

BRENNAN
CENTER
FOR JUSTICE

RESTORING THE
RIGHT TO VOTE

Erika Wood

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S RIGHT TO VOTE PROJECT

The Right to Vote Project leads a nationwide campaign to restore voting rights to people with criminal convictions. Brennan Center staff counsels policymakers and advocates, provides legal and constitutional analysis, drafts legislation and regulations, engages in litigation challenging disenfranchising laws, surveys the implementation of existing laws, and promotes the restoration of voting rights through public outreach and education.

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ACKNOWLEDGMENTS

The author would like to thank Garima Malhotra, Liz Budnitz, Judith Joffe-Block, Larry Schwartztol, and Denise Schulman for their invaluable research assistance, and Matt Robinson, Carl Wicklund, Deborah Goldberg, Ryan King, Kimberly Haven, Andres Idarraga, Denver Schimming, Koren Carbuccia, Myrna Pérez, Renée Paradis, Ana Muñoz, and members of the Brennan Center Law Enforcement and Criminal Justice Advisory Council for their helpful comments. The Center thanks the Carnegie Corporation of New York, Educational Foundation of America, Ford Foundation, JEHT Foundation, Open Society Institute, and an anonymous donor for the generous support that made this paper possible. The statements made and views expressed in this paper are solely the responsibility of the Brennan Center.

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I. INTRODUCTION

The right to vote forms the core of American democracy. Our history is marked by successful struggles to expand the franchise, to include those previously barred from the electorate because of race, class, or gender. As a result our democracy is richer, more diverse, and more representative of the people than ever before. There remains, however, one significant blanket barrier to the franchise. 5.3 million American citizens are not allowed to vote because of a felony conviction. As many as 4 million of these people

THERE REMAINS ONE SIGNIFICANT BLANKET BARRIER TO THE FRANCHISE. 5.3 MILLION AMERICAN CITIZENS ARE NOT ALLOWED TO VOTE BECAUSE OF A FELONY CONVICTION.

live, work and raise families in our communities, but because of a conviction in their past they are still denied the right to vote.

Felony disenfranchisement serves no legitimate purpose. More disconcerting, these laws are rooted

in the Jim Crow era and were designed to lock freed slaves out of the voting process. It is time to remove this last barrier to the franchise.

The Brennan Center for Justice at NYU School of Law proposes **automatic post-incarceration voting rights restoration**¹ in each of the 35 states that still disenfranchise people who are not in prison (see map, p. 3).

Under this system, citizens released from prison would be immediately eligible to vote while on probation and parole, as would those who are sentenced to probation without serving any time in prison. These citizens would be permitted to register in precisely the same way as other eligible citizens, without submission of special paperwork.

Specifically, the Brennan Center proposes that all vote restoration policies:

