



BREAKING BARRIERS TO THE BALLOT BOX

Felon Enfranchisement Toolkit

Right to Vote: A Campaign to End Felony Disfranchisement



Dear Friends,

Right to Vote: A Campaign to End Felony Disfranchisement (Right to Vote) is part of the American Civil Liberties Union's Racial Justice Program. Together with the Voting Rights Project, Right to Vote works with ACLU affiliates throughout the country on legislation, litigation and public education to reform felony disfranchisement policies and practices, and to promote the fundamental, democratic right to vote for all citizens.

Unless you live in Maine or Vermont, where incarcerated citizens may vote, there is important work to do on this issue. One of the greatest barriers to felon enfranchisement is the lack of public awareness of this issue; where awareness exists, the information available is often misleading or inaccurate. Well over five million Americans are legally barred from voting due to a felony conviction (and in six states, a misdemeanor conviction), while millions more are disfranchised due to ignorance, misunderstanding or confusion about disfranchisement law in their states.

In this toolkit, you will find the individual pieces that, when combined, will help you launch a successful campaign in your state. Additional information is also available on our website, <http://www.aclu.org/righttovote>, including sample bills, public education materials, op-eds and more.

While this toolkit is extensive, you should also make use of the Right to Vote staff. If you are working on, or considering working on, this issue, please contact us to strategize about how we can best assist you.

We look forward to working with you!

Right to Vote: A Campaign to End Felony Disfranchisement
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TOOLKIT INDEX

■ STRATEGIES

Components of Successful Felon Enfranchisement Policy Reform.....	8
Policy Reform Goals & Strategies.....	11
Recent Successful Policy Reforms.....	14
Components of Model Legislation & Pressure to Create Exceptions.....	17
Legislating Notice & Voter Registration.....	19
Working with Corrections, Parole & Probation.....	21
Executive Reform.....	23
Comparing Your State to Surrounding States.....	26
Comparing the U.S. to Other Democracies & Analyzing the U.S.’ Human Rights Obligations.....	27
Endnotes	29

■ RESOURCES

Map of State Felony Disfranchisement Laws.....	32
Policy Changes to State Felony Disfranchisement Laws 1997 – 2007.....	33
Why & How to Conduct a Survey of State & Local Election Officials.....	35
Using Video to Illustrate the Personal Impact of Felon Disfranchisement: <i>Democracy’s Ghosts</i>	36

Significant Endorsements in Support of Felon Enfranchisement Reform	37
Legal Primer.....	42
Mini-Bibliography.....	44

■ MODEL MATERIALS

Model Legislation: Rhode Island.....	48
Model Legislation: North Carolina.....	50
Model Talking Points: Colorado.....	51
Model Fact Sheet: Wyoming.....	54
Model Testimony: Alaska.....	57
Model Testimony: Rhode Island.....	60
Model Resolution: New Jersey.....	63
Model Briefing Paper: Wisconsin.....	65
Model Pub-Ed: Georgia.....	66
Model Op-Ed: Jack Kemp.....	67
Model Op-Ed: Washington State.....	69



STRATEGIES

COMPONENTS OF SUCCESSFUL FELON ENFRANCHISEMENT POLICY REFORM

This fact sheet outlines the key components to launch and sustain a successful campaign, and will be useful whether your reform goals are large or small, comprehensive or piecemeal. It can be utilized whether you're seeking to undertake a multi-year public education and legislative strategy to amend your state's constitutional disfranchisement policy, or simply to secure the cooperation of state officials to improve awareness of the rights restoration process among formerly incarcerated people.

- **Form a coalition.** Where appropriate, form a coalition. Involve diverse organizations—civic, racial and ethnic-identified groups, religious groups and labor unions. Broad-based and successful coalitions include the Florida Rights Restoration Coalition¹ and the Kentucky Voting Rights Coalition.²
- **Identify and engage key allies in communities of color.** Felony disfranchisement disproportionately impacts communities of color. Organizations and communities of color have been effective leaders and active participants in the reform effort in many states.
- **Involve formerly incarcerated people.** Formerly incarcerated individuals should serve as leaders, lobbyists and spokespersons in your state campaign. For compelling examples, see *Democracy's Ghosts*³ or *Digital Stories of Disenfranchised Kentuckians* produced by the Kentucky Voting Rights Coalition.⁴
- **Conduct state-based research.** Surveys measuring state and county elections officials' knowledge and implementation of disfranchisement and restoration policy are useful. They can expose gaps in the officials' knowledge, and flaws in the administration of your state's disfranchisement law. You can use the data to advocate for improved policies. *Example:* In 2005, the North Carolina ACLU surveyed 100 counties; 48 knew the law correctly, but 46 did not. Advocates used this data to press for legislation requiring that people with criminal records receive written notice of rights restoration as well as a voter registration form. This is now the law in that state.
- **Identify your legislative goal.** Be clear about your goals from the outset. If you are trying to reform your state policy from one of post-sentence enfranchisement to post-incarceration enfranchisement (i.e., granting people on parole and probation the right to vote), be focused on that goal. If the reform you support is to pass a notice bill or shorten the waiting period to apply for rights restoration, be clear about the goal at all times.
- **Start your legislative work early.** Most legislatures convene in January and remain in session for a limited time. Felon enfranchisement advocates should meet with stakeholders and potential legislative supporters well in advance of the new legislative session. Summer and fall is the best time to hammer out draft legislation, analyze the potential strengths and weaknesses of any anticipated effort, and lay the groundwork for the introduction of bills. Don't wait until January to convene your first coalition meeting!
- **Don't negotiate against yourself!** Drafting legislation always involves a balancing act between asking for everything you need to make the policy work and potentially overreaching. Take stock of the political environment and dialogue with potential legislative supporters and organizational allies, but recognize that whatever language you propose will likely be amended or weakened, so plan accordingly.

■ **Calibrate your strategy to the partisan environment of your legislature.** Both Republicans and Democrats have been responsible for advancing and defeating felon enfranchisement reform. Democratic governors have derailed reform by threatening to veto legislation, and Republican policy-makers have worked aggressively to deny votes needed for passage. Bipartisan majorities also have successfully advanced reform. Plan and execute your approach taking the particular dynamics of your state into account.

■ **Hire a professional lobbyist.** You could also allocate staff resources specifically to lobbying.

■ **Identify possible supporters within key state agencies** such as the Department of Corrections (DOC), the Division of Parole and the Secretary of State. Where possible, utilize agency personnel (past and present) to speak to the issue. *Example:* In Maine, the DOC testified in opposition to regressive legislation. In Georgia, DOC officials agreed to disseminate educational materials jointly prepared by the ACLU and the Secretary of State. In Rhode Island, the head of the state division of parole publicly supported a constitutional amendment to reform the state's disenfranchisement policy from post-sentence to post-incarceration enfranchisement, in spite of the governor's opposition to the measure.

■ **Utilize key criminal justice and legal organizations.** Do so nationally and locally to leverage support. A variety of influential national organizations have taken a range of positions in support of felon enfranchisement, including: the American Correctional Association; the American Probation and Parole Association; the American Bar Association and the National Black Police Association. Contact the Right to Vote staff to find out how to best access these groups and use their support in your local campaign. *Example:* The National Black Police Association went on record in favor of felon enfranchisement legislation during hearings in Washington and Maryland; the President of the American Bar Association has authored op-ed pieces in Kentucky newspapers; and the American Probation and Parole Association has formally endorsed post-incarceration enfranchisement.

■ **Use technological tools to educate and mobilize.** Use the web and other tools to communicate with new constituencies as well as your base. *Example:* The Florida Rights Restoration Coalition web site provides a wide range of public information and contains a secure, password protected portal for coalition members to share and exchange information. Activists in Kentucky have posted video stories on *YouTube* and communicate regularly via a list serve dedicated to monitoring legislative developments. In Colorado, the state affiliate activated the ACLU's national legislative alert system via the Washington Legislative Office and contacted thousands of ACLU members who then called targeted state legislators, successfully urging them to maintain their support for reform.

■ **Identify the intersections between voting rights and other reentry issues.** Communities, families, policymakers and interest groups concerned with the barriers faced by people returning from prison and jail have more than just voting rights on their minds, and are often occupied with more immediate needs such as housing, healthcare, employment, public assistance, family concerns, and licensing restrictions. While most felon enfranchisement legislation does not address broader civil rights restoration issues, it is important for you to advocate for voting rights while being cognizant of the myriad other obstacles faced by people with criminal records.

■ **Develop and implement a comprehensive public education and messaging strategy.** Utilize the most effective, proven messages in support of felon enfranchisement and incorporate diverse tools in your campaign, such as op-ed pieces, talking points, briefing papers, fliers, brochures and electronic media. Rachel Bloom can provide you with sample materials and assist ACLU affiliates in developing state-specific resources.

■ **Put your state in context.** Show policymakers where your state stands in relationship to neighboring states and nationally. Seventeen states have adopted progressive reforms in at least 24 separate legislative or administrative enactments in the past ten years (AL, CT, DE, FL, HI, IA, MD, NE, NV, NM, NC, RI, TN, TX, UT, VA and WY). Find out where your state stands in relationship to these states' policies, and present your goals in the most advantageous context.

■ **Draw upon a universal human rights framework to advance your campaign.** Felony disenfranchisement policies in the U.S. are clearly out of step with the laws and practices of most democracies worldwide. These differences are documented in the ACLU publication *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies* (2006).⁵ Nearly half of Europe's 40 nations allow the incarcerated to vote, and, where there are restrictions on prisoner voting, with limited exceptions, all formerly incarcerated persons may vote automatically post-incarceration.

■ **Consider litigation along with your legislative campaign.** The ACLU has brought or participated in litigation in federal and state courts to reform felony disenfranchisement policies in Washington, Mississippi, Arizona and other states. Consult with us about whether there are issues in your state that might be ripe for litigation.

■ **Use polling and public opinion data to your advantage.** According to a national poll, a solid majority of the public supports felon enfranchisement reform, including voting rights for people on parole and probation. This polling data may be employed to influence policymakers. Additionally, where affordable, affiliates and their allies should consider conducting statewide polling to generate more state-specific data that will undoubtedly be more influential with local legislators. Some states have done so, and have been pleasantly surprised by the results! For suggestions on the phrasing of survey questions, contact Rachel Bloom.

■ **Share information with the national ACLU and utilize national resources.** Let us learn from you and vice versa. Right to Vote (Rachel Bloom [rbloom@aclu.org], Laleh Ispahani [lispahani@aclu.org] and Nicole Kief [nkief@aclu.org]) can provide public education materials, draft and analyze legislation, and assist with contacts and strategies. The Voting Rights Project (Nancy Abudu [nabudu@aclu.org]) can evaluate the potential for litigation and provide other legal assistance.

POLICY REFORM GOALS & STRATEGIES

Below is an outline of the major policy reform goals you or your campaign might seek to accomplish in order to promote voting rights for people with criminal records, as well as a list of strategies you might employ to achieve those goals. Because felony disenfranchisement laws and procedures vary considerably from state to state, your campaign will have to take into account the specific language of your state's current policy, local and regional politics, applicable case law (if any), and other state-specific considerations.

GOALS

Ending Permanent Disfranchisement

Kentucky and Virginia are the last two states where *all* people with felony convictions are permanently disenfranchised. Before attempting more far-reaching reform, advocates may first want to work towards enfranchising people with felony convictions who have completed their sentences. Prior to 2007, Florida⁶ was one of three states that banned all persons with felony convictions from voting; see page 23 for information about the revision of Florida's clemency rules.

Similarly, if your state is one of the eight where *some* people with felony convictions are permanently disenfranchised (AL, AZ, DE, FL, MS, NV, TN & WY), your initial legislative goal may be to eliminate their permanent disenfranchisement. Maryland was in this category until lawmakers adopted landmark reforms in 2007 eliminating the lifetime voting ban for people with certain felony convictions, thereby restoring the right to vote to an estimated 52,000 people. See page 15 for information about Maryland's reform campaign.

Enfranchising People on Probation and Parole

If your state is one of the 20 in which voting rights are restored automatically after *completion of sentence* (AK, AR, GA, ID, IA, KS, LA, MD, MN, MO, NE, NJ, NM, NC, OK, SC, TX, WA, WV & WI), your goal may be to permit voting automatically *upon release from prison*. Rhode Island became the most recent state to take this step, its voters approving, in 2006, an amendment to the state constitution enfranchising all people with felony convictions on parole and probation. See page 15 for information about legislative victory in Rhode Island.

If your state is one of the five where people on probation (but not on parole) are eligible to vote (CA, CO, CT, NY & SD), your goal may be to enfranchise people on parole. In 2007, Colorado became the state to most recently attempt to do so; the provision passed both the House and Senate, but was ultimately stripped from the election reform bill after a threatened gubernatorial veto.

Removing Other Post-Sentence Barriers to Voting

In several states, people with criminal records encounter a variety of other barriers to voting, including, most often, cumbersome restoration processes or lengthy waiting periods before rights restoration applications may be submitted.

If you live in one of the four states with a waiting period, (AZ, DE, NE & WY), your initial goal will be to eliminate this phase. If your state also has a complex, confusing and/or onerous restoration process, your goal will be to simplify that process. Until 2006, Tennessee had the most complex re-enfranchisement regime in the nation. That year, lawmakers passed a bill streamlining the state's restoration process, which had previously treated people differently for purposes of restoration depending on when a person was convicted and of what offense the person was convicted. The law also directed people to different agencies

from which to seek rights restoration based on conviction date and offense. The new law prescribes that all those who are eligible apply for certificates of restoration through the Board of Probation and Parole. See page 16 for additional information about reforms in Tennessee.

Promoting Broad Public Awareness and Administrative Compliance

Regardless of where you live, voting rights for people with criminal records are only meaningful if those directly affected, and those administering the laws, are knowledgeable about their provisions. Ensuring that formerly incarcerated people are aware of the laws and procedures for regaining the right to vote in their home states is a critical component of enfranchisement work. In addition, those in charge of administering disenfranchisement policies (election and criminal justice officials) often dispense incorrect information and inhibit voting by eligible citizens, so ensuring knowledge of and compliance with laws and procedures is also crucial.

Particularly if you live in one of the 13 states (plus the District of Columbia) where people with felony convictions on probation and parole can vote (DC, HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, & UT), you might, among other goals, work to ensure that people are aware of their voting rights and that enfranchisement laws are properly implemented. See page 19 for the section on Legislating Notice & Voter Registration, and page 21 for the section on Working with Corrections, Parole & Probation.

STRATEGIES

In order to promote voting rights for people with criminal records, your campaign might make use of one or more of the following legislative, executive, administrative, legal, and/or public education strategies:

- **Support enfranchisement legislation** that, in one form or another, expands access to the ballot box for people with criminal records (see page 14 for case studies of several recent legislative victories and page 17 for components of model legislation).
- **Support notification legislation** mandating the provision of written notice of rights restoration and voter registration materials to formerly incarcerated people. Comprehensive notice provisions may (1) require that individuals be notified *in advance of sentencing* that they will lose their right to vote, and/or (2) mandate that entities within the criminal justice system correctly and systematically inform people of rights restoration procedures before or when they become re-eligible. Notice bills were recently advanced in North Carolina and Rhode Island; see page 19 for details about this strategy.
- **Support a state constitutional amendment**, which sometimes requires a popular referendum, to expand voting rights for people with criminal records and **pass enabling legislation** to ensure that constitutional amendments are implemented (see page 15 for a case study of Rhode Island's legislative victory and page 48 for model legislation from that state).
- **Advocate for gubernatorial action** to expand voting rights for people with criminal records, where this strategy is available (see page 23 for examples of this strategy in Iowa and Florida).
- **Secure the administrative cooperation of state officials**, who may agree to provide information about voting rights to people in prison, on probation, or on parole—absent an official legislative mandate (see page 21 for a case study of Georgia).

