

# CHALLENGES to Fair Elections



## The Case Against Felony Disfranchisement

Felony disfranchisement is the practice of denying people with felony convictions the right to vote. The American tradition of states determining their own election laws has led to a national patchwork of policies and practices that result in *de jure* and *de facto* denial of the vote based on felony conviction status. Currently, most states impose some voting restrictions on people with felony convictions, ranging from a prohibition from voting while incarcerated to a virtual lifetime ban. In 2004, these laws were responsible for directly denying 5.3 million Americans their right to vote, with millions more disfranchised due to a variety of procedures that leave even eligible voters misinformed about their voting rights.

No other Western democracy disfranchises so many of its citizens. Furthermore, the United States is the only democracy in the world that takes the vote away from citizens who have completed their sentences. Compounding the problem, state corrections authorities and elections officials rarely advise people with felony convictions about their voting rights, and when they do, they often distribute unclear and inaccurate information.

As the November 2006 election approaches, with so many known problems and new concerns about the health of our election system, this is a pivotal time to examine the state of our democracy.

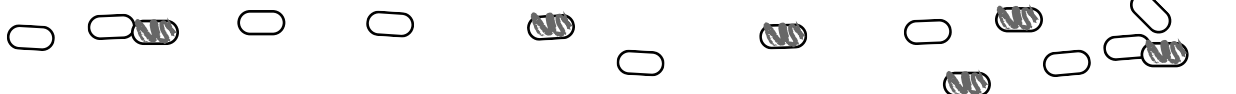
### Where to Watch

#### Problems:

Alabama, Arizona, Delaware, Florida, Kentucky, Maryland, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Washington, and Wyoming all effectively disfranchise some or all ex-felons, sometimes for life. Florida is especially egregious, disfranchising over 1 million of its citizens, or 9 percent of its voting age population, in 2004.

#### Progress:

Like virtually every other Western democracy, Vermont and Maine allow prisoners to vote. Other states have made significant changes in their felony disfranchisement policies in recent years. For example, in 2005, Iowa Governor Tom Vilsack issued an executive order restoring the voting rights of an estimated 100,000 current ex-felons<sup>1</sup> and automatically restoring voting rights for Iowans as they are released from supervision.



## **The Facts:**

- 5.3 million Americans – 1 in every 40 voting-age adults – were barred from voting in 2004 because of a felony conviction.<sup>2</sup>
- Approximately 73 percent of disfranchised individuals are living in our communities, paying taxes, working, and raising a family. Denying these 3.9 million people a voice in our government reduces them to second-class citizens, a practice deeply at odds with the fundamental American value of fairness.<sup>3</sup>
- Felony disfranchisement policies undermine the spirit and purpose of American democracy and put us at odds with other democratic nations. The United States is the only Western democratic nation that takes the vote away from citizens who have completed their sentences. In fact, many countries also allow prisoners to vote, including Canada, Denmark, France, Israel, Japan, Kenya, Norway, Peru, South Africa, Sweden, and Zimbabwe.<sup>4</sup>
- Restoring the vote to ex-felons is part of effective rehabilitation. Restrictions on voting rights impede the goal of reintegrating those with felony convictions back into our communities. A recent study has offered evidence that those who vote are less likely to be re-arrested.<sup>5</sup>
- Additionally, felony disfranchisement laws have a disproportionately negative impact on the voting strength and representation of communities of color:
  - In states that disfranchise ex-offenders, one in four black men is permanently disfranchised.<sup>6</sup>
  - Given current rates of incarceration, three in 10 of the next generation of black men can expect to be disfranchised at some point during their lifetime.<sup>7</sup>
  - The average disfranchisement rate for blacks is nearly five times higher than that of non-black Americans. In Connecticut, Pennsylvania, and Illinois, the disfranchisement rate for blacks is more than 17 times higher.<sup>8</sup>
  - Nationwide, over 13 percent of black adult males are denied the right to vote<sup>9</sup>, and black men make up 38 percent of the total disfranchised population.<sup>10</sup>
  - Seventeen percent of Latino men will enter prison in their lifetime, compared to only 6 percent of white men, replicating much of the political disfranchisement experienced in the African American community.<sup>11</sup>