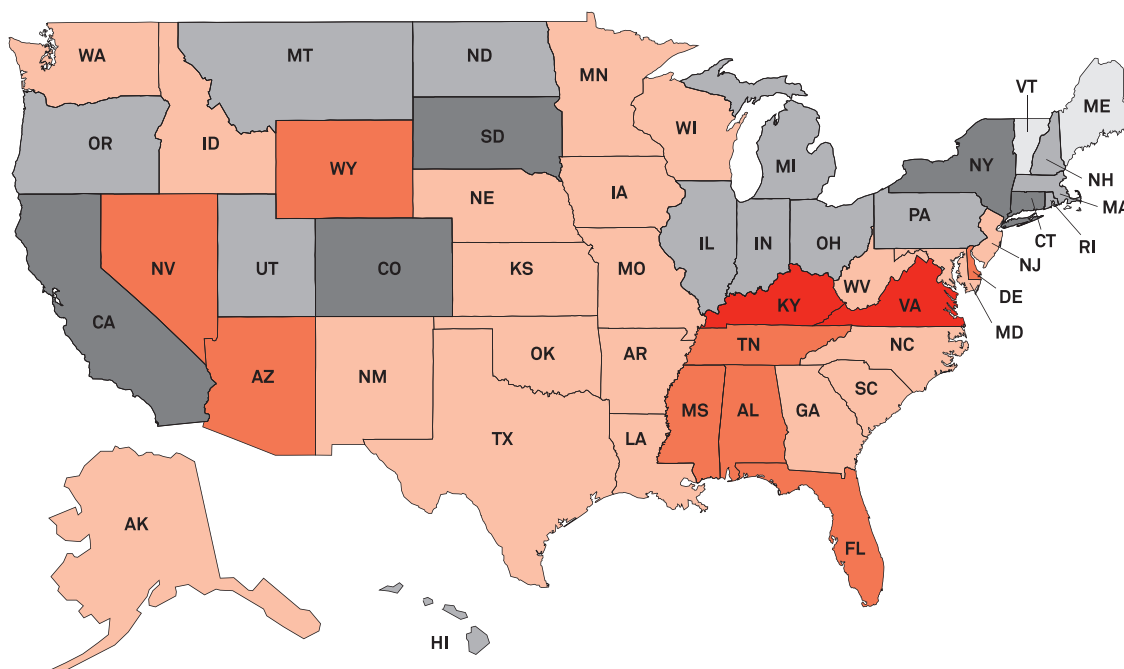
- **Automatically restore voting rights to people living in the community.** Voting rights should not be contingent upon payment of fees, fines, restitution, or other legal financial obligations.
- **Ensure that criminal defendants receive notice:** (1) before conviction and sentencing to prison, that they will lose their voting rights while in prison; and (2) upon release from prison, that they are again eligible to register and vote.

- **Assist eligible voters with registration.** Make the Department of Corrections and Probation and Parole authorities responsible for assisting with voluntary voter registration. Ensure that all citizens are subject to the same application procedures.
- **Synchronize statewide voter registration databases.** Names on the state's computerized list of registered voters should be marked inactive upon a person's imprisonment and then reactivated upon release from incarceration by electronic information-sharing between criminal justice agencies and elections agencies.
- **Educate eligible voters.** The state's chief election official should be responsible for educating other government agencies and the public about the new law.

These proposals are based on research, policy objectives, and historical analysis presented in this report. We conclude that post-incarceration voting rights restoration builds a stronger democracy, advances civil rights, ends second-class citizenship, aids law enforcement, empowers family and communities, and assures fair and accurate voter rolls.

CRIMINAL DISENFRANCHISEMENT LAWS ACROSS THE U.S.

States vary widely on when voting rights are restored. Maine and Vermont do not withdraw the franchise based on criminal convictions; even prisoners may vote there. Kentucky and Virginia are the last two remaining states that permanently disenfranchise all people with felony convictions, unless they receive individual, discretionary, executive clemency.²



- Permanent disenfranchisement for all people with felony convictions, unless government approves individual rights restoration: KY, VA
- Permanent disenfranchisement for at least some people with criminal convictions, unless government approves individual rights restoration: AL, AZ, DE, FL, MS, NV, TN, WY
- Voting rights restored upon completion of sentence, including prison, parole, and probation: AK, AR, GA, ID, IA, KS, LA, MD, MN, MO, NE,* NJ, NM, NC, OK, SC, TX, WA, WV, WI
* Nebraska imposes a two-year waiting period after completion of sentence.
- Voting rights restored after release from prison and discharge from parole (probationers may vote): CA, CO, CT, NY,* SD
* In New York, people on parole may vote if they have received a Certificate of Relief from Disabilities.
- Voting rights restored to people on probation and parole: DC, HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT
- No disenfranchisement for people with criminal convictions: ME, VT

II. THE CASE FOR POST-INCARCERATION VOTING RIGHTS RESTORATION

BUILDING A STRONGER DEMOCRACY

Abraham Lincoln famously described American democracy as “government of the people, by the people, for the people.” Today our country is closer to this democratic principle than ever before, but only after centuries of persistent struggle to expand the franchise. Felony disenfranchisement represents one of the last remaining barriers between citizens and the ballot box.