- **Ensure that list matching and purge procedures** guard against disfranchisement and facilitate voter registration of people with felony convictions. (For a detailed account of state purge procedures and recommendations for reform, see the report *Purged! How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote*, available at http://www.aclu.org/FilesPDFs/purged%20-voting_report.pdf.)
- **Make the state Department of Corrections a “motor voter” agency** through the federal National Voter Registration Act of 1993 (see the Voter Registration Assistance section on page 19 and the Rhode Island case study that follows).
- **Litigate** disfranchisement policies or aspects thereof, but only if both feasible and advisable (see the Legal Primer on page 42 of the toolkit).
- **Use international and human rights standards** to challenge felony disfranchisement policies (see page 27 for a discussion of human rights protections that address voting rights for people with felony convictions).
- **Encourage passage of resolutions** in support of enfranchisement by counties, cities and influential organizations (see the model resolution on page 63 of the toolkit).

RECENT SUCCESSFUL POLICY REFORMS

Seventeen states have made progressive changes to their policies and procedures governing felon enfranchisement in the past decade, expanding the right to vote or otherwise eliminating bureaucratic obstacles. The six policy reforms summarized below reflect the variety of these changes. In Iowa, broad enfranchisement reform was achieved through gubernatorial action. Other states such as North Carolina have taken more modest but important steps by mandating that written notice and voter registration forms be provided to formerly incarcerated people. In Rhode Island, voters amended the state constitution (and policymakers passed enabling legislation) to provide the right to vote to all people on parole and probation. In Maryland and Tennessee, formerly states with among the most complex and burdensome rights restoration schemes, reform involved streamlining restoration procedures and, in Maryland's case, both streamlining restoration procedures and enfranchising 52,000 formerly disfranchised voters.

Case Study: Iowa

On July 4, 2005, pursuant to his authority under the state constitution to grant reprieves, commutations and pardons, Iowa's then Governor Thomas Vilsack signed Executive Order 42. Vilsack thereby restored the right to vote to individuals with felony convictions and aggravated misdemeanors who had been permanently disfranchised by the Iowa Constitution.⁷ Before the Order was signed, the only way individuals with felony convictions could seek to have their voting rights restored was through gubernatorial pardon, a lengthy and discretionary process involving the state board of parole and the governor's office.

The principal impact of Vilsack's Order was retroactive, restoring the rights of citizenship to approximately 80,000 people who had completely discharged their criminal sentences as of July 4, 2005. Vilsack's Order also required that from the date of his Order going forward, "offenders who wholly discharge their criminal sentence, including any accompanying term of probation, parole or supervised release, will be given consideration for a restoration of citizenship rights without undue delay." (Restitution must still be fully paid before rights are restored under the Order.)

Muscatine County Attorney Gary Allison immediately challenged Vilsack's action by filing a petition (*Allison v. Vilsack*⁸) in District Court in Muscatine, but on October 28, 2005, Judge J. Hobart Darbyshire upheld Vilsack's order.

Case Study: Florida⁹

Prior to 2007, Florida was one of three states (along with Kentucky and Virginia) that permanently disfranchised people with felony convictions, and remains the state with the largest number of disfranchised citizens. African-Americans were particularly impacted by Florida's draconian policies, which disfranchised fully 18.8% of the black voting age population in the state.

Legislation to reform felony disfranchisement policy was introduced in 2007 but, as in years past, did not receive enough support to move through the legislature.

On April 5, 2007, Republican Governor Charlie Crist and the state clemency board (composed of the governor and three cabinet members, two Republicans and one Democrat) adopted a new policy aimed at reforming Florida's antiquated and discriminatory felony disfranchisement procedures. The board revised the clemency rules so that certain people with felony convictions could be restored to the rolls without an application or hearing by the clemency board. These individuals nevertheless have to wait until they receive a certificate restoring their rights from the board before they may vote again. Under the new rules,

the rights being restored are not only voting rights, but the right to serve on a jury and the right to hold public office. Additionally, individuals must have their civil rights restored before applying for many state-issued occupational licenses.

A more detailed analysis of the change in Florida appears on page 23 of the toolkit.

Case Study: Maryland

In 2007, the Maryland ACLU, working with a statewide coalition, lobbied vigorously to support legislation to streamline Maryland's complicated felony disfranchisement regime. The measure established a more uniform process for the restoration of voting rights to formerly incarcerated people upon completion of their sentence and repealed a three-year waiting period for rights restoration after completion of sentence. The bill also repealed the lifetime voting ban for people convicted of some offenses. In a major victory for felon enfranchisement advocates, SB 488 became law.¹⁰ Approximately 52,000 of Maryland's estimated 111,000 disfranchised people stand to immediately benefit from the measure, in addition to the thousands of people with felony convictions who will complete their sentences each year.

Case Study: North Carolina

In May 2007, HB 1020, Rights of Ex-Offenders, passed the House, 99 to 12. In the State Senate, the measure was rolled into an omnibus bill of amendments to the state's election laws, as Section 26 of HB 1743, Election Amendments.¹¹ The Senate passed the omnibus bill, and the bill went to conference to hammer out some small differences unrelated to the notification section. Both chambers adopted the conference report, which includes this section. Governor Easley signed the bill into law on August 19, 2007.

The bill, which was drafted and supported by the ACLU of North Carolina, requires the State Board of Elections, the Department of Correction, and the Administrative Office of the Courts to **“jointly develop and implement educational programs and procedures for persons to apply to register to vote at the time they are restored to citizenship.”** More specifically, the procedures require written notice be given to formerly incarcerated people to inform them of their right to vote upon completion of sentence and provide them with a voter registration form.

In 2005, advocates conducted a survey of all 100 county boards of election in the state to determine the level of knowledge among election officials of North Carolina's disfranchisement policies. Ninety-four counties responded, forty-eight answering correctly, but an astonishing 46 counties answering incorrectly.

Case Study: Rhode Island

In November 2006, in a major victory for felon enfranchisement advocates, Rhode Island voters approved Question 2, a state constitutional amendment enfranchising the state's parolee and probationer population. This was the first time the issue of felony disfranchisement had been placed on a ballot in any state.¹² (The state Assembly had earlier passed a joint legislative resolution placing that question on the ballot.) The ACLU helped throughout the process: organizing a statewide coalition to support the legislation, testifying before the House and Senate on the resolution, and commenting on ballot language. The referendum received broad support from all parts of the state, including Providence's police chief, the Secretary of State, and many civil rights and community-based organizations. Also in 2006, the state legislature passed a bill aimed at implementing the changes. The statute requires that people with felony convictions be notified of the loss and restoration of their voting rights, that criminal justice agencies provide assistance with voter registration and voting by absentee ballot, and that corrections and elections agencies share the data necessary to verify voter eligibility.

Prior to the adoption of the amendment and the implementing legislation, individuals with felony convictions had to wait until they completed their sentences to have their voting rights restored. Rhode Island now joins New England states such as Massachusetts and New Hampshire in automatically restoring voting rights upon release from prison.

In July 2007, the ACLU of Rhode Island testified on proposed regulations to implement the legislation. The Secretary of State revised the regulations consistent with the suggestions offered by the National and State ACLUs.

Case Study: Tennessee

In 2006, the Tennessee legislature approved HB 1722 and SB 1678 to simplify the process for people who have completed a felony sentence to regain their voting rights.¹³ Prior to passage of the new law, Tennessee had the most complex felon enfranchisement regime in the nation. Under the new system, eligible people who have completed their felony sentences, including probation and parole, and paid their restitution, may apply for and receive a “certificate of voting rights restoration” through the criminal justice system. A person must then present this certificate to elections officials for verification before registering to vote. People convicted of murder, rape, and certain other specified crimes are ineligible to have their voting rights restored. (A last minute amendment also prevents the restoration of voting rights if individuals are not current on child support payments.)

While this scheme is far from ideal, it represents tremendous progress when compared to the arcane and almost indecipherable process that previously existed. The National ACLU advised bill sponsors on the merits of a number of competing bills, and the Tennessee Right to Vote coalition, led by the Tennessee ACLU, lobbied for passage of the bill that ultimately succeeded.

COMPONENTS OF MODEL LEGISLATION & PRESSURE TO CREATE EXCEPTIONS

Components of Model Legislation

As illustrated by the language of the enabling legislation used to implement the Rhode Island constitutional amendment (now codified as Section 17-9.2-3 of Rhode Island General Laws and found on page 48 of the toolkit), key components of model felon enfranchisement legislation that advocates should seek to adopt include:

- Advance notice of loss of voting rights before sentencing or plea.
- List matching and purge procedures that guard against disfranchisement and facilitate voter registration of people with felony convictions.
- Written notice of rights restoration procedures.
- Facilitating voter registration by making the state Department of Corrections an official voter registration or “motor voter” agency under the 1993 federal National Voter Registration Act (NVRA).
- An affirmative duty to educate judges, parole officers, Department of Corrections staff and other relevant criminal justice/state personnel about felon enfranchisement laws and procedures.

Pressure to Create Exceptions for Certain Crimes

When seeking to move a state from post-sentence to post-incarceration enfranchisement (or to adopt related reforms), lawmakers will often attempt to limit the scope of the policy change to people with specific convictions, such as those convicted of non-violent crimes or without prior criminal records. Similarly, they denounce extension of the reform to particular classes of people, such as those convicted of capital, sex, or violent crimes.

This was the dynamic in Alaska, Kentucky and Virginia where lawmakers respectively:

- Sought to limit parolee and probationer voting to people convicted of less serious crimes without prior convictions (Alaska).
- Amended the language of the proposed constitutional amendment to bar rights restoration for any individuals convicted of a felony “which includes as an element of the offense the intentional killing of a human being not done under the influence of extreme emotional disturbance for which there exists a reasonable explanation or excuse, sexual contact with a minor, sexual intercourse, or deviate sexual intercourse” (Kentucky).
- Amended the language of the proposed constitutional amendment to restrict the legislative authority for rights restoration to people convicted of non-violent crimes (Virginia).

While advocates will have to decide on a case-by-case basis whether and under what conditions such limitations can be accepted, there are a variety of issues to consider:

- Significant administrative complications can occur if even modest exceptions are made to voting rights for people on parole and probation. Under uniform post-incarceration enfranchisement, anyone “out on the street” is automatically eligible to vote. However, if limitations are imposed, election administrators have both a mandate and an incentive to create a range of requirements to ensure that ineligible people are not voting. These requirements will almost invariably end up disfranchising eligible individuals.

- Agreeing to these exceptions may be a necessary political accommodation in some instances, but it nevertheless undermines core principles and creates inconsistency in the argument that the right to vote is inalienable and should never be tied to one's criminal record.
- Consult carefully with your coalition partners before agreeing to compromises, as they have the potential to fracture joint efforts where all parties may be essential to a successful outcome.
- Once you agree to the exclusion of certain classes from enfranchisement reform, lawmakers will almost certainly attempt to add additional restrictions to the list (such as people convicted of terrorism, air piracy, sex crimes, etc.), which become difficult to oppose.

LEGISLATING NOTICE & VOTER REGISTRATION

Providing Notice and Facilitating Voter Registration

Ensuring that formerly incarcerated people are aware of the laws and procedures for regaining the right to vote in the state where they live is a critical component of felon enfranchisement reform. Notice bills are often less controversial than those that seek to enfranchise categories of people with convictions, but such bills nonetheless help to ensure that people who become eligible to vote (1) know their rights, (2) register to vote and (3) participate in elections. People with convictions often labor under the misimpression that, when convicted, they have forever or irrevocably lost the right to vote. If they do inquire, county boards often misinform them with respect to the loss, restoration and exercise of their voting rights. In the last two years, successful notice bills were advanced in North Carolina, Rhode Island, and Texas. (All of them involved the ACLU and its affiliates.) However, Texas' Governor vetoed that state's notice bill.¹⁴

Passage of legislation that mandates the provision of written notice and voter registration materials to formerly incarcerated people can also be an especially effective strategy in states where major reform is not yet possible. In states where advocates are pursuing significant change—such as moving from post-sentence enfranchisement to post-incarceration enfranchisement—it is essential that legislation include a strong notice provision. Comprehensive notice provisions might require that individuals be notified *in advance of sentencing* that they will lose their right to vote. They might also mandate educational programs to ensure that entities within the criminal justice system do a better job of informing people of rights restoration procedures. Simpler notice provisions might only require written notice of the rights restoration process and/or a voter registration form. In general, a notice bill has a better chance of success where a state survey or study has exposed problems with the administration of current state disfranchisement law, particularly if it can be demonstrated that there is spotty or no notification.

Notice of Loss and Restoration of Right to Vote

An ideal notice bill should include two elements that ensure criminal defendants are informed:

- (1) Before conviction and sentencing, that they will lose their voting rights; and
- (2) At the point of restoration, that they are again eligible to register and vote.

Model language follows:

“Before accepting a plea of guilty or *nolo contendere* to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in the loss of the right to vote only if and for as long as the person is [in prison/on parole/on probation, depending on state law], and that voting rights are restored thereafter.”

“As part of the release process leading to the discharge of a person who has been disfranchised because of [incarceration/parole/probation] upon a felony conviction, the [Department of Corrections/Probation/Parole] shall notify that person in writing that voting rights will be restored.”

Voter Registration Assistance

You might also seek to include a provision *requiring* the DOC to give such individuals voter registration forms (should they need to re-register) and provide registration assistance. The best way to accomplish

this is to make the DOC into a voter registration agency under the National Voter Registration Act, which allows states to designate certain social welfare agencies as voter registration agencies. These agencies must offer people assistance with registration in a non-coercive way. Laws establishing this system already exist in many states, so bills can simply piggyback thereon by adding the DOC to the existing list of voter registration agencies. The bill should refer to existing state law.

Model voter registration assistance language follows:

“The DOC shall act as a voter registration agency pursuant to _____ of this Code. As part of the release process leading to the discharge of a person who has been disfranchised because of a felony conviction, the DOC shall provide the person with a voter registration form and a declination form, and offer that person assistance in filling out the form. Unless the registrant refuses to permit the DOC to do so, the DOC shall transmit the completed form to the Board of Elections.”

Two detailed case studies summarizing efforts to pass legislation to mandate notice of rights restoration for formerly incarcerated people follow below.

Case Study: North Carolina

North Carolina law allows people to register or re-register to vote as soon as they are discharged from the DOC. However, in North Carolina—as in many other states—many individuals with felony convictions are not aware that their voting rights are automatically restored and mistakenly believe that they can never vote again. Although advocates in North Carolina would eventually like to pass legislation to enable people on parole and probation to vote (post-incarceration enfranchisement), they recognized that the legislature was not ready to take such a significant step.