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**Myth: In most states, individuals with a felony conviction cannot vote.**

**Reality: The majority of states restore the right to vote to former prisoners.**

Although there is a widespread belief among affected communities and even elections officials that a felony conviction permanently bars an individual from voting, only 13 states disfranchise their citizens after completion of their sentences.<sup>12</sup> There are seven states whose laws require permanent disfranchisement under certain circumstances.<sup>13</sup> Twelve states and the District of Columbia allow those on parole and probation to vote<sup>14</sup> and another five states disfranchise parolees, but allow probationers to vote<sup>15</sup>. It is essential that individuals with felony convictions be provided with accurate information on their voting rights.

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**Myth: Most Americans support permanent disfranchisement.**

**Reality: Eighty percent of Americans believe that all people who have completed their sentences should have the right to vote.**

According to a July 2002 Harris Interactive poll, 80 percent of Americans believe that all people who have completed their sentences should have the right to vote. The same poll found that over 60 percent of Americans believe that citizens on probation or parole should have the right to vote.

National opinion leaders like *The New York Times* and *The Christian Science Monitor*, as well as a number of local and regional newspapers, have editorialized in support of voting by people with felony convictions—as have many community, religious, and political leaders across the nation.

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**Myth: Felony disfranchisement laws were adopted as a sanction for criminal behavior.**

**Reality: States adopted felony disfranchisement restrictions as part of their voter eligibility laws, like age and residency requirements, but often to suppress the African American vote.**

The loss of voting rights is a “collateral consequence” of a felony conviction, an administrative measure which is not part of the official conviction record. Many individuals are not even aware of the loss of their voting rights until they are released. Many of the harshest felony disfranchisement laws were enacted in the post-Reconstruction era as a method of keeping newly freed African Americans from the voting booth. By 1920, states throughout the South disfranchised individuals for crimes thought to be disproportionately committed by African Americans, such as theft and vagrancy, while crimes viewed as more likely to be committed by whites, such as murder and assault, did not lead to disfranchisement. While the civil rights movement succeeded in overturning the obvious barriers to the vote, felony disfranchisement continues to affect the same result: large segments of the black electorate are barred from voting.

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**Myth: No state allows prisoners to vote.**

**Reality: Maine and Vermont allow all imprisoned citizens to vote.**

Maine and Vermont allow citizens incarcerated for a felony conviction to vote from prison. In addition, even in states that disfranchise imprisoned felons, those in jail awaiting trial or those convicted of a misdemeanor are permitted to register and vote while incarcerated.

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**Myth: Once a person has served their time they can have their right to vote restored.**

**Reality: Thirteen states disfranchise citizens who have completed their sentences, sometimes for life.**

In these states,<sup>16</sup> even people who have served their prison terms, completed probation and parole, paid any fines, and have been reincorporated into our communities may be barred from voting, sometimes for life. In fact, 39 percent of the disfranchised population, an estimated 2.1 million individuals, have completed the terms of their sentence and still remain disfranchised.<sup>17</sup>

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**Myth: This is a partisan issue.**

**Reality: Voting rights restoration has bipartisan and international support.**

In August 2001, the National Commission on Federal Election Reform, chaired by former Presidents Carter and Ford, recommended that all states restore voting rights to citizens who have fully served their sentences. Thirty-one U.S. senators recently voted for a measure introduced by Senators Harry Reid (D-NV) and Arlen Specter (R-PA) – both former district attorneys – to grant voting rights in federal elections to people upon completion of their sentences. In 1997, President Bush, then governor of Texas, signed a bill that facilitated voting rights restoration for those with felony convictions. In July 2006, the United Nations Human Rights Committee condemned the U.S.’s disfranchisement policies and called for the extension of voting rights to all individuals upon release from prison. Most recently, Charlie Crist, the Republican candidate for governor in Florida, said he is in favor of automatic restoration of voting rights for felons once they have completed their sentences.<sup>18</sup>

## Momentum for Change

With growing nationwide momentum for voting rights restoration, sixteen states have implemented reforms since 1997 resulting in the restoration of voting rights to approximately 621,400 individuals.<sup>19</sup> In 2001, Connecticut restored the right to vote to 36,000 citizens by extending voting rights to citizens on probation. Iowa Governor Tom Vilsack issued an executive order in 2005, restoring the vote to those who have completed supervision. Vilsack's order reduced the number of disfranchised Iowans by 81%, or approximately 100,000 persons.<sup>20</sup>