During the early days of the Republic, the right to vote was limited to propertied white men. Since the first elections in 1789, however, the journey towards a more equal and just society has been marked by expanded suffrage. By the end of the 1850’s most states had abolished property requirements.³ In 1870 the Fifteenth Amendment enfranchised African-American men, but grandfather clauses, literacy tests, and poll taxes still barred most freedmen from the voting booth. In 1915 the grandfather clause was struck down as unconstitutional.⁴ Five years later, the Nineteenth Amendment extended the right to vote to women.⁵ By the mid-1950s most states had extended suffrage to Native Americans.⁶ In 1964 the Twenty-Fourth Amendment abolished the poll tax, and the following year the Voting Rights Act outlawed literacy tests and other measures that had long been used to suppress the African-American vote.⁷ The continuing disenfranchisement of citizens with criminal histories today starkly contrasts with our increasingly inclusive vision of democracy.

Denying the right to vote to people who are living and working in the community runs counter to the modern ideal of universal suffrage. Under that ideal, each citizen is entitled to cast one vote, and each vote counts the same regardless of who casts it. Voting thus becomes a powerful symbol of political equality; full citizenship and full equality mean having the right to vote.

Democratic elections reflect the will of the people and thereby confer legitimacy on government leaders and the policies they adopt. The Declaration of Independence proclaims that “Governments are instituted among Men, deriving their just powers from the consent of the governed.” Increased voter participation also makes our government more responsive to the diverse needs of our country. Excluding millions of citizens from the franchise only weakens our democracy. A strong, vibrant democracy requires the broadest possible base of voter participation, across all sectors of society.

The continued disenfranchisement of people after release from prison also places this country at odds with the vast majority of the world's modern democracies. The United States accounts for less than five percent of the world's population,⁸ but almost half of those in the world who cannot vote because of a criminal conviction are U.S. citizens.⁹ How can we credibly market democracy abroad, when so many at home are barred from the polls?

According to a recent study of international practices, the debate in Europe is “over *which prisoners* should be barred from voting. In almost all cases, the debate stops at the prison walls.”¹⁰ While researchers differ over how to categorize certain laws, in most European nations, some or all prisoners are entitled to vote; in the remainder (mainly countries of the former Eastern Bloc), prisoners are barred from voting but are generally re-enfranchised upon release.¹¹

The European Court of Human Rights and the high courts of Canada, Israel, and South Africa have issued important decisions on criminal disenfranchisement.¹² In each case, the court recognized the fundamental importance of the franchise.¹³ In 2006, the United Nations Human Rights Committee determined that United States laws that continue to disenfranchise people after prison violate the International Covenant on Civil and Political Rights, to which the U.S. is a party.¹⁴ Recognizing the disproportionate

“I WENT TO REGISTER TO VOTE THE OTHER DAY. IT FEELS GOOD TO BE A PART OF THE DEMOCRATIC PROCESS. IT WAS VERY FULFILLING, BUT TRUTHFULLY, I HAD MIXED FEELINGS. I THOUGHT, ‘WHY DID I HAVE TO WORK SO HARD JUST TO SIGN THIS LITTLE PIECE OF PAPER?’”

*Andres Idarraga, Pawtucket, Rhode Island
A law student at Yale, he voted for the first time in 2008.*

impact felony disenfranchisement has on minority groups, the Committee urged the United States to restore voting rights to people upon release from prison.

Some proponents of felony disenfranchisement argue that people with criminal histories should be barred from voting to protect the so-called “purity

of the ballot box.” As Kentucky Senator Mitch McConnell commented during a 2002 U.S. Senate debate, “states have a significant interest in reserving the vote for those who have abided by the social contract that forms the foundation of representative democracy ... those who break our laws should not dilute the votes of law-abiding citizens.”¹⁵ Under this argument, including people with criminal histories in the electorate taints or dilutes the votes of those who have not been convicted of a crime.

This argument is based on an archaic notion of democracy, which views voting as a privilege reserved for the few rather than a right guaranteed to all. Our country has endured social unrest and fought intense legal battles in the name of true, universal suffrage. Continuing to deny the right to vote to U.S. citizens who are living and working in the community undermines the centuries-long struggle to make our democracy one that is truly “of the people, by the people, for the people.”