In light of these conditions, the ACLU affiliate drafted and supported a measure in 2007 to require the State Board of Elections, the DOC and the Administrative Office of the Courts to **“jointly develop and implement educational programs and procedures for persons to apply to register to vote at the time they are restored to citizenship.”** More specifically, the procedures require that people be informed by written notice of their right to vote upon completion of sentence and that they be provided with a voter registration form.

Although these provisions were originally drafted as a stand-alone measure, they were incorporated into an omnibus bill of amendments to the state’s election laws, where they appeared as Section 26 of HB 1743, Election Amendments, which was passed into law.¹⁵ The full text of the bill can be found on page 50 of the toolkit.

Case Study: Rhode Island

Rhode Island is the only state where the Department of Corrections is mandated to act as a state voter registration agency pursuant to the National Voter Registration Act (NVRA). Making the DOC an official state NVRA agency (similar to the State Department of Motor Vehicles or state public assistance agencies) will increase the number of formerly incarcerated people registered to vote because the procedures mandated by the NVRA are more rigorous and were specifically designed to encourage voter registration among disadvantaged populations. Of course, as recent studies have shown, overall compliance nationwide with—and enforcement of—the NVRA is generally weak, but these procedures should still benefit formerly incarcerated people in Rhode Island. The text of the Rhode Island Restoration of Voting Rights Act, including section (c), the notice provision, as incorporated into the General Laws of the State Rhode Island is available on page 48 of this toolkit.

WORKING WITH CORRECTIONS, PAROLE & PROBATION

SEEKING ADMINISTRATIVE REFORM WITH PAROLE AND PROBATION OFFICES AND DOC

Most efforts for felon enfranchisement reform concentrate on litigation, state legislation, the adoption of state constitutional amendments or gubernatorial/executive action. In some instances, however, reformers can make progress by securing the support of the state DOC—or individual officials—who agree to provide educational materials to people in prison or on parole or probation, absent an official legislative mandate. The following case studies describe these activities in two states.

Case Study: Georgia

In Georgia, individuals with felony convictions cannot vote until full completion of sentence. With conservative Republicans dominating the Georgia General Assembly and governorship, legislative reform on felon enfranchisement is extremely difficult. Although rights restoration bills have been introduced in recent years, the legislation has had very limited movement.

In light of these conditions, the affiliate launched a multi-faceted approach to restoring voting rights to people with felony convictions, including education campaigns targeting institutions, the incarcerated, the formerly incarcerated, and the general public, as well as coalition-building.

A key component of this effort includes the publication of 20,000 copies of an educational brochure and voting rights restoration fact sheet, which the DOC has agreed to include in its Re-Entry Handbook, given to every incarcerated person upon release from prison.¹⁶ The affiliate also has direct contact with the impacted population and provides educational materials at DOC job fairs. In 2004, the ACLU partnered with the Georgia Secretary of State and the Georgia Rural Urban Summit to design and print posters that were placed in every Georgia parole and probation office. A copy of the poster can be found on page 66.

Case Study: Wyoming

Wyoming is one of only eight states to permanently disfranchise at least some people with felony convictions. In sharp contrast, fully 40 other states *automatically* restore voting rights at differing points in the process (i.e., completion of sentence, probation or parole, or release from incarceration).

In 2003, Wyoming lawmakers enacted legislation enabling people convicted of first time, non-violent felonies to apply to the Wyoming Board of Parole for a certificate restoring their voting rights five years after successful completion of their sentences. In spite of this policy reform, formerly incarcerated people remain virtually unaware of the rights restoration process. According to the Wyoming Parole Board, from July 1, 2003, until July 31, 2004, only six people applied for restoration under this provision.¹⁷

In 2007, the ACLU testified and lobbied in support of HB 235, a bill to shorten the waiting period for the eligible population from five years to one year. An amendment to the bill, which was adopted in Committee, provided for written notification, to wit:

“The department of corrections, upon expiration of all of the terms of sentence of a person who will be eligible for restoration of rights under this section, shall notify the person in writing of his eligibility to apply for restoration of his rights pursuant to this section.”

The DOC spoke in favor of the bill, which received bipartisan support and passed out of Committee 7 to 2, but then died on the calendar, having never been called up for a floor vote.

In the absence of legislative progress, the affiliate opened a dialogue with the DOC, which has agreed to distribute and display educational materials designed by the National ACLU.¹⁸ The material will be disseminated throughout the state, but the DOC has agreed to provide it to probation and parole offices.

EXECUTIVE REFORM

Most efforts for felon enfranchisement reform concentrate on either litigation, state legislation or, where necessary, the adoption of state constitutional amendments. In other instances, reformers can achieve more modest gains by working with the state department of corrections—or individual official—who may agree to provide educational materials to people in prison or on parole or probation, absent an official legislative mandate.

There is, however, another avenue for change: gubernatorial and executive action. While it is important to note that not all governors have similar authority, this fact sheet discusses developments in three states, Iowa, Virginia and Florida, where advocates have pressed for executive level reform. *Before you launch a campaign, it is important to conduct legal research to ascertain what authority your state’s governor has to restore voting rights.*

Case Study: Iowa

On July 4, 2005, pursuant to his authority under the state constitution to grant reprieves, commutations and pardons (Article IV, SEC 16 of the Iowa Constitution), Iowa’s then Governor Thomas Vilsack signed Executive Order 42,¹⁹ thereby restoring the right to vote to people with felony convictions permanently disfranchised by the Iowa Constitution.²⁰ Before Vilsack signed the order, people could ask to have their voting rights restored, but were subject to a lengthy process involving the state parole board and governor’s office.

The main impact of Vilsack’s Order was retroactive, restoring the rights of citizenship for approximately 80,000 people who had completely discharged their criminal sentences as of July 4, 2005.

Muscatine County Attorney Gary Allison immediately challenged Vilsack’s action by filing a petition (Allison v. Vilsack²¹) in District Court in Muscatine, but, on October 28, 2005, Judge J. Hobart Darbyshire upheld Vilsack’s order.

Vilsack’s Order also required that, from July 4, 2005 going forward, “offenders who wholly discharge their criminal sentence, including any accompanying term of probation, parole or supervised release, will be given consideration for a restoration of citizenship rights without undue delay.” The Order then laid out the procedure for this consideration as follows:

“Beginning August 1, 2005, the Director of the Department of Corrections shall submit monthly a record of offenders meeting this criterion to the Governor’s Office. The list of eligible offenders, along with any recommendations made pursuant to Iowa Code section 907.9(4), will be reviewed forthwith to determine whether restoration of citizenship rights is warranted.”

Although a subsequent governor could rescind Vilsack’s order, thereby halting the process of ongoing enfranchisement, no governor or legislature has the authority to rescind the right to vote that Executive Order 42 bestowed upon Iowa’s 80,000 people with criminal records. Vilsack’s successor, Governor Chet Culver, a Democrat, has given no indication he intends to rescind the policy.

Case Study: Florida²²

Prior to 2007, Florida was one of three states (along with Kentucky and Virginia) that permanently disfranchised people with felony convictions, and remains the state with the largest number (more than one million) of disfranchised citizens. African Americans were particularly impacted by Florida’s Civil War era policies, which disfranchised fully 18.8% of the state’s black voting age population.

Legislation to advance felon enfranchisement reform was introduced in 2007, but did not receive meaningful attention from the legislature. On April 5, Republican Florida Governor Charlie Crist and the state clemency board (composed of the governor and three cabinet members, two Republicans and one Democrat) revised the clemency rules in an effort to reform Florida's antiquated and discriminatory felon disenfranchisement policies. The new rules can be found at <https://fpc.state.fl.us/Policies/ExecClemency/ROEC04052007.pdf>.

While the new rules do represent incremental progress, they still fall far short of a truly fair and effective plan to restore the right to vote. The effective reintegration of formerly incarcerated people, as well as basic principles of democratic fairness, dictate that Florida should adopt a truly automatic rights restoration process, free of any application or other paperwork, for all Floridians who have completed their sentences, without restitution as a precondition to rights restoration.

Under the new rules, the rights being restored are not only voting rights, but the right to serve on a jury and the right to hold public office. Additionally, individuals must have their civil rights restored before applying for many state-issued occupational licenses.

Although Governor Crist had repeatedly declared his commitment to significant reform of Florida's system, these rules fall short of this goal. Staunch opposition from cabinet member State Attorney General Bill McCollum, and more moderate opposition from cabinet member and Commissioner of Agriculture and Consumer Services Charles Bronson, contributed to the adoption of a compromise proposal, which establishes a set of complex and burdensome procedures.

Prior to the adoption of this new policy, Governor Crist declared that he intended to adopt a more uniform approach; these new rules, however, are not consistent with that position.

The only people who will truly benefit from the new practice are those convicted of less severe or nonviolent crimes. These individuals (defined as those that haven't committed any of a long list of crimes, and do not qualify as a habitual violent offender, violent career criminal or sexual predator) who have completed all terms of their sentences and supervision, paid restitution (if any), and have no pending charges against them, would receive a certificate of restoration from the clemency board. According to the Florida Parole Commission, 70% of individuals with felony convictions would be eligible for rights restoration without a hearing, if restitution has been paid. However, preliminary research by the Department of Corrections indicates that restitution, which cannot be waived by the Cabinet, may impact 41% of all applicants.

For additional information on Florida, as well as an analysis of the rules change, please visit www.restorerights.org.

Case Study: Virginia

As of December 31, 2004, a total of 377,847 people were disenfranchised in the Commonwealth of Virginia, or 6.76% of the state's voting age population.²³ Presently no executive action has taken place in Virginia, but many feel that the state is well-positioned for this type of change as the Governor has the authority to enact reform by executive order. Given the complicated legislative procedures in the Commonwealth for amending the state constitution—necessary for the law to change—an executive order strategy makes sense.

Virginia's practice disproportionately impacts African Americans to a very significant degree. As of 2006, African Americans made up 19.9% of the state population of 7.6 million, but the state's 208,343 disenfranchised African Americans (in December 2004) comprised more than half (55.1%) of the total disenfranchised population. And, while 6.76% of the total voting age population is disenfranchised, the corresponding figure

for African Americans (19.76%) is almost three times higher. Sixteen percent of all adult African Americans in the Commonwealth (including 25% of black men) cannot vote because of a felony conviction.

Furthermore, Virginia and Kentucky are now the only two states that permanently disfranchise all people with felony convictions unless the governor personally approves an individual application for restoration of rights or grants a pardon. Alternatively, in Virginia, an individual can petition the local circuit court to restore the right to vote (unless convicted of a violent felony, drug trafficking, or election fraud), at which point the court will hold a hearing on demonstrated “civil responsibility” and make a recommendation to the governor.

In 2000, the General Assembly took the first step toward reform by passing HB 1080, which requires the Department of Corrections to provide information to persons under its jurisdiction about the loss of voting rights and the process of restoration. Two years later, this process of restoration was dramatically restructured for some categories of offenses to simplify the burdensome process of petitioning the governor. Still, these reforms made no meaningful impact on the hundreds of thousands of disfranchised Virginia citizens.

To reinstate their voting and civil rights, people with felony convictions must, in addition to completing their incarceration and probation, have paid all fines. In addition, people convicted of violent felonies must wait five years before applying, and those convicted of non-violent felonies must wait three years. The application process requires applicants to retrieve all court records and sentencing orders and submit reference letters from three people.

In 2003, Virginia’s then Governor Mark Warner implemented an expedited application process for people convicted of non-violent crimes seeking the right to vote. Under Warner’s administration, a one-page application could be filed with the Secretary of the Commonwealth, who would then perform a records check. A longer 13-page application was still necessary for people convicted of violent offenses, including drug trafficking and election fraud. Between January 2002 and January 2006, Governor Warner restored civil rights to 3,486 people, more than four times the number of his four predecessors combined. Again, while admirable, these numbers barely scratched the surface of the state’s sweeping disfranchising policies.

In 2006, incoming Governor Tim Kaine promised to continue Warner’s expedited practice and between January 2006 and April 2007, Governor Kaine granted restoration to 778 people. This rate of 622 per year is somewhat less than Warner’s 871 grants of restoration annually.

Because disfranchisement in Virginia is pursuant to the state constitution—which also gives the governor the power to “remove political disabilities consequent upon conviction”—any change to the state’s policy would require either executive action by the governor or an amendment to the state constitution. During the last months of 2005, prior to Governor Warner’s departure from office, an array of non-partisan voting rights and citizen advocacy groups urged the governor to follow in the footsteps of Iowa Governor Thomas Vilsack and use his executive authority to restore the right to vote. Warner, who was mulling a possible bid for the Democratic Party Presidential nomination, was unresponsive.

Felon enfranchisement advocates in Virginia are now concentrating on a dual strategy: pressing Governor Kaine to adopt significant reforms and, in the absence of gubernatorial action, pursuing the adoption of a constitutional amendment—first by the legislature and then by the voters—to end Virginia’s draconian felon disfranchisement regime.

COMPARING YOUR STATE TO SURROUNDING STATES

As is often the case with many legislative proposals, state policymakers want to know how the proposed measure compares with similar laws in surrounding states. This dynamic may not always work in your favor, but, if you are able to show that your state is out of step with the majority of its neighbors and/or the nation as a whole, it can often be helpful.

As part of Wyoming's legislative effort on behalf of HB 235, a bill to shorten the waiting period for voting rights restoration for people convicted of first-time, non-violent crimes from five years to one year, the ACLU drafted a fact sheet from a regional perspective, which can be found on page 54 of the toolkit. The bill received bipartisan support and a "do pass" recommendation by a vote of 7 to 2 in committee but then died on the calendar, having never been called up for a floor vote.

As highlighted in the fact sheet, Wyoming is alone among its seven neighboring states (ID, MT, ND, SD, NE, CO, UT) in requiring an application process and government approval to regain the right to vote. And every one of Wyoming's neighbors has automatic restoration of the right to vote following satisfactory completion of one or more criteria.

Right to Vote can help you produce a fact sheet like this for your state relying on a variety of easy to access, publicly available source materials, including:

- "Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide," (W.S. Hein and Company, 2006), by Margaret Colgate Love. Available at: <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486>
- "Felony Disenfranchisement Laws in the United States," (Washington, D.C. The Sentencing Project, April 2007). Available at: http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf
- ACLU Map of State Felony Disfranchisement Laws (which can be found on page 32 of the toolkit)

COMPARING THE U.S. TO OTHER DEMOCRACIES & ANALYZING THE U.S.' HUMAN RIGHTS OBLIGATIONS

The Right to Vote: Human Rights Protections for People with Criminal Convictions

The United States has signed and agreed to abide by several treaties that address the right to vote: the Covenant on the Elimination of all forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), and the American Declaration on the Rights & Duties of Man (ADRDM). These obligations are binding on federal, state and local governments.

In general, taken together, the treaties emphasize principles of universal and equal suffrage, counsel against “blanket” voting bans (bans on entire classes of persons, e.g., all felony probationers), and require any deprivation of voting rights to be objective, reasonable, and proportional to both offense and sentence. Additionally, any deprivation of voting rights may not disproportionately affect minority groups. More broadly, the treaties declare that people deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. They also underscore that the purpose of prison is rehabilitation, which, in their view, begins upon entry into a prison.

