



## THE DEMOCRACY RESTORATION ACT

### **Felony Disfranchisement – A Civil Right Denied**

Voting is a fundamental right and a cornerstone of our democracy. The Supreme Court has said the right to vote is “preservative of all rights.”<sup>1</sup> Unfortunately, millions of Americans have had their right to vote revoked because of a criminal conviction. Upon release from incarceration, these citizens work, pay taxes, live in our communities and bring up families, yet they are without a voice. An estimated 5.3 million citizens cannot vote as a result of felony convictions, and nearly 4 million of those have been released from prison and are living and working in the community.<sup>2</sup>

Worse still, felony disfranchisement laws are rooted in the Jim Crow era and were intended to bar minorities from voting. The impact of these laws continues today. Nationwide 13% of African American men have lost the right to vote – a rate seven times the national average.<sup>3</sup> Latino citizens are also disproportionately disfranchised because they are disproportionately over-represented in the criminal justice system. Over the last few decades, the number of disfranchised citizens has been increasing because of an incarceration boom fueled by mandatory minimum sentences and the “war on drugs.” In turn, this has impacted the families of those who are disfranchised and the communities in which they reside by reducing their collective political voice.

Any democracy is stronger with broad civic engagement and election participation. The United States, however, is one of the few western democratic nations that excludes such large numbers of people from the democratic process. In fact, almost half of European countries preserve the right to vote for all incarcerated persons and a smaller number of countries impose a time limited ban on voting for a few categories of prisoners.<sup>4</sup>

By continuing to deny citizens the right to vote based on a past criminal conviction, the government is endorsing a system that expects these citizens to contribute to the community, but denies them participation in our democracy. Not only is disfranchising millions of citizens undemocratic, but it is counterproductive to the rehabilitation and reintegration into society of those released from prison.

### **Confusion Surrounding Varied State Laws**

Confusion regarding state felony disfranchisement laws has resulted in legitimate voters, sometimes even those with no disqualifying criminal conviction, being purged from the rolls or denied the ability to register to vote or cast their ballots. Research indicates that many election officials do not understand their state’s basic voter eligibility laws or the registration procedures for voters with a criminal conviction.<sup>5</sup> There is often confusion

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<sup>1</sup> *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

<sup>2</sup> ERIKA WOOD & RACHEL BLOOM, *DE FACTO DISENFRANCHISEMENT 1* (2008), available at <http://www.aclu.org/votingrights/exoffenders/36992pub20081001.html>.

<sup>3</sup> Brennan Center, “Voting After Criminal Conviction” website, [http://www.brennancenter.org/content/section/category/voting\\_after\\_criminal\\_conviction](http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction) (last visited Apr. 1, 2009).

<sup>4</sup> LALEH ISPAHANI, *OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISFRANCHISEMENT IN THE U.S. AND OTHER DEMOCRACIES 3* (2006), available at <http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html>.

<sup>5</sup> WOOD & BLOOM, *supra* note 2, at 2.

regarding a voter's eligibility while on probation versus parole, whether a misdemeanor can disqualify a voter, and how to re-register to vote in states that do not permanently disfranchise those with felony convictions.<sup>6</sup>

States have vastly different approaches to voting with a criminal conviction. For example, some states permanently disfranchise some, but not all, citizens with felony convictions, while others allow voting after a sentence is completed or after release from prison.<sup>7</sup> Two states, Virginia and Kentucky, permanently disfranchise citizens with felony convictions unless the state approves individual rights restoration; two states, Maine and Vermont, allow all persons with felony convictions to vote, even while incarcerated; all other states fall somewhere in between.<sup>8</sup> Unfortunately, this has caused widespread confusion about the proper administration of state laws that, in turn, has contributed to the disfranchisement of even eligible citizens.

### **A Legislative Solution: The Democracy Restoration Act**

Congressional action is needed to establish a federal standard that restores voting rights in federal elections to the millions of Americans who are living in the community, but continue to be denied their ability to fully participate in civic life. Senator Russell Feingold and Representative John Conyers introduced the Democracy Restoration Act in the 110<sup>th</sup> Congress (S. 3640/HR 7136) and reintroduction in the 111<sup>th</sup> Congress is expected soon.

The provisions of the Democracy Restoration Act would:

- Restore voting rights in federal elections to nearly 4 million Americans who have been released from prison and are living in the community.
- Ensure that probationers never lose their right to vote in federal elections.
- Notify people about their right to vote in federal elections when they are leaving prison, sentenced to probation, or convicted of a misdemeanor.

Passage of the Democracy Restoration Act would:

- Create a uniform standard across the country in federal elections.
- Strengthen our democracy by creating a broader and more just base of voter participation.
- Aid law enforcement by encouraging participation in civic life, assisting reintegration, and rebuilding ties to the community.
- Facilitate election administration by streamlining registration issues and eliminating the opportunity for erroneous purges of eligible voters.
- Eliminate the confusion about who is eligible to vote.

As the Supreme Court has said, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”<sup>9</sup> It is time to restore the most precious of civil rights that has been denied far too long to millions of American citizens.

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<sup>6</sup> *Id.* at 1-6.

<sup>7</sup> See Voting Rights for People with Criminal Records: 2008 State Legislative and Policy Changes, <http://www.aclu.org/votingrights/exoffenders/statelegispolicy2008.html> (last visited Apr. 1, 2009) (contains a map detailing state laws).

<sup>8</sup> *Id.*

<sup>9</sup> *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).