Also in recent months, an Alabama court has enjoined the state from implementing its felony disfranchisement law until it clarified the offenses that constituted crimes of “moral turpitude,” the class of offenses that cost Alabamans the right to vote. The state is appealing that decision. Rhode Island citizens will vote on a ballot question on November 7 that would extend the vote to individuals serving parole and probation. Tennessee has also relaxed its felon voting restrictions in recent months—although its requirement that individuals pay all unpaid child support before registering to vote is likely to keep otherwise eligible low-income citizens off the voter rolls. Most recently, the American Civil Liberties Union filed a lawsuit in Mississippi to stop the state from disfranchising people who have been convicted of crimes other than the ten specifically listed in the state's Constitution.

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## References

- 1 Ryan S. King. *A Decade of Reform: Felony Disenfranchisement Policy in the United States*, October 2006, available at [http://www.sentencingproject.org/pdfs/FVR\\_Decade\\_Reform.pdf](http://www.sentencingproject.org/pdfs/FVR_Decade_Reform.pdf).
  - 2 Jeff Manza and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy*. Oxford University Press (2006).
  - 3 Ibid.
  - 4 See ACLU, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies*, May 2006, available at <http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html>.
  - 5 Christopher Uggen and Jeff Manza. Voting and Subsequent Crime & Arrest: Evidence from a Community Sample, 36, *Colum. Human Rights L. Rev.* 193 (2004).
  - 6 *Felon Disenfranchisement Laws in the United States*, The Sentencing Project at <http://www.sentencingproject.org/pdfs.1046.pdf> (viewed October 2006).
  - 7 Ibid.
  - 8 Ryan S. King. *A Decade of Reform: Felony Disenfranchisement Policy in the United States*, October 2006, available at [http://www.sentencingproject.org/pdfs/FVR\\_Decade\\_Reform.pdf](http://www.sentencingproject.org/pdfs/FVR_Decade_Reform.pdf).
  - 9 *Felon Disenfranchisement Laws in the United States*, The Sentencing Project at <http://www.sentencingproject.org/pdfs.1046.pdf> (viewed October 2006).
  - 10 Calculated from figures in Jeff Manza and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy*. Oxford University Press (2006).
  - 11 Ibid.
  - 12 Alabama, Arizona, Delaware, Florida, Kentucky, Maryland, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Washington, and Wyoming effectively disfranchise some or all ex-felons, sometimes permanently. Scholars and advocates use varying criteria when evaluating and classifying states' disfranchisement procedures, leading to slight variations in their conclusions about the number of states that disfranchise ex-felons, and for how long. The number of states currently ranges from 12 to 14.
  - 13 According to unpublished research by Professor Keesha Middlemass, the seven states that require permanent disfranchisement under certain circumstances are Alabama, Delaware, Maryland, Missouri, Tennessee, Washington, and Wyoming. Note that Florida is not among these states since it doesn't permanently disfranchise anyone as a matter of law. Florida requires a pardon from the Board of Executive Clemency, which consists of the governor and his cabinet. This process can take years, and few pardons are granted. Since Governor Jeb Bush took office in 1999, Florida's Clemency Board has rejected more than 200,000 applications for restoration of civil rights. In 2004, close to a million (957,423) ex-felons remain disfranchised.
  - 14 These twelve states are Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Utah, and the District of Columbia.
  - 15 These five states are California, Colorado, Connecticut, New York, and South Dakota.
  - 16 See endnote 11.
  - 17 Jeff Manza and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy*. Oxford University Press (2006).
  - 18 William March, “Christ would let all felons vote,” *The Tampa Tribune*, October 14, 2006.
  - 19 Ryan S. King. *A Decade of Reform: Felony Disenfranchisement Policy in the United States*, October 2006, available at [http://www.sentencingproject.org/pdfs/FVR\\_Decade\\_Reform.pdf](http://www.sentencingproject.org/pdfs/FVR_Decade_Reform.pdf).
  - 20 Ibid.
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