In addition to these treaties, other human rights documents and agreements protect voting. They include the European Convention on Human Rights (a regional treaty for European countries), as well as certain non-binding but influential and widely accepted documents such as the Universal Declaration of Human Rights (UDHR) and the U.N.'s Standard Minimum Rules for the Treatment of Prisoners, which is a code of good practice for U.N. member states (including the U.S.).

Disfranchisement Policies in Other Democracies

Other democracies disfranchise far fewer people with criminal convictions, if they disfranchise anyone at all. Ten U.S. states, however, have bans that disfranchise a total of 2.1 million people who have fully completed their felony sentences, permanently banning some or all citizens with felony convictions from voting. Virtually no other democratic nation disfranchises its citizens after completion of sentence. In fact, many democratic nations permit, and even enable, people with felony convictions to vote in prison. Seventeen European countries (nearly half the continent) allow all prisoners to vote, and some prisoners may vote in 11 others. The remaining 12 European nations deny prisoners the vote, but generally do not bar people on parole or probation from the ballot box.

Disfranchisement Viewed by Human Rights Tribunals and Foreign Courts

Courts overseas increasingly view felony disfranchisement as a human rights issue. Recent decisions by national and regional courts in Canada,²⁴ Israel,²⁵ South Africa²⁶ and Europe²⁷ all affirm the right of a citizen to vote while incarcerated. In fact, all foreign constitutional courts that have evaluated disfranchisement laws have found the automatic, blanket disqualification of prisoners to violate basic democratic principles. The Supreme Court of Israel held that, “without the right to elect, the foundation of all other basic rights is undermined.” These courts and others have found felony disfranchisement inconsistent with domestic law as well as the international laws mentioned above that set forth the right to vote as an essential human right.

Disfranchisement of people with criminal convictions is not the democratic norm. The United States is one of the only democracies to disfranchise its citizens long after completion of their criminal sentences. Not only is this undemocratic, but it violates an individual’s basic right to suffrage and representation. In sum, American disfranchisement policies are unlike those of most of its peer democracies, and are increasingly

at odds with modern understandings of universal human rights. The United States is a blatant anachronism in remaining out of step with the world on the issue of felony disenfranchisement.

For a comprehensive discussion of relevant human rights treaties, case law, and policy statements by a wide variety of international organizations, see the ACLU report *Out of Step With the World: A Brief Overview of Felon Disfranchisement in the U.S. and other Democracies*, available online at <http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html>.

END NOTES

- ¹ Available online at <http://www.restorerights.org>.
- ² Available online at http://www.facesandvoicesofrecovery.org/pdf/KY_flyer.pdf.
- ³ Included in this packet and available online at http://stream.luxmedia501.com/?file=clients/aclu/DG_TRAILER_h.mov&type=mov.
- ⁴ Available online at <http://www.youtube.com/watch?v=cC17hdAO-gw&feature=Playlist&p=FFEC33B629CC2989&index=0>.
- ⁵ Available online at <http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html>.
- ⁶ Florida was classified as a permanent disfranchisement state until April 2007, when clemency rules changes made it unnecessary for certain individuals (deemed to have “non-violent” offenses by the Clemency Board) to apply for civil rights restoration. Civil rights restoration is not automatic even for these individuals since they must await issuance of a certificate of rights restoration. Many Florida voting rights advocates believe Florida should continue to be classified as a permanent disfranchisement state since the Clemency Rules are fully discretionary and there are lengthy delays in issuing certificates even in the case of non-violent offenses.
- ⁷ Available online at <http://www.governor.iowa.gov/administration/docs/vilsack-eo-42.pdf>.
- ⁸ Available online at http://www.aclu-ia.org/pdf/Brf_Amici_ICLU_League.pdf.
- ⁹ See note 6.
- ¹⁰ Available online at http://mlis.state.md.us/2007RS/chapters_noln/Ch_159_sb0488T.pdf.
- ¹¹ Available online at <http://www.ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H1743v7.html>.
- ¹² Available online at <http://www.sec.state.ri.us/elections/publications/gen06backfinal-prn.pdf>.
- ¹³ Available online at http://www.legislature.state.tn.us/Info/Leg_Archives/104GA/Bills/BillStatus/HB1722.htm.
- ¹⁴ In vetoing the measure, Governor Rick Perry asserted, “registering former inmates to vote is not within the mission of [Texas Department of Criminal Justice].” The governor also stated that he found it “unseemly that the state would make a greater effort to register former inmates to vote than we would any other group of citizens in this state.” He also declared that “when an individual is released from prison and their rights are restored, it is imperative that they take personal responsibility for all aspects of their life, including their right to vote...government should not make it a greater priority to register to vote those who broke our laws than those who have abided by them.” To view the bill text, go to <http://www.legis.state.tx.us/tlodocs/80R/billtext/doc/HB00770F.doc>.
- ¹⁵ Available online at <http://www.ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H1743v7.html>.
- ¹⁶ The brochure and fact sheet were developed with the assistance of the ACLU Voting Rights Project.
- ¹⁷ As reported in “Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide,” (W.S. Hein and Company, 2006), by Margaret Colgate Love.
- ¹⁸ Available online at <http://www.aclu.org/righttovote>.
- ¹⁹ Available online at <http://www.governor.iowa.gov/administration/docs/vilsack-eo-42.pdf>.
- ²⁰ Iowa Constitution (Article II, Disqualified persons. SEC. 5), reads as follows: “No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.”
- ²¹ Available online at http://www.aclu-ia.org/pdf/Brf_Amici_ICLU_League.pdf.
- ²² See note 6.

²³ Jeff Uggen and Christopher Manza, *Locked Out: Felon Disenfranchisement and American Democracy*, (Oxford University Press, USA, 2006), Table A3-3, pp. 248-250.

²⁴ Sauvé v. Canada (Attorney General), [1993] 2 S.C.R. 438 (*Sauvé No. 1*).

²⁵ Hilla Alrai v. Minister of the Interior HC2757/06 P.D. 50(2) 18 (1996).

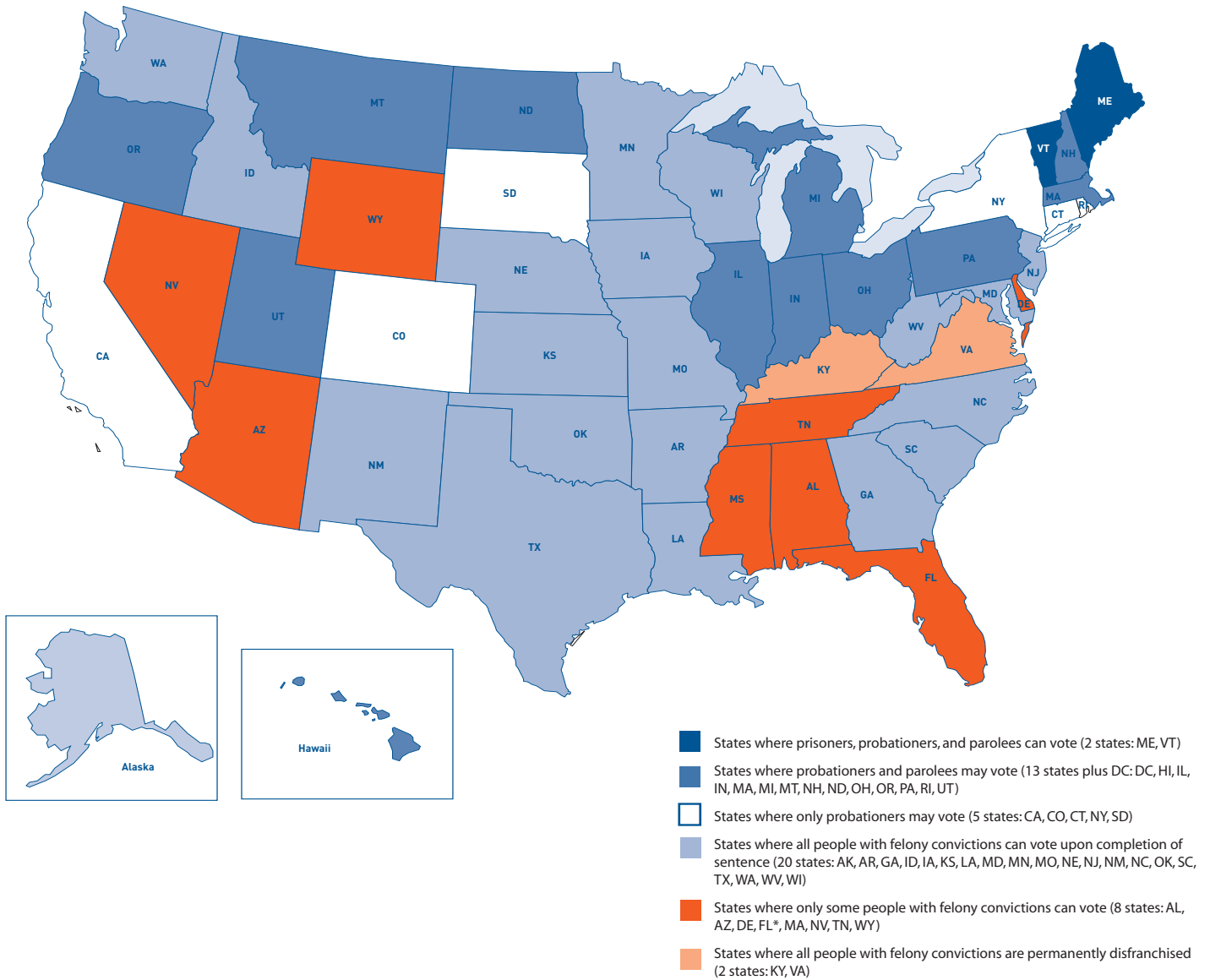
²⁶ August and Another v Electoral Commission and Others (CCT 8/99 1999).

²⁷ Hirst v United Kingdom (Hirst No.1) 30. 6. 2004, Rep 2004.



RESOURCES

MAP OF STATE FELONY DISFRANCHISEMENT LAWS, JANUARY 2008



*Some still classify FL as a permanent disenfranchisement state.

POLICY CHANGES TO STATE FELONY DISFRANCHISEMENT LAWS 1997 – 2007¹

- **Alabama:** In 2003, Governor Riley signed into law a bill that permits most people with felony convictions to apply for a certificate of eligibility to register to vote after completing their sentence.
- **Connecticut:** In 2001, Governor Rowland signed into law a bill that extends voting rights to all people on probation.
- **Delaware:** In 2000, the General Assembly passed a constitutional amendment restoring voting rights to some individuals with felony convictions five years after the completion of their sentence.
- **Florida:** In 2007, the Governor and two members of his cabinet voted to amend the state’s voting rights restoration procedure to automatically approve the reinstatement of rights for some persons convicted of non-violent offenses. Some persons convicted of violent crimes are now immediately eligible to apply for review and approval without a hearing while others must still submit to a hearing before the Clemency Board.
- **Iowa:** Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all people with felony convictions, a process that will continue on a monthly basis, upon the completion of sentence.
- **Kansas:** In 2002, the Legislature excluded people on probation from voting.
- **Kentucky:** In 2001, the Legislature passed a bill that requires that the Department of Corrections inform and aid eligible individuals in completing the restoration process to regain their civil rights.
- **Maryland:** In 2007, the Legislature repealed all provisions of the state’s lifetime voting ban, including the three-year waiting period after completion of sentence for certain categories of offenses, and instituted an automatic restoration policy for all persons upon completion of sentence.
- **Massachusetts:** In 2000, the Massachusetts electorate voted in favor of a constitutional amendment, which strips persons incarcerated for a felony offense of their right to vote.
- **Nebraska:** In 2005, the Legislature repealed the lifetime voting ban for people with felony convictions and replaced it with a two-year post-sentence ban.
- **Nevada:** In 2003, the state approved a provision to automatically restore voting rights for people convicted of first-time nonviolent felonies immediately after completion of sentence.
- **New Mexico:** In 2001, the Legislature adopted a bill repealing the state’s lifetime ban on voting for people with felony convictions. In 2005, a bill was passed that requires the Department of Corrections to provide notification of completion of sentence to the Secretary of State’s office.
- **North Carolina:** In 2007, the Legislature adopted a notice bill that requires state officials to provide notice of the right to vote as well as a voter registration card to individuals with felony convictions upon completion of their sentence.
- **Rhode Island:** In 2006, Rhode Island voters approved a referendum to amend the state constitution and restore voting rights to persons currently serving a sentence of probation or parole.
- **Tennessee:** In 2006, the Tennessee legislature amended the country’s most complex restoration system by greatly simplifying the procedure. All persons convicted of a felony (except electoral or serious violent offenses) are now eligible to have their right to vote restored upon completion of sentence and may apply for a “certificate of restoration” from the Board of Probation and Parole. All applicants must also satisfy any court-ordered restitution or child support obligations.
- **Texas:** In 1997, the Texas Legislature passed a bill, signed by Governor George W. Bush, eliminating the two-year waiting period after completion of sentence before individuals can regain their right to vote.
- **Utah:** In 1998, Utah voters approved an amendment prohibiting persons incarcerated for a felony conviction from voting. In 2006, the state legislature clarified state law regarding voting with a federal or out-of-state conviction.

■ **Virginia:** The Virginia legislature passed a law in 2000 enabling people with certain felony convictions to apply to the circuit court for the restoration of their voting rights five years after the completion of their sentence; those convicted of felony drug offenses must wait seven years after completion. The circuit court's decisions are subject to the Governor's approval.

■ **Wyoming:** In 2003, Governor Freudenthal signed a bill to allow people convicted of a non-violent first-time felony to apply for restoration of voting rights five years after completion of sentence.

¹ Current as of December 2007. Source: The Sentencing Project. See also, Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, Human Rights Watch, The Sentencing Project, October 1998; Patricia Allard and Marc Mauer, *Regaining the Vote: An Assessment of Activity Relating to Felon Disenfranchisement Laws*, The Sentencing Project, January 2000.

WHY & HOW TO CONDUCT A SURVEY OF STATE & LOCAL ELECTION OFFICIALS

Advocates and impacted individuals are not the only ones confused by the “crazy quilt” of felon disfranchisement laws around the country. Those in charge of administering disfranchisement policies are too often uninformed and dispense incorrect information to individuals seeking information about their right to vote.

In most states, individuals with felony convictions regain the right to vote at some point, but confusion about state law and eligibility acts as a hindrance to registering to vote. Conducting a statewide survey of local election agencies is one way to find out what information local election agencies are dispensing to impacted individuals.

Surveys in several states have demonstrated that these agencies are disbursing inaccurate information concerning the voting rights of people with felony convictions. For instance:

- In Mississippi, only about one-third of the local elections officials knew that a federal felony conviction was not a bar to voting in Mississippi, and only about one-half of them knew that out-of-state convictions did not disqualify individuals from voting in Mississippi.
- In New York, more than half of the local election agencies, including all five boroughs in New York City, refused to register individuals with a felony conviction until they provided various documents that were *not legally required* and often did not exist.
- In Oklahoma, 35% of the counties were unable to directly answer whether or not an individual with a felony conviction could vote, and would resort to reading the voter registration form over the phone. Thirty-one percent of the counties did not know if a federal felony conviction was a disfranchising offense.
- In Colorado, well over half of the county clerk and recorder offices demonstrated confusion regarding the administration of Colorado’s disfranchisement provisions.

