discriminatory intent. With felony disenfranchisement considered constitutional by the Courts, changes must come through the political process—a political issue that did not seem to get much traction until the 2000 Presidential Election. After the controversial 2000 Election felony disenfranchisement and Florida came to the forefront of the discussion. This prompted research on whether felony disenfranchisement is politically consequential. Relying on FDOC race data, research concludes that felony disenfranchisement did not reverse the 2000 Presidential Election. Additional research in 2003 investigated for the first time what impact is felony disenfranchisement having on Hispanics in Florida concluding that Hispanics are underrepresented in the disenfranchised population.

Noting the importance and need for accurate race data on Hispanics in Florida and how felony disenfranchisement impacts Hispanics, this research undertook the task of investigating two questions: (1) what is the empirical estimates of Hispanics in FDOC (and does FDOC data reflect the results); and (2) using the empirical estimates from FDOC, how are Hispanics impacted by felony disenfranchisement in Florida. The answer is (1) there are about $10 - 12$ percent Hispanics in FDOC data which is greater than what FDOC reports by more than two and a half times; and (2) applying the empirical estimates, Hispanics are least impacted by felony disenfranchisement compared to Blacks and Whites in Florida. However, when coupling the disenfranchised population with the large number of adults who are ineligible to vote (such as legal residents), Hispanics are the group most impacted in Florida. To conduct this research, an optimal surname list was used and applied to FDOC data to produce empirical estimates of Hispanics in the data.

The resulting estimates were then used to analyze the disenfranchisement impact on Hispanics and make comparisons among groups.

Revealing that FDOC is systematically misclassifying Hispanics has several implications. First is the fact that it calls into question research that relies on (and is sensitive to) FDOC reported race data. Research on the electoral outcome of the 2000 Presidential Election relied on FDOC race and thus used an inflated number of Whites because of FDOC's misclassification. To avoid such questionable scenario, this research warns future researchers to beware of FDOC's misclassifications and explains the use of an empirical surname list to be used to correct for the inaccuracies. Despite FDOC's inaccurate reporting, however, this research provides an up to date accurate estimate of FDOC's racial make-up. This research informs researchers, policy makers, and the public what the state of the data is with respect to Hispanics in FDOC and the disenfranchisement population in Florida. Providing these accurate estimates is particularly important to the debates on criminal justice and disenfranchisement reform in Florida. Future research should be conducted to disaggregate the results in this research and narrow down what communities (or regions) are being impacted the most. Also, although FDOC is the largest correctional system in Florida, the surname list approach should be applied to local correctional facilities to obtain a more complete and robust picture of how Hispanics are impacted by the criminal justice system in Florida.

Ultimately, the findings in this research serves as evidence that FDOC must reform the way it collects data if it intends for its race data to be accurate. The Urban Institute recently outlined what steps should be taken to reform such data collection. The quickest and possibly most

affordable and practical step FDOC can take is to allow individuals to self-identify their race/ethnicity from eligible options rather than having staff subjectively classify individuals. Also, although it will be difficult to change the misclassification for those already released, FDOC can fix the data retrospectively for those still under its supervision by simply asking them to self-identify their race/ethnicity and updating their information. Until FDOC reforms its data collection, however, research like this one must continue to fill the gap by using empirical methods to account for Hispanics in FDOC.

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