ADVANCING CIVIL RIGHTS

Felony disenfranchisement laws in the United States are deeply rooted in the troubled history of American race relations. In the late 1800s these laws spread as part of a larger backlash against the adoption of the Reconstruction Amendments – the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution – which ended slavery, granted equal citizenship to freed slaves, and prohibited racial discrimination in voting.¹⁶ The reaction to the Amendments achieved its intended result: the removal of large segments of the African-American population from the democratic process for sustained periods, in some cases for life.¹⁷

Despite their newfound eligibility to vote, many freedmen remained effectively disenfranchised as a result of organized

NATIONWIDE, 13 PERCENT OF AFRICAN-AMERICAN MEN HAVE LOST THE RIGHT TO VOTE, A RATE THAT IS SEVEN TIMES THE NATIONAL AVERAGE.

efforts to prevent them from voting. Violence and intimidation were rampant. Over time, Southern Democrats sought to solidify their hold on the region by modifying voting laws in ways that would exclude African Americans from the polls without overtly violating the Fourteenth and Fifteenth Amendments.¹⁸ The legal barriers employed – including literacy tests, residency requirements, grandfather clauses, and poll taxes – while race-neutral on their face, were intentional barriers to African-American voting.¹⁹

Felony disenfranchisement laws were part of this effort to maintain white control over access to the polls. Between 1865 and 1900, 18 states adopted laws restricting the voting rights of criminal offenders. By 1900, 38 states had some type of criminal voting restriction, most of which disenfranchised convicted individuals until they received a pardon.²⁰

At the same time, states expanded the criminal codes to punish offenses that they believed freedmen were most likely to commit, including vagrancy, petty larceny, miscegenation, bigamy, and receiving stolen goods.²¹ Aggressive arrest and conviction efforts followed, motivated by the practice of “convict leasing,” whereby former slaves were convicted of

crimes and then leased out to work the very plantations and factories from which they had ostensibly been freed.²² Thus targeted criminalization and felony disenfranchisement combined to produce both practical re-enslavement and the legal loss of voting rights, usually for life, which effectively suppressed the political power of African Americans for decades.²³

The disproportionate impact of felony disenfranchisement laws on people of color continues to this day. Nationwide, 13 percent of African-American men have lost the right to vote, a rate that is seven times the national average.²⁴ In eight states, more than 15 percent of African Americans cannot vote due to a felony conviction, and three of those states disenfranchise more than 20 percent of the African-American voting-age population.²⁵

“THE BALLOT WAS A CONCRETE REMINDER, NOT JUST RHETORIC, THAT I HAVE POWER IN A DEMOCRACY. I HELD THE BALLOT AND FELT I WAS NO LONGER A NUMBER OR A SECOND-CLASS CITIZEN.”

*Deirdre Wilson, Santa Cruz, California
Voted for the first time in November 2008.*

African Americans make up just 13 percent of the national population.²⁶ African Americans are seven times more likely to be incarcerated than whites.²⁷

Proponents of felony disenfranchisement argue that these disparities are merely the result of a higher propensity among members of minority communities to commit crimes. Yet the overrepresentation of African Americans in the criminal justice system cannot be explained solely by differing crime rates. For instance, nationwide, 56 percent of those incarcerated on felony drug charges are African-American, while African Americans constitute only 13 percent of monthly drug users. Whites make up only 19 percent of drug prisoners, but 74 percent of monthly users.²⁸ The “war on drugs” has targeted inner-city street corners, not college dormitories.

Given current rates of incarceration, three in ten of the next generation of African-American men can expect to lose the right to vote at some point in their lifetime.²⁹ Restoring voting rights to people who are living and working in society is one important step in the battle to correct centuries of organized efforts to disenfranchise African-American voters.