In addition to learning about the level of official knowledge in your state, these surveys can also be used to:

- Push for legislative reform that seeks to expand the franchise or streamline and ease restoration processes. Surveys are particularly useful when pushing notice bills.
- Bring media attention to the issue of felon disfranchisement in your state by showcasing problems in implementation of the law.
- Seek meetings with state and local officials with the goal of jointly engaging in public education and to train officials charged with implementing the law.
- Draft op-eds, public-education materials and state-specific talking points.

Right to Vote has drafted and implemented many such surveys and utilized their findings in various ways. We would be happy to help you design a survey, conduct it, and use the results to your best advantage.

For more information, please contact Rachel Bloom and visit [http://www.brennancenter.org/dynamic/subpages/RTVToolkit\(VotingRegProcedures\).pdf](http://www.brennancenter.org/dynamic/subpages/RTVToolkit(VotingRegProcedures).pdf)



USING VIDEO TO ILLUSTRATE THE PERSONAL IMPACT OF FELONY DISFRANCHISEMENT: *DEMOCRACY'S GHOSTS*

Democracy's Ghosts is a documentary film on felony disenfranchisement. Produced by the ACLU, the film focuses on people who have lost the right to vote, revealing how it affects their lives, their communities, and, ultimately, our society.

Whether you are new to this issue or a seasoned advocate, the film and accompanying materials will help you take action to end felony disenfranchisement.

In addition to the film, the DVD contains expert perspectives on the issue, expanded chapters of the film, and a short version of the film for use at conferences and in meetings with policymakers. There's also a short, animated/live-action film put together by Off Ramp Films and one of the disenfranchised individuals featured in the film, which is great for showing at college events and conferences.

The film is a great way to introduce the issue to people. And it's free! All that we ask in return is that you let us know how and where you use it. To date, it has been used on television, shown to legislators, in colleges and law schools, churches, high schools and community meetings, to name a few.

The film can be used in a variety of ways: you can host viewing parties, air it on your local cable access network, show it at community events—in churches, community centers and schools—and more. The opportunities are endless!

To order your free copy, email demghosts@aclu.org.

SIGNIFICANT ENDORSEMENTS IN SUPPORT OF FELON ENFRANCHISEMENT REFORM

Several prominent organizations and individuals have publicly expressed support for eliminating restrictions on the franchise based on criminal convictions. Some of them also recommend that federal, state and local agencies take steps to educate those who are becoming or are eligible to vote and ensure that there are no roadblocks preventing them from voting. Depending on your state's disenfranchisement policy, these endorsements may be incorporated into your work and can be useful in countering arguments against restoring voting rights to people with felony convictions. (National ACLU maintains close contacts with several of these organizations and individuals, and can facilitate their action on behalf of your reform effort.)

POST-INCARCERATION ENFRANCHISEMENT

A. American Probation and Parole Association

Resolution Supporting Restoration of Voting Rights

WHEREAS, many citizens who have been convicted of felonies and have completed their sentences, including community supervision, do not have the right to vote; and

WHEREAS, many states have some restrictions on voting privileges for felons; and

WHEREAS, the loss of the right to vote is not based on a need to protect the integrity of the electoral process and the justice system; and

WHEREAS, disenfranchisement of felons is disproportionately affecting an increasingly large segment of the population and their families; and

WHEREAS, disenfranchisement laws work against the successful re-entry of offenders;

THEREFORE, BE IT RESOLVED that the American Probation and Parole Association advocates the restoration of voting rights upon completion of an offender's prison sentence and advocates no loss of voting rights while on community supervision.

Available online at http://www.appa-net.org/newsreleases/2007/APPA_Voting_Rights_Release.pdf

B. American Bar Association

Collateral Sanctions and Discretionary Disqualification of Convicted Persons

Standard 19-2.6 Prohibited collateral sanctions. Jurisdictions should not impose the following collateral sanctions:

(a) deprivation of the right to vote, except during actual confinement.

Available online at http://www.abanet.org/crimjust/standards/collateral_blk.html#2.2

C. The United States Conference of Catholic Bishops

Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice

Policy 7. Insisting that punishment has a constructive and rehabilitative purpose.

Finally, we must welcome ex-offenders back into society as full participating members, to the extent feasible, and support their right to vote.

Available online at <http://www.usccb.org/sdwp/criminal.shtml#policy>

D. National Latino Congreso

Resolution 5.06 - Restoration of Voting Rights

1. THEREFORE BE IT RESOLVED that the organizations represented by delegates of the 2007 National Latino Congreso endorse the automatic restoration of voting rights to individuals with felony convictions upon their release from prison; and

2. FURTHER BE IT RESOLVED that the organizations represented by delegates of the 2007 National Latino Congreso call on the legislators from those thirty-five states that continue to disenfranchise individuals who are living and working in the community to enact legislation that will automatically restore voting rights upon release from prison; and

3. FURTHER BE IT RESOLVED that the organizations represented by delegates of the 2007 National Latino Congreso pledge to support federal legislation that will automatically restore voting rights after release from prison on a national level.

Available online at <http://www.latinocongreso.org/resolutions07approved.php?id=79>

E. United Nations Human Rights Committee¹

Concluding Observations to the U.S. 2006

The state party should adopt appropriate measures to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole.

F. The New York Times

Laws that deny citizens access to the polls should be employed only after painstaking deliberation—if at all—and never in a fashion that bars an entire class of people from the polls.

Editorial “Voting Rights, Human Rights” October 14, 2005.

POST-SENTENCE ENFRANCHISEMENT

A. American Correctional Association

Public Correctional Policy on Restoration of Voting Rights for Felony Offenders

Introduction:

-People convicted of crimes are expected to become responsible citizens after being discharged from correctional supervision. However, many individuals are excluded from exercising their civic rights because they are banned from voting in many jurisdictions. The laws that prohibit offenders from voting, even after they have been discharged from correctional supervision, frustrate the offenders in their attempts to fully reenter society successfully, reduce the voting constituency, and disproportionately exclude a large number of people from participating fully in society.

-Nearly all states place some form of restriction on felon voting rights. Some states have developed processes to restore voting rights, but many felons are unaware of them, do not present the proper documentation, or the processes are often very cumbersome and have the effect of discouraging voting.

Policy Statement:

-The American Correctional Association affirms that voting is a fundamental right in a democracy and it considers a ban on voting after a felon is discharged from correctional supervision to be contradictory to the goals of a democracy, the rehabilitation of felons and their successful reentry to the community.

Therefore, ACA advocates:

- A. Restoring voting rights for felony offenders once they have been discharged from incarceration or parole;
- B. Developing protocols for federal, state and local correctional agencies that inform inmates near their release about the means by which their voting rights will be restored and provide education and assistance to felony offenders in completing the restoration process to regain their civil rights; and
- C. Developing state election agency procedures that permit eligible felony offenders to vote in elections after completing and filing all necessary paperwork.

Available online at: <http://www.aca.org/government/policyresolution/view.asp?ID=39>

B. President George W. Bush

In 1997, then Governor of Texas George W. Bush signed into law a bill that eliminated a two-year period that people with felony convictions had to wait after completing their sentences before they were entitled to register to vote.

C. Jack Kemp, former Congressman, HUD Secretary and Republican Vice-Presidential candidate

It is a matter of simple fairness that once a person has completed the entire sentence, his or her voting rights should be restored...I am further convinced that the ability to fully participate as a productive citizen—including becoming a full voting member of society—reduces recidivism and is an incentive for prisoners to change their behavior for the good.

Without a doubt, every person ordered to pay restitution, should pay it. Yet, ironically, they cannot pay restitution until their civil rights restoration opens up employment opportunities now closed to them. The requirement to pay restitution before regaining civil and voting rights should not be part of a fair solution.

Op-ed “Opportunity to Expand Civil Rights” in *The Washington Times*, April 12, 2007.

D. Chuck Colson, Founder of Prison Fellowship and former Chief Counsel for President Nixon

The unfortunate thing in American life is that the offender never stops getting punished. He’s labeled ‘ex-con’ with a scarlet ‘x’ on his forehead. And we continue to penalize him—its harder getting jobs, it’s harder being accepted into the community... What we ought to think about is what we must do both culturally and politically in order to reintegrate people into society.

Quote from the ACLU documentary *Democracy’s Ghosts*

E. National Commission on Federal Election Reform (2001), Co-chaired by former Presidents Jimmy Carter and Gerald R. Ford

Policy Recommendation 5

Each state should allow for restoration of voting rights to otherwise eligible citizens who have been convicted of a felony once they have fully served their sentence, including any term of probation or parole.

National Commission on Federal Election Reform (2005) Co-chaired by former President Jimmy Carter and Secretary of State James Baker

Policy Recommendation 4.6.1

States should allow for restoration of voting rights to otherwise eligible citizens who have been convicted of a felony (other than for a capital crime or one which requires enrollment with an offender registry for sex crimes) once they have fully served their sentence, including any term of probation or parole.

Policy Recommendation 4.6.2

States should provide information on registration to ex-felons who have become eligible to vote. In addition, each state’s Department of Corrections should automatically notify the state election office when a felon has regained eligibility to vote.

F. The National Black Police Association

This organization has not yet issued a formal policy statement on felony disfranchisement, but testified in support of post-sentence legislation in Maryland on March 9, 2007.

Restoring voting rights promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods safer. Re-enfranchising people who have served their sentences is a fair way to treat people, and it is also an effective way to enhance public safety.

From the perspective of law enforcement, excluding so many people from the political process is counterproductive. Voting is an important part of making people feel connected to their communities,

which in turn helps them avoid falling back into crime...an important factor in preventing recidivism is helping formerly incarcerated people feel connected to their community.

G. The National Latino Officers Association of America

This organization has not yet issued a formal policy statements on felony disfranchisement, but signed an amicus brief dated October 14, 2005, in the Johnson v. Bush litigation² asserting the following:

The permanent exclusion of a citizen from the political community does not materially advance any accepted goal of the criminal justice system, such as prevention, deterrence, or retribution. And a life-time exclusion from voting gravely disserves the State's interest in rehabilitating the offended and reintegrating him into civil society.

The State's interest in rehabilitation would be far better served by re-enfranchising ex-offenders who have completed their terms of incarceration and supervision.

¹ This committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by the 160 nations, including the United States, that have agreed to be bound by the treaty.

² Johnson v. Bush, 405 F.3d 1214 (11th Cir.) (en banc), cert. denied, 546 U.S. 1015 (US Nov. 14, 2005) (No. 05-212).

LEGAL PRIMER

What is the legal basis for states to disfranchise people with felony convictions?

In 1974, in a case called Richardson v. Ramirez, the U.S. Supreme Court ruled that states could exclude people with felony convictions from the franchise without violating the Fourteenth Amendment's guarantee of equal protection under the law. Its ruling hinged almost entirely on a provision of the Fourteenth Amendment that reduces a state's representation in Congress if it denies voting rights to otherwise-eligible citizens "except for participation in rebellion, or other crime." Since then, states have relied heavily on Section 2 and Richardson to support the enactment and enforcement of felon disfranchisement laws.

Are there any limitations on Richardson?

Since Richardson, courts have recognized some fundamental constitutional restrictions on state disfranchisement policies. States may not enact disfranchisement laws that reflect "*purposeful racial discrimination*" or laws that result in gender discrimination.¹

There is currently one case in federal court challenging a state's disfranchisement law. In Farrakhan v. Gregoire, the plaintiffs seek to strike down Washington State's felon disfranchisement law as racially discriminatory, in violation of Section 2 of the Voting Rights Act.² Specifically, plaintiffs argue that the interaction between the state's felon disfranchisement law and the state's racially biased criminal justice system results in a disproportionate number of racial minorities being disfranchised following a felony conviction.³ Although an appellate court has ruled that plaintiffs may challenge a felon disfranchisement law under the Voting Rights Act, a decision regarding the merits of the plaintiffs' claims is still pending.

Are any legal challenges to my state's disfranchisement policy possible?

A significant number of states require people to pay *court fees, fines, and victim restitution* before they are eligible for restoration of their voting rights. Organizations including the ACLU have challenged the constitutionality of this requirement under the Fourteenth Amendment's Equal Protection clause, as well as the Twenty-Fourth Amendment, which prohibits states from establishing poll taxes. The Supreme Court has held repeatedly that a person's wealth has no bearing on the right to vote,⁴ but the Court has not addressed indigency in connection with the right to vote for people with felony convictions. Lower courts in Florida and the Washington Supreme Court have upheld the constitutionality of this requirement,⁵ but the ACLU continues to challenge similar laws in other states, including in a pending case in Arizona federal court.⁶

In addition, at least one state, Mississippi, has *expanded the list of disfranchising crimes* in contravention of the state constitution, which expressly enumerates the list of disqualifying offenses. The ACLU has sued the state for this unlawful action under the Equal Protection Clause, the Separation of Powers Doctrine, and the National Voter Registration Act. That case is pending.⁷

Overall, litigators continue to face an uphill battle when challenging felon disenfranchisement laws in light of Richardson and its progeny. However, advocates remain optimistic that, given the increasing number of people who are under correctional supervision and the public's awareness of how many people disenfranchisement laws impact, the courts' views will shift and become more aligned with the intent of the Constitution's framers to protect the right to vote, even for the most marginalized members of our society.

For a more comprehensive memo of the legal background to felony disenfranchisement visit www.aclu.org/righttovote.

¹ See Hunter v. Underwood, 471 U.S. 222 (1985) (striking down Alabama's felon disenfranchisement law in light of evidence that the law was enacted to discriminate against African-Americans); Hobson v. Pow, 424 F.Supp. 362 (N.D. Ala. 1977) (holding unconstitutional a provision of Alabama law allowing for the disenfranchisement of men convicted of assault and battery against their wives, but not of women convicted of the same offense committed against husbands).

² No. CV-96-076-RHW, 2006 WL 1889273 (E.D. Wash. July 6, 2007).

³ *Id*

⁴ Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668 (1966)(holding that "wealth or fee paying has . . . no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned."); Harmon v. Forssenius, 380 U.S. 528, 542 (1965) ("[C]onstitutional deprivations may not be justified by some remote administrative benefit to the State.").

⁵ Johnson v. Bush, 405 F.3d 1214, 12 "In 1974, in a case called Richardson v. Ramirez, the U.S. Supreme Court ruled that states could exclude people with felony convictions from the franchise without violating the Fourteenth Amendment's guarantee of equal protection under the law. Its ruling hinged almost entirely on a provision of the Fourteenth Amendment that reduces a state's representation in Congress if it denies voting rights to otherwise-eligible citizens "except for participation in rebellion, or other crime." Since then, states have relied heavily on Section 2 and Richardson to support the enactment and enforcement of felon disenfranchisement laws 17 n.1 (11th Cir. 2005) (en banc); Madison v. State, 163 P.3d 757, 779 (Wash. 2007).

⁶ Coronado v. Napolitano, No. CV07-01089 PHX SMM (D. Ariz. June 1, 2007).

⁷ Strickland v. Clark, No. G2006-1753 S/2 (Miss. Ch. Ct. Oct. 6, 2006).

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MODEL MATERIALS

MODEL LEGISLATION: RHODE ISLAND

TITLE 17¹ Elections

CHAPTER 17-9.2 Rhode Island Restoration of Voting Rights Act

SECTION 17-9.2-3

§ 17-9.2-3 Restoration of voting rights. – (a) A person who has lost the right of suffrage under Article II, Section 1 of the Constitution of Rhode Island because of such person’s incarceration upon a felony conviction shall be restored the right to vote when that person is discharged from incarceration.

(b) Before accepting a plea of guilty or nolo contendere to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in loss of the right to vote only if and for as long as the person is incarcerated and that voting rights are restored upon discharge.

(c) The department of corrections shall act as a voter registration agency in accordance with § 17-9.1-8. In this capacity, and as part of the release process leading to a person’s discharge from a correctional facility, the department of corrections shall notify that person in writing that voting rights will be restored, provide that person with a voter registration form and a declination form, and offer that person assistance in filling out the appropriate form. Unless the registrant refuses to permit it to do so, the department of corrections shall transmit the completed voter registration form to the state board or local board where the registrant resides.

(d) The department of corrections shall, on or before the 15th day of each month, transmit to the secretary of state two (2) lists. The first shall contain the following information about persons convicted of a felony who, during the preceding period, have become ineligible to vote because of their incarceration; the second shall contain the following information about persons convicted of a felony who, during the preceding period, have become eligible to vote because of their discharge from incarceration:

- (1) name;
- (2) date of birth;
- (3) date of entry of judgment of conviction;
- (4) description of offense;
- (5) sentence.

(e) The secretary of state shall ensure that the statewide central voter registration is purged of the names of persons who are ineligible to vote because of their incarceration upon a felony conviction. The secretary of state shall likewise ensure that the names of persons who are eligible and registered to vote following their discharge from incarceration are added to the statewide central voter register in the same manner as all other names are added to that register.

(f) The secretary of state shall ensure that persons who have become eligible to vote because of their discharge from incarceration face no continued barriers to registration or voting resulting from their felony convictions.

(g) The secretary of state shall develop and implement a program to educate attorneys, judges, election officials, corrections officials, and members of the public about the requirements of this section, ensuring that:

(1) Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their voting rights in accordance with subsection (b) hereof.

(2) The department of corrections is prepared to assist people with registration to vote in anticipation of their discharge from incarceration, including by forwarding completed voter registration forms to the state board or local board where the registrant resides.

(3) The language on voter registration forms makes clear that people who have been disqualified from voting because of felony convictions regain the right to vote when they are discharged from incarceration.

(4) The state department of corrections is prepared to transmit to the secretary of state the information specified in subsection (d) hereof.

(5) Probation and parole officers are informed of the change in the law and are prepared to notify probationers and parolees that their right to vote is restored.

(6) Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes, whether disfranchising or not, is made available through a single publication to government officials and the public.

(h) Voting rights shall be restored to all Rhode Island residents who have been discharged from incarceration or who were never incarcerated following felony convictions, whether they were discharged or sentenced before or after the effective date of this section.

¹ This referendum was presented to the voters of Rhode Island and passed November 2006.

MODEL LEGISLATION: NORTH CAROLINA¹

SECTION 26. (a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

§ 16382.20A. Voter registration upon restoration of citizenship.

The State Board of Elections, the Department of Correction, and the Administrative Office of the Courts shall jointly develop and implement educational programs and procedures for persons to apply to register to vote at the time they are restored to citizenship and all filings required have been completed under Chapter 13 of the General Statutes. Those procedures shall be designed to do both of the following:

- (1) Inform the person that the restoration of rights removes the person's disqualification from voting, but that in order to vote the person must register to vote.
- (2) Provide an opportunity to that person to register to vote.

At a minimum, the program shall include a written notice to the person whose citizenship has been restored, informing that person that the person may now register to vote, with a voter registration form enclosed with the notice.”

SECTION 26. (b) This section becomes effective October 1, 2007.

¹ This bill was passed and signed into law August 19, 2007.

MODEL TALKING POINTS: COLORADO, MARCH 2007

Colorado Talking Points and Policy Arguments

1. VOTING IS A FUNDAMENTAL RIGHT AND ESSENTIAL TO AMERICAN DEMOCRACY. WITHOUT A VOTE, CITIZENS HAVE NO VOICE.

Voting is a fundamental right and a civic duty. Restoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration reintegrate into society. When people are released from prison, they deserve a second chance to work, raise families and vote. Taxpaying citizens deserve a say in their government and voting is an essential part of reassuming the duties of full citizenship. As the U.S. Supreme Court stated in *Reynolds v. Sims*, 377 U.S. 533 (1964): “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”

2. INDIVIDUALS WHO VOTE HELP MAKE A COMMUNITY SAFER AND MORE VIBRANT

Individuals who vote help make a community safer and more vibrant. They also are more likely to give to charity, volunteer, attend school board meetings, serve on juries, be interested in politics, participate in a public demonstration and cooperate with fellow citizens on community affairs.¹ Recent studies indicate that voting encourages “volunteering and other good forms of citizenship.”² Additionally, there are inter-generational benefits to voting. When children see their parents voting, they are more likely to engage in voting as adults. Research on voting participation shows that participation leads to more participation.³ Finally, research shows that formerly incarcerated individuals who vote are less likely to be re-arrested. In one study, Minnesotans with felony convictions who voted in the 1996 presidential election were about half as likely to be rearrested from 1997-2000 as non-voting Minnesotans with felony convictions.

3. PEOPLE ON PAROLE LIVE & WORK IN OUR COMMUNITIES AND SHOULD BE ALLOWED TO VOTE. A SIGNIFICANT MAJORITY OF THE PUBLIC AGREES.

The people to whom SB 83 extends the right to vote—those on parole—live and work in our Colorado communities. Approximately one quarter of the disfranchised population in Colorado is comprised of people on parole—law-abiding taxpayers who live in the community.⁴ **According to a 2002 Harris Interactive national public opinion survey, 60% of respondents said that people who had been convicted of a crime, but released from prison on parole and living in the community, should have the right to vote.**⁵

4. DISFRANCHISEMENT MAKES AN INDIVIDUAL’S RETURN TO THE COMMUNITY MORE CHALLENGING.

Prominent law enforcement officials have described “the vital importance that the right to vote has on the health and welfare of this nation,” and have argued that, “[disfranchisement] laws may, in fact, undermine the rehabilitative aims of incarceration and parole.”⁶ Chief Advocate for the Maine Corrections Department, Wesley Andrenyak, called voting “one of the basic rights granted citizens,” and testified, “an integral part of this (incarceration) process is the ability for prisoners to become productive citizens in their community upon release. One of the basic entitlements and responsibilities regarding civic responsibility is to exercise one’s ability to vote.”⁷

5. DISFRANCHISEMENT HAS A RACIALLY DISPROPORTIONATE IMPACT IN COLORADO.

Disfranchisement of persons convicted of offenses in Colorado has a disproportionate impact on minority communities. The rate of disfranchisement of African American voters in the state (5.41%) is more than six times the statewide rate (.84%). African Americans and Latinos comprise less than a quarter of Colorado's population, yet account for half of all people on parole. As of December 31, 2004, there were an estimated 28,636 people in Colorado disfranchised due to felony convictions, of which 20,537 were in prison, 6,920 were on parole and 1,180 were in jail. With a voting age population of 3,397,937, these 28,636 disfranchised Coloradans represent an overall disfranchisement rate of 0.86%. This figure compares to a disfranchisement rate of 5.41% for African Americans in Colorado, where 7,459 African Americans are disfranchised out of a total black voting age population of 137,783.⁸

6. ENFRANCHISING PEOPLE ON PAROLE STREAMLINES THE RESTORATION PROCESS, CONSERVES GOVERNMENT RESOURCES AND SAVES TAXPAYER MONEY.

Enfranchising people upon their release from incarceration streamlines the process of restoring the right to vote. Language in S.B. 83 would simplify restoration by making persons eligible to vote once they have served their term of imprisonment, thereby concentrating in the Department of Corrections the responsibility for initiating restoration of voting rights. A streamlined restoration process conserves government resources and saves taxpayer dollars.

7. ACCORDING TO THE COLORADO SUPREME COURT, THE LEGISLATURE HAS THE AUTHORITY TO ENFRANCHISE PEOPLE ON PAROLE.

The Colorado Supreme Court confirmed in Danielson v. Dennis that the legislature of the State of Colorado has the authority to determine that, for purposes of the Election Code, persons released on parole have completed their full term of imprisonment and are therefore no longer disfranchised pursuant to Article V, Section 10 of the Colorado Constitution.

8. THE FAILURE TO ENFRANCHISE INDIVIDUALS AFTER RELEASE FROM PRISON MAKES THE UNITED STATES AN OUTLIER ON THE WORLD SCENE.

The United States is the only democratic nation that currently disfranchises large numbers of non-incarcerated individuals. In fact, many democratic nations permit even prisoners to vote, including 17 European countries, Canada, Israel and South Africa. Another 11 European countries ban some in prison from voting while allowing other prisoners to vote.

9. PASSAGE OF S.B. 83 IN COLORADO WOULD BE CONSISTENT WITH THE OVERALL NATIONAL TREND TOWARD EXPANDING DEMOCRACY AND THE RIGHT TO VOTE, ESPECIALLY FOR PEOPLE WITH FELONY CONVICTIONS.

Colorado has harsher felon disfranchisement laws than 15 other states, yet, since 1997, a total of 16 states have adopted less restrictive disfranchising provisions. The state legislative landscape is now dominated by reform measures that dismantle barriers to voting for persons with prior criminal convictions. By adopting S.B. 83, Colorado lawmakers will be keeping in step with the nation as a whole, by continuing to remove barriers to voting for people with criminal records.

¹ Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community*, (USA: Simon and Schuster, 2000).

² Stephen Knack, “Social Altruism and Voter Turnout: Evidence from the 1991 NES Pilot Study,” (USA: University of Maryland, 1992). James McCann. “Electoral Participation and Local Community Activism; Spillover Effects 1992- 1996.” Paper presented at the annual meeting of the American Political Science Association in 1998. As referenced in Putnam, 2000.

³ Mary Gittell, “Empowering Citizens: From Social Citizenship to Social Capital,” *Social Capital and Social Citizenship*, (England: Lexington Books, 2003).

⁴ As of December 31, 2004, there were an estimated 28,636 disfranchised felons in Colorado, of which 20,537 were prisoners, 6,920 were parolees and 1,180 were jail inmates. These 6,920 parolees represent 24.16% of the total population of disfranchised felons. See: Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, (USA: Oxford University Press, 2006), Table A3-3, p. 248.

⁵ Jeff Manza, Clem Brooks, Christopher Uggen. “Public Attitudes Toward Felon Disenfranchisement in the United States,” *Public Opinion Quarterly* 69, (2004): 275-286.

⁶ Muntaqim et al. v. Coombs et al., In Banc Brief of Amici Curaie Zachary W. Carter et al. In Support of Plaintiffs-Appellants and in Support of Reversal, 01-7260-cv/04 – 3886 –pr (March 30, 2005) at 9-12

⁷ From testimony Wesley Andrenyak gave Maine legislators who were considering stripping inmates of their right to vote. Maine and Vermont are two New England states that allow inmates the right to vote.

⁸ Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, (USA: Oxford University Press, 2006), Table A3-3, p. 248 and Table A3-4, p. 251.

MODEL FACT SHEET: WYOMING, JANUARY 2007

Felony Disfranchisement in Wyoming & Surrounding States¹

FACT SHEET²

When it comes to the removal of voting rights from individuals with felony convictions, Wyoming is significantly out of step with all of its neighboring states and far from the mainstream when compared to the nation as a whole. Consider the following:

- Wyoming is one of only eight states that permanently disfranchise at least some people with felony convictions unless the government approves individual rights restoration.³ In sharp contrast, fully 39 other states *automatically* restore voting rights at differing points in the process (i.e. completion of sentence, probation or parole, or release from incarceration), while two states, Maine and Vermont, never disfranchise people with felony convictions. Three states, Florida, Kentucky and Virginia, permanently disfranchise all people with felony convictions unless the state government approves individual rights restoration.
- With regard to its seven neighboring states (ID, MT, ND, SD, NE, CO, UT), Wyoming is *alone* in requiring an application process and government approval to regain the right to vote. Every one of Wyoming's neighbors has automatic restoration of the right to vote following satisfactory completion of one or more criteria. For example, in Montana the right to vote is automatically restored after release from incarceration; in Idaho after completion of sentence including incarceration, probation and parole; and in Nebraska after a two year waiting period following completion of sentence, including parole.
- In 2003, new legislation enacted in Wyoming enabled people convicted of first time, non-violent felonies to apply to the Wyoming Board of Parole for a certificate restoring their voting rights five years after successful completion of sentence. With the exception of Nebraska—which has a waiting period of two years, after which rights are automatically restored—no neighboring state has any waiting period prior to rights restoration.
- Wyoming's 2003 reform was in keeping with a broad national trend, wherein 16 states have adopted less restrictive disfranchising provisions since 1997. The state legislative landscape is now dominated by reform measures, and Wyoming lawmakers will be keeping in step with both neighboring states and the nation as a whole by continuing to remove barriers to voting for individuals with felony convictions.

A brief summary of voting rights for people with felony convictions in Wyoming's neighboring states of Montana, North Dakota, South Dakota, Nebraska, Colorado, Utah and Idaho follows below.

IDAHO

Automatic restoration after completion of sentence, including incarceration, probation and parole.

A sentence of custody following a felony conviction suspends all the civil rights of the person so sentenced. Civil rights are restored upon final discharge of sentence, where "final discharge" means satisfactory completion of imprisonment, probation and parole. A suspended sentence also results in loss of the right to vote.

MONTANA**Automatic restoration after release from incarceration.**

Pursuant to the State Constitution, a convicted person is ineligible to vote only if “serving a sentence for a felony in a penal institution.” (Mont. Const. art. IV, § 2). The right to vote is regained upon release from incarceration. Full rights—including firearms rights—are automatically restored “by termination of state supervision for any offense against the state.”

NORTH DAKOTA**Automatic restoration after release from incarceration.**

The rights to vote and to hold public office are lost upon conviction of a felony and sentence to imprisonment “during the term of actual incarceration,” but automatically restored upon release from prison. Release from incarceration also restores the right to sit on a jury, except for people convicted of certain offenses.

SOUTH DAKOTA**Automatic restoration after full discharge of sentence, including parole.**

Civil rights, including the right to vote, are lost upon a sentence to imprisonment and regained only when the prison sentence is fully discharged, including parole; people not sentenced to a term of incarceration do not lose any civil rights. Rights are lost, however, if the prison sentence is suspended by court, and are not restored until “the termination of the time of the original sentence or the time extended by order of the court.” Upon issuance of discharge certificate by Secretary of Corrections, a person is considered “restored to the full rights of citizenship,” although the discharge certificate is not issued until the entire prison sentence is completed, including any period of parole. People not sentenced to a term of incarceration do not lose any civil rights.

NEBRASKA**Automatic restoration of voting rights after two year waiting period following completion of sentence, including parole.**

Before 2005, all felony convictions resulted in the permanent loss of voting rights. Under legislation passed in 2005, the right to vote is now restored *automatically* two years after completion of sentence, including any period of parole. Support was sufficient to override a gubernatorial veto. The measure has returned the right to vote to more than 50,000 Nebraskans. Individuals who were convicted of a felony in another state only lose the right to vote and other civil rights in Nebraska, if they have been imprisoned for an offense that would be punishable by imprisonment under Nebraska law.

COLORADO**Automatic restoration of voting rights after serving full term of imprisonment and parole; probationers never lose the right to vote.**

A person loses the right to vote if sentenced to a prison term and does not regain it until completion of parole. Voting rights are automatically restored “after serving out [the] full term of imprisonment.” A person in pre-trial detention may vote, as can persons sentenced to probation only.

UTAH

Automatic restoration of voting rights while on probation or parole, or after completing entire prison sentence.

Persons convicted of felonies lose the right to vote, but that right is restored *automatically* upon 1) a sentence to probation by the sentencing court; 2) release on parole by the Board of Pardons; or 3) successful completion of a term of incarceration. In 2006, the Utah General Assembly clarified state law to ensure that the right to vote is automatically restored. Individuals with out-of-state or federal felony convictions are now subject to the same rights restoration laws as those convicted within Utah. Because of this legislation, any person convicted of a felony is allowed to vote while on probation or parole, or after completing his entire prison sentence, regardless of whether the conviction was in a Utah court, a federal court, or a court of another state.

OTHER STATES

It is worth noting that other Western states have made significant changes in recent years in order to remove barriers to voting for people with criminal records. For example:

Texas – In 1997, then Governor George W. Bush signed legislation into law repealing Texas’ two year post-sentence waiting period. Current law in Texas denies the right to vote to persons on probation, in prison, or under parole supervision, but the right to vote is automatically restored upon final discharge from sentence. The elimination of the two year waiting period restored voting rights to approximately 317,000 Texans who would otherwise have remained disfranchised.

Nevada – In 2001, Nevada lawmakers eliminated the five year waiting period before people with felony convictions could even apply for restoration of voting rights. Persons discharged to probation were also given the right to apply for rights restoration directly with the Division of Parole and are no longer required to go through the court system. In 2003, the State Assembly automatically restored the right to vote to persons convicted of a first-time, non-violent offense upon completion of sentence, thereby eliminating the burdensome process of applying for rights restoration for them.

New Mexico – In 2001, the New Mexico legislature repealed the state’s lifetime prohibition against voting for persons convicted of felonies and restored the right to vote to nearly 69,000 residents. In 2005, the legislature implemented a notification process requiring the Department of Corrections to issue a certificate of completion of sentence and notify the Secretary of State when an individual has completed his or her sentence.

¹ Sources: Margaret Colgate Love, “Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide,” (W.S. Hein and Company, 2006), and The Sentencing Project, “Felony Disenfranchisement Laws in the United States,” (Washington, D.C.: The Sentencing Project, April 2007).

² This fact sheet was created in January 2007. Since its creation, several of the laws referenced in these talking points have changed.

³ The eight states are: AL, AZ, DE, MD, MS, NV, TN, and WY.

MODEL TESTIMONY: ALASKA, FEBRUARY 2007

Testimony of

DANIEL LEVITAS

On behalf of

THE AMERICAN CIVIL LIBERTIES UNION

On

SB 7

AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

Before the

STATE AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE - FIRST SESSION
STATE OF ALASKA

February 22, 2007

Good afternoon Madam Chairman and members of the Committee. Thank you very much for the opportunity to testify today on SB 7, a measure addressing the voting rights of persons with felony convictions in Alaska. I urge your support for this important legislation.

My name is Daniel Levitas and I am a consultant to the American Civil Liberties Union on the issue of felon enfranchisement and am based in Atlanta, Georgia. Founded in 1920, the ACLU is a non-profit, nonpartisan organization with more than 500,000 members nationwide dedicated to preserving and protecting civil liberties and civil rights.

Currently there are an estimated 5.3 million Americans who are disfranchised as a result of a prior criminal conviction, including approximately 11,132 persons in Alaska, which represents 2.42% of the state's voting age population.¹ It is especially important to note that the majority of Alaska's disfranchised population is *not* in prison or jail, but actually living in the community. In fact, slightly more than half the 11,132 disfranchised persons in Alaska, or 6,010 people, are on felony probation (5,083 and 46%) or parole (927 and 8%).

Currently Alaska is one of 19 states where the right to vote is automatically restored upon completion of sentence, including the term of incarceration, probation and parole.

However, there are a growing number of states—20 to be exact—whose disfranchisement policies are less harsh than Alaska's and whose policies are likely to promote more effective reintegration of people with felony convictions. I hope that you and your colleagues in the Alaska legislature will give strong consideration to embracing this trend with the adoption of SB 7.

For example, in 13 states and the District of Columbia (including Oregon, Montana, Utah and Indiana), individuals with felony convictions can vote automatically upon release from prison.² In five

other states voting rights are restored automatically after release from prison and discharge from parole, but probationers may vote.³ And in two states—Maine and Vermont—there are no felon disfranchising provisions.

In taking up SB 7, Alaska policymakers are hardly alone in considering less restrictive disfranchising provisions. Over the past ten years there has been a broad national trend of adopting less restrictive measures with 16 states implementing positive reforms to their felon disfranchisement policies. And legislators in Colorado and Washington State are currently debating measures nearly identical to SB 7, which would fully enfranchise all persons upon release from incarceration. And just last fall, Rhode Island voters approved a statewide ballot initiative that restored voting rights to approximately 15,000 individuals on parole and probation in that state.

This trend is also one that enjoys support across the political spectrum. While testifying last summer in favor of renewing the expiring provisions of the Voting Rights Act, former Cabinet Secretary Jack Kemp declared his support for felon enfranchisement. And Florida's new Governor, Charlie Crist, who said during his campaign that he favored instituting automatic restoration of voting rights, was recently scheduled to meet personally with Kemp to discuss how to move forward on this issue. In Virginia, one of only three states that still permanently disfranchise felony offenders, the Republican controlled state senate voted overwhelmingly early this month in favor of a constitutional amendment that would allow the General Assembly to restore voting rights to formerly incarcerated individuals who committed nonviolent crimes.

In Alaska, as is the case elsewhere in the United States, the vast majority of inmates are going to return to their communities. It is therefore in our collective interest for people with felony convictions to function as responsible taxpayers and citizens, recognizing the full range of their responsibilities to society. Passage of SB 7 would help facilitate this goal by enabling more people with prior felony convictions to vote and thereby giving them a higher stake in their Alaska communities. After all, people on probation and parole are law-abiding citizens who are living in the community, working or seeking work, raising their families and paying taxes.

Restricting voting rights does not prevent crime or provide compensation to victims. Instead, disfranchising people following their release from incarceration accomplishes exactly the opposite of what we should be doing to promote re-entry. In this way, prolonged disfranchisement of citizens with criminal convictions after their release from incarceration is actually harmful to the prospects for sustainable reintegration of people with felony convictions into society. In fact, extending the right to vote to individuals who are released from incarceration is also likely to reduce the chances that they will re-offend as recent research finds a link between voting participation and re-offense: people who voted after release from supervision were half as likely to be re-arrested as those who did not vote.⁴ Similar effects were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted.⁵

In contrast, maintaining Alaska's current policy of disfranchising offenders who are deemed safe enough to be living and working in local communities on probation or parole can only discourage these offenders from becoming productive members of society, enhance their likelihood of re-arrest, and weaken democratic institutions by decreasing participation in the voting process.

Overall, criminal disfranchisement also has a disproportionate impact on minority communities. While disfranchisement policies prevent 2.5% of the total population from voting nationwide, they prevent 13% of the total population of African American men from casting a ballot.⁶ In Alaska, while the majority of individuals with felony convictions are Caucasian, felony disfranchisement still has a very significant racially disproportionate effect. For example, 1,469 of the 11,132 Alaskans who are disfranchised as a result of a felony conviction are African American, which represents 7.6% of the overall black voting age population in the state. This compares with the aforementioned disfranchisement rate of just 2.4% for all

voters (including minorities). Put another way, African Americans are disfranchised at a rate nearly four times that of whites in Alaska as a result of current disfranchisement policy.

Alaska Natives are similarly impacted. According to state Department of Corrections statistics, in 2000, Alaska Natives constituted 31%⁷ of the total disfranchised population, though they comprised only 15.6% of the total population.⁸ And of the 5,046 persons on probation and parole as of December 2003, approximately 55% (or 2,774 persons) were white, while 28% were Alaska Natives, and approximately 9% were African American, which is more than double the state's 3.7% black population.⁹ The remaining 6% of parolees and probationers were divided roughly equally between Latinos and Asian Americans/Pacific Islanders.

Voting is a fundamental right and a civic duty. As the U.S. Supreme Court stated in its landmark 1964 decision, Reynolds v. Sims, “*The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.*”¹⁰

Thank you very much.

¹ Alaska’s voting age population was 459,529 people as of December 31, 2004 – the date for which we have the most recent comprehensive data on disfranchised persons.

² The 13 states are: HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT.

³ The five states are: CA, CO, CT, NY, and SD.

⁴ Jeff Manza & Christopher Uggen. “Voting and Subsequent Crime and Arrest: Evidence from a Community Sample.” *Columbia Human Rights Law Review* 36, No. 1 (2004) 193-215.

⁵ *Ibid.*

⁶ Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, (USA: Oxford University Press, 2006), Table A3-3, p. 248 and Table A3-4, p. 251.

See, also: The Sentencing Project and Human Rights Watch, “Losing the Vote. The Impact of Felony Disenfranchisement Laws in the United States,” (October 1998).

⁷ Alaska Department of Corrections. “2003 Offender Profile” (2003). p. 11, 66. Accessed: January 22, 2007 <<http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf>>

⁸ US Census Bureau. “Profile of General Demographic Characteristics: Alaska.” (April 1, 2000). Accessed: January 22, 2007 http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US02&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-_sse=on

⁹ <http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf>

¹⁰ Reynolds v. Sims, 377 U.S. 533 (1964).

MODEL TESTIMONY: RHODE ISLAND, JUNE 2005

Testimony of

LALEH ISPAHANI

On behalf of

THE AMERICAN CIVIL LIBERTIES UNION

On

On HB 6280 and HB 6069

RHODE ISLAND RESTORATION OF VOTING RIGHTS ACT

Before the

HOUSE COMMITTEE ON JUDICIARY
STATE OF RHODE ISLAND

Thank you for the opportunity to testify today regarding House Bills 6280 and 6069. I am the Voting Rights Fellow at the American Civil Liberties Union, an organization that works to defend and preserve the Bill of Rights. The ACLU is a member of the national Right to Vote Campaign, which works to reform felony disenfranchisement policies nationwide. I have worked intensively on felony disenfranchisement for three years, writing and speaking frequently on the issue, including by publishing a report last fall that examined the procedures states use to purge people from their voter rolls.

In my testimony I will present a brief overview of the national scale of this problem and recent legislative developments, followed by a rationale for why this legislation would establish a more fair and effective policy for Rhode Island.

National Overview

Currently, nearly five million American citizens cannot vote as a result of a felony conviction. In recent years, there has been a great deal of legislative activity around the nation concerning disenfranchisement policies. This has happened as the public and policymakers have become aware of the broad impact of these practices, leading to a reconsideration of the wisdom of policies that in many cases were developed a century or two ago. Since 1996, ten states have enacted reforms to their disenfranchisement statutes, significantly including neighboring Connecticut's extension of voting rights to persons on probation.

No Penological Justification for Disfranchising People on Probation and Parole

Persons living in the community under probation or parole supervision have been determined by judges or corrections officials to *not* require incarceration for the safety of the community. Further, these persons are presumed to have the same rights and responsibilities as other citizens, except for supervision and reporting requirements imposed by corrections agencies. Persons on probation, for example, can get married or divorced, write a letter to the editor, or participate in their child's PTA organization. It is in the community's best interest to encourage these activities, because to the degree that persons under supervision maintain positive connections with the community they will be less likely to recidivate. Encouraging

such activities is also consistent with the Rhode Island Department of Corrections' asserted purposes of parole and probation that are "rehabilitation, responsibility, and meaningful reintegration", which includes good citizenship.

A recent study found that voters were half as likely to recidivate than non-voters. For persons with a prior arrest, 27% of non-voters were re-arrested over a three-year period, compared with only 12% of voters.

Expansion of Voting Rights Would Eliminate Problems of Determining Eligibility

While each state has its own laws regarding voting eligibility for people with felony convictions, there are also a variety of practical issues that determine who is actually able to vote. In recent years, we have witnessed enormous problems involved in making these determinations. These have led to both eligible people being inappropriately denied the right to vote and ineligible people being permitted to vote.

Such situations in Colorado, Florida and Washington State, among others, all resulted from a combination of confusing laws, limitations in database technology, and inadequate training of election officials. While some advances may be made in the area of technology, there is no strong reason to believe that these problems can be substantially remedied in most states in the near future.

Because of these practical problems, a state policy that permitted voting for all non-incarcerated persons would be the simplest one for election officials and for the voting public. Anyone applying in person to register to vote would by definition not be incarcerated, and therefore election officials would not need to conduct any investigation into their status. In states like Pennsylvania, where this is the case, election officials are clear about who is eligible; voter fraud has not been an issue and is, in any case, prevented by a statute denying ballots to incarcerated individuals.

Conclusion: Growing Support for Reform

Rhode Island is currently the most restrictive state in New England, disfranchising not only incarcerated individuals, but also those serving time in the community under probation and parole. Vermont and Maine do not disfranchise anyone, and prisoners regularly vote from their cells without incident. In New Hampshire and Massachusetts, only prisoners are disfranchised. And in Connecticut, prisoners and parolees are disfranchised but people on probation may vote. Changing state policy along the lines of HB 6069 would place Rhode Island closer to these other New England states.

Notably, 86% of those deprived of the vote in Rhode Island are not in prison, but are living and working in the community. Moreover, Rhode Island's probation sentences are the second longest in the nation, which means that individuals who have committed low-level felony offenses can be deprived of the right to vote for decades. In absolute numbers, Rhode Island disfranchises more people than any New England state (15,758), as well as by percentage of population (2.09%). Rhode Island also disfranchises a higher percentage of African-Americans than Mississippi, Louisiana, Georgia, North Carolina, South Carolina, and Tennessee, and 31 other states. The state bars 20% of African-American men and 9% of Hispanic men from voting.

Nationally, 16 states restore voting rights to those on parole, and 20 states retain voting rights for people sentenced to probation. Enfranchising citizens on probation would thus place Rhode Island, nationally, in the mainstream. Enfranchising parolees as well would put Rhode Island slightly ahead of the national mainstream. Changing state policy along the lines of HB 6280 and 6069 would also place Rhode Island closer to the 14 states that enfranchise all people post-incarceration. These states do not fit any traditional patterns of being liberal or conservative, and include states as diverse as Illinois, Massachusetts, North Dakota, and Oregon.

I hope that Rhode Island can join the growing movement for reform of disfranchisement policies. Such a change would aid persons returning to the community from incarceration, as well providing public safety benefits for all residents. I appreciate your consideration of these remarks and would be pleased to work with the Committee if I can be of any further assistance.

■ MODEL RESOLUTION: NEW JERSEY

Resolution Supporting the Restoration of Voting Rights to People on Probation and Parole

WHEREAS, [New Jersey] citizens who are on probation and parole do not have the right to vote;

WHEREAS, more than [150,000] citizens of [New Jersey] are deprived of the right to vote because they are on probation or parole;

WHEREAS, voting is both a fundamental right and a civic duty that strengthens our democracy;

WHEREAS, voting is an essential part of reclaiming the duties of full citizenship and persons who have been released from incarceration should have the right to participate in civic activities, including choosing their elected representatives;

WHEREAS, restoring the right to vote helps people who have completed their term of incarceration to reintegrate into society, and research shows that formerly incarcerated people who vote are less likely to be re-arrested;

WHEREAS, individuals who vote help make a community safer and more vibrant, and are more likely to give to charity, volunteer, attend school board meetings, serve on juries, be interested in politics, cooperate with fellow citizens on community affairs and encourage their children to vote;

WHEREAS, felony disfranchisement has a disproportionate impact on people and communities of color in [New Jersey];

WHEREAS, felony disfranchisement penalizes entire communities, particularly those with high concentrations of people on probation or parole, by reducing their political power and their say in the political decisions affecting them, their families and their communities;

WHEREAS, the loss of the right to vote is not based on a need to protect the integrity of the electoral process and the justice system;

WHEREAS, enfranchising people on probation and parole streamlines the restoration process, conserves government resources and saves taxpayer money;

WHEREAS, a strong majority of the public supports felon enfranchisement reform;

WHEREAS, the trend nationally is towards expanding our democracy, including the right to vote, especially for people with felony convictions, and [New Jersey's neighbor states of Connecticut, Delaware, Maryland and Rhode Island have all enacted enfranchising reforms in recent years];

WHEREAS, 13 states and the District of Columbia automatically restore voting rights upon release from prison, five states permit people on probation to vote, and two states allow people in prison to vote;

WHEREAS, numerous criminal justice and legal associations support the restoration of voting rights upon release from incarceration, including the American Probation and Parole Association and the American Bar Association;

WHEREAS, the United States, the only democratic nation in the world that currently disfranchises large numbers of non-incarcerated individuals, is clearly out of step with other advanced democracies;

WHEREAS, numerous international human rights treaties, documents and agreements protect voting rights for people with criminal convictions, and the U.S. and [New Jersey] are in violation of these universal human rights standards as they pertain to voting;

THEREFORE, BE IT RESOLVED that the [City of XXX] advocates the restoration of voting rights for citizens on probation or parole and calls on [the Legislature and Governor of New Jersey] to enact legislation that will automatically restore voting rights to people on probation and parole.

MODEL BRIEFING PAPER: WISCONSIN



Felony Disfranchisement in Wisconsin

Felony disfranchisement is a policy that bars citizens from the ballot box upon conviction of a felony. In the United States, over 5.3 million Americans cannot vote due to a felony conviction. Felony disfranchisement laws vary from state to state, but 48 states bar incarcerated individuals from casting a ballot, with only Maine and Vermont allowing inmates to vote. Ten states permanently ban certain individuals with a felony conviction from voting and two states bar all persons with felony convictions from voting.

The vast majority of disfranchised individuals are no longer incarcerated, but are living in their communities on probation or parole and 2.1 million of the disfranchised population have fully completed their sentences. These individuals are tax-paying citizens, involved with the issues in their community, but unable to vote to affect them.

The impact of felony disfranchisement falls disproportionately upon communities of color. Nearly 1.5 million African-American men, or 13%, are disfranchised due to felony convictions, a rate that is seven times the national average of one out of 41 adults. If incarceration rates hold steady, three in ten of the next generation of black men can expect to be disfranchised at some point in their lives.

However, over the last decade the national trend has been toward lowering barriers for the disfranchised. Since 1997, 16 states have made progressive changes to their felony disfranchisement laws, enfranchising over 700,000 formerly incarcerated individuals.

In a democracy voting is a right, not a privilege. But for over 5 million Americans, that is not the case. We are aiming to change that in Wisconsin.

- More than 62,000 Wisconsin residents are disfranchised.
- The majority of Wisconsin's disfranchised population is not in prison or jail, but lives in Wisconsin's communities.
- One out of nine African-American voters in Wisconsin is disfranchised, compared to one out of 50 Wisconsin voters.
- Wisconsin has more restrictive felony disfranchisement laws than 20 other states, including Michigan, Illinois, Indiana and Ohio.

Wisconsin Disfranchisement Policy

In Wisconsin, individuals with felony convictions are barred from voting until full completion of their sentences – incarceration or probation and any period of parole and/or extended supervision. Individuals must register to vote upon completion of sentence.

Who is disfranchised regionally?

Wisconsin's felony disfranchisement laws are more restrictive than four neighboring states. Michigan, Illinois, Indiana and Ohio all automatically restore voting rights upon release from incarceration. Two other neighbors, Minnesota and Iowa, however, restore voting rights upon completion of sentence. Iowa's current policy, adopted July 4, 2005, by then Governor Tom Vilsack, enfranchised approximately 80,000 Iowans who had until then been permanently barred from voting.

Who is disfranchised in Wisconsin?

An estimated 62,342 people with felony convictions are barred from voting in Wisconsin. Only 39% of the disfranchised are in prison while

40% are on probation and 21% are on parole. Like many of us, probationers and parolees live in their communities and work, pay taxes and raise families.

Racial Impact

One out of nine African-American voters is disfranchised in Wisconsin, compared to one out of 50 Wisconsin voters. As a result, Wisconsin has the 11th highest rate of African-American disfranchisement in the United States. African Americans comprise 39% of the disfranchised population, even though they comprise only 5% of the states voting age population.

Voting & Public Safety

Felony disfranchisement runs counter to the goal of public safety. Restricting voting rights does not prevent crime, nor does it provide compensation to victims. In fact, disfranchising persons after release from prison is antithetical to the reentry process and harmful to long-term prospects for sustainable reintegration of ex-offenders into society. Research has found a link between voting participation and re-offense; people who voted after release from supervision were half as likely to be re-arrested as those who did not vote. Similar effects

were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted.

Far from making streets safer, felony disfranchisement may be detrimental to public safety. Voting demonstrates an individual's commitment to the institutions of American democracy. The irony of felony disfranchisement is that the very behavior that society strives to encourage – the commitment to the larger social and political collective – is undermined by a policy that requires people who desire to engage in that behavior to relinquish the right to vote.

How can I help in Wisconsin?

Join the state-wide coalition working to repeal Wisconsin's law. To contact the coalition, email liberty@aclu-wi.org

Call your legislator and tell them you support the legislation that has been introduced in the Wisconsin legislature to restore voting rights upon release from incarceration.

Visit democracysghosts.com and aclu-wi.org to learn more about the issue and watch a film on felon disfranchisement. Show the film to your friends and neighbors!

MODEL PUB-ED: GEORGIA



RESTORE YOUR RIGHT TO VOTE!

"The right to choose our leaders is perhaps the most fundamental right we have as Americans. Georgians who have been convicted of a felony ARE still eligible to exercise this right by registering to vote upon completion of their sentence....

Georgia law makes felons eligible to register to vote immediately upon completing their sentence. If is automatic, there is no application or formal process.

There is a need for greater public education on this issue as these citizens begin to rebuild their lives and become productive members of society."

Cathy Cox, Secretary of State



FOR MORE INFORMATION PLEASE CONTACT:

ACLU of Georgia
70 Fairlies Street • Atlanta, GA 30303
404.523.6201

Georgia Rural Urban Summit
PO Box 225 • Decatur, GA 30031-0225
404.522.GRUS (4787)

Georgia Secretary of State
214 State Capital • Atlanta, GA 30334
404.656.2881

GA's Constitution protects your most sacred right. Your vote is your voice.

If you are an ex-felon, and have completed your sentence requirements, you are eligible to vote.

STAND UP FOR YOUR RIGHTS REGISTER TO VOTE!

You qualify to vote if registered 30 days in advance of an election day!

TO RECEIVE MORE INFORMATION N YOUR VOTING RIGHTS PLEASE CALL 1-800-816-5166

■ MODEL OP-ED: JACK KEMP

Thursday, April 12, 2007

Washington Times

An Opportunity to Expand Civil Rights

By Jack Kemp

The Maryland Legislature recently passed a law restoring the right to vote to all ex-offenders who have fully completed their sentences and finished parole and probation, with the exception of people convicted of election fraud. And in Florida, Gov. Charlie Crist and his Cabinet took the first steps toward ending the civil rights crisis in that state by proposing new rules to restore the civil rights (including the right to vote) for ex-offenders.

These are important developments that deserve support, but the effort is far from over. The Maryland bill still awaits Gov. Martin O'Malley's signature, the complexity of the new Florida rules are cause for concern and millions of Americans in other states who have paid their debt to society are still excluded from participating in the most fundamental exercise of any democracy—the right to vote.

In Maryland, where I have lived since 1971, an estimated 50,000 citizens, despite the fact that they have completed their criminal sentences and are responsible, law-abiding taxpayers in their communities, still cannot vote. If signed into law, the Maryland Voter Registration Protection Act would change the state's outdated rules that bar even people who commit misdemeanors, which are less serious crimes, from voting. In fact, Maryland is one of only two states that disenfranchise people for committing those minor crimes even if they never serve a day in jail.

Simply put, it is now time to move Maryland into the mainstream by restoring voting rights to people after they have fully completed their criminal sentences.

In Florida, Crist's desire to change that state's Civil War-era disenfranchisement policies is admirable and long in coming, but the proposed rules still fall short of a truly fair, effective and automatic plan to restore the right to vote.

Along with Kentucky and Virginia, Florida stands alone in permanently disenfranchising ex-offenders for life, even after they have completed all terms and conditions of their sentence and post-incarceration supervision. Its disenfranchisement laws affect nearly 1 million Floridians—that's one out of every 15 men, women and children. In Florida, people with past felony convictions lose not only the basic right to vote, but also the right to run for public office, sit on a jury, hold numerous occupational licenses and in many cases even get a decent-paying job.

The problem is that Florida's newly proposed clemency rules fail to explicitly address how to treat literally hundreds of thousands of currently disenfranchised ex-felons who already have completed their sentences and are law-abiding taxpayers, living and working in their communities. The governor's office has said that the State Department of Corrections will try to be proactive in assisting these individuals by transmitting their records to the Florida Parole Commission for processing. But this still falls short of a truly fair and effective plan to restore the right to vote.

The new process is made additionally unfair by the rule that all ex-offenders who owe restitution will remain ineligible for civil rights restoration.

Without a doubt, every person ordered to pay restitution should pay it. Yet the irony is that they cannot pay restitution until their civil rights are restored, since civil rights restoration opens up employment opportunities that are now closed to them. The requirement to pay restitution before regaining civil and voting rights should not be part of a fair solution.

I applaud Crist and his Cabinet as they continue to work on comprehensive civil rights restoration reform. The effective reintegration of ex-offenders, as well as basic principles of democratic fairness, dictate that Florida should adopt a truly automatic, paperwork-free rights restoration process for all Floridians who have completed their sentences. It also should remove the financial barriers to restoration of civil rights.

It is a matter of simple fairness that once a person has completed the entire sentence, his or her rights should be restored. My experience visiting prisons, including one in Florida, and that of my wife as a member of Prison Fellowship, Chuck Colson's wonderful (and very effective) ministry, convinces me that being able to start with a clean slate after fully completing one's sentence provides an important element of hope during incarceration. I am further convinced that the ability to fully participate as a productive citizen—including becoming a full voting member of society—reduces the rate of recidivism and is an incentive for those in prison to change their behavior for the good.

Maryland is poised to abandon its voting bans, and Florida has taken an important first step. Now other states—especially Kentucky and Virginia, the last two states that permanently disenfranchise ex-offenders for life—should take action. As a member of the party founded in large part by Abraham Lincoln, I'm proud to stand in favor of this historic civil rights reform.

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■ MODEL OP-ED: WASHINGTON STATE

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State's system for restoring voter rights unfair, unwieldy

By Kathleen Taylor

Consider two people who are convicted of felonies. Both go to prison and serve their time. But one is able to vote upon release from custody, while the other will not be able to vote for many years after release, perhaps ever.

What makes the difference — seriousness of the offense? Length of sentence? Personal history?

In Washington, the answer is “none of the above.” The person with more money is far more likely to regain the right to vote. This is because of a state law — recently upheld by the Washington Supreme Court — under which the right to vote will be restored only after payment of all court costs and other related financial obligations. And that includes interest, which accrues at 12 percent per year.

In practice, this means a wealthy citizen may be able to vote again almost immediately; a citizen who cannot afford to pay the financial portions of the sentence right away may wait many years, maybe forever, to vote again.

The system for restoring voting rights isn't just unfair. It is so complex and confusing that it causes major problems at election times. Election officials find it devilishly complicated to figure out who still owes money on a sentence. The Department of Corrections stops keeping records after persons have completed their terms of custody. Payments are made to a network of county court clerks; they each have their own accounting systems that were never designed to interface with voter-registration rolls.

As a result, state and local officials often are uncertain exactly who is eligible to vote. In short, this is a broken system.

The effects of the law are widespread, affecting tens of thousands of citizens. The vast majority of people convicted of crimes in Washington are poor when they enter prison, and even poorer when they leave. Once out, it can be difficult for them to find decent-paying jobs. Overall, only a small portion of the people convicted of felonies in Washington are ever able to vote again after they have served their time.

The loss of voting rights hits racial minorities especially hard. Felony disenfranchisement affects 3.6 percent of the state's total voting-age population, but 10.6 percent of the Latino population and 17.2 percent of the African-American population.

As a matter of principle, a democratic society should never condition the right to vote on a person's wealth. Poll taxes have been justly outlawed. And, we normally do not use the right to vote as a method of debt collection. People with unpaid parking tickets also owe money to the state, but they are not disenfranchised.

Many states have a more-sensible, streamlined system. Our Northwest neighbors, Oregon and Montana, automatically restore the right to vote at the end of the term of imprisonment. A simple, clear rule based

on whether a person is currently incarcerated would have eliminated some of the confusion we saw in the 2004 elections. Anyone not in prison who is otherwise eligible may register to vote. Any other system requires election officials to become bogged down in a maze of paperwork, subject to mistakes and second-guessing.

The current system also places a barrier to rehabilitation of people who have served their time. At least two recent studies have shown that people who vote after their release from prison are far less likely to commit future crimes than those who do not. As a matter of public safety, the state should encourage full political participation.

Fortunately, the Legislature can fix this broken system. No constitutional amendment is required. In 2007, Sen. Jeanne Kohl-Welles, D-Seattle, and Rep. Jeannie Darneille, D-Tacoma, sponsored automatic-restoration bills. The Secretary of State's Office and the Department of Corrections supported the legislation. So did a wide array of organizations, including the League of Women Voters, the Washington State Labor Council, the Paralyzed Veterans of America, and the Washington Coalition of Sexual Assault Programs.

Though the legislation did not pass this year, it will be up for consideration again in 2008.

Gov. Christine Gregoire has observed that Washington's current re-enfranchisement system creates "a virtual debtor's prison." It doesn't have to be that way. We should join the states that automatically restore voting rights once people have finished their prison sentences. And, we shouldn't wait to act until after the next major election.

Kathleen Taylor is executive director of the American Civil Liberties Union of Washington.