ENDING SECOND-CLASS CITIZENSHIP

When we ask people leaving prison to accept responsibility for reintegrating themselves fully into society, we cannot simultaneously continue to treat them as second-class citizens. With the obligation to obey the law should come the opportunity to influence the political process. As one court has explained:

Disenfranchisement is the harshest civil sanction imposed by a democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box ... [he] must sit idly by while others elect his civic leaders and ... choose the fiscal and governmental policies which will govern him and his family.³⁰

“WHEN YOU’RE AFFORDED THE OPPORTUNITY TO VOTE, YOU THINK ‘I AM FULLY VESTED IN MY CITY, STATE, COUNTRY; I’M JUST AS MUCH A CITIZEN AS ANYONE ELSE.’ IT SIGNALS REHABILITATION. IT PRESENTS A MINDSET THAT LOOKS FORWARD, NOT BACKWARD.”

Denver Schimming, Goodlettsville, Tennessee
He was able to vote in his town’s mayoral race in October, 2007.

Our country is not one in which people are continually punished for mistakes in their past. We believe that people deserve a second chance. In

his 2004 State of the Union address, former President George W. Bush said, “America is the land of second chances and when the gates of the prison open, the path ahead should lead to a better life.”³¹ A better life includes the opportunity to participate in our democracy. While having strong family support and stable employment are critical to a person’s successful transition from prisoner to citizen, researchers have determined that one’s identity as a responsible citizen – including jury service, volunteer work, neighborhood involvement, and voting – is also important.³² Several researchers have argued that civic reintegration should be included in re-entry models because it can help transform one’s identity from deviant to law-abiding citizen.³³ Many returning prisoners have voiced the importance of such a role for themselves as they reintegrate into their communities.³⁴ David Waller, a citizen of Maryland speaking on the day that a new law went into effect restoring his right to vote, explained:

According to the state of Maryland I was not a full citizen. In my eyes, I was not a full citizen. After finishing my sentence for things I had done in the past, I was denied the right to vote. And without it, I was not afforded all the rights and privileges of citizenship. Today all that changes. When I walk into the Board

of Elections and hand in my signed voter registration, I will no longer be fragmented from society. I'll be a father, grandfather, uncle, and friend who is able to give more of a hand in creating a better place to live, work, and go to school.³⁵

It is only fair that people who are living and working in the community have a say in the way their lives are governed. Those who commit crimes must and will serve all terms of their sentence. But once the criminal justice system has determined that they are ready to return to the community, they should receive both the rights and responsibilities that come with that status, and should not continue to be relegated to second-class citizenship.

AIDING LAW ENFORCEMENT

The United States is the world's leader in incarceration, with 2.3 million people (1 out of 100 adults) currently in the nation's prisons and jails – a more than 500% increase over the past thirty years.³⁶ Each year over 600,000 people leave prison. Approximately two out of every three people released from prison in the U.S. are re-arrested within three years of their release.³⁷

The combination of the sheer number of people being released from prison every day, and the “revolving door” created by staggering recidivism rates have forced law enforcement, policymakers, and advocates to take a careful look at the process of re-entry, the

“DENYING THE VOTE TO PEOPLE WHO HAVE COMPLETED THEIR PRISON SENTENCE DISRUPTS THE REENTRY PROCESS AND WEAKENS THE LONG-TERM PROSPECTS FOR SUSTAINABLE REHABILITATION.”

Colonel Dean Esserman, Chief, Providence Police Department

transition from prison to community, and ask what can be done to ease this integration with the ultimate goal of preventing future crime.

Increasingly, officials with deep experience in law enforcement are speaking out against disen-

franchisement, not only because they believe in democracy but also because they are committed to protecting public safety. They recognize that bringing people into the political process makes them stakeholders, which helps steer former offenders away from future crimes. Branding people as political outsiders by barring them from the polls disrupts re-entry into the community. While it is difficult to prove that restoration of the franchise directly reduces crime rates, allowing voting after release from incarceration affirms the returning community member's value to the polity, encourages participation in civic life, and thus helps to rebuild the ties to fellow citizens that motivate law-abiding behavior.³⁸

Many law enforcement officials believe that bringing former offenders back into civic life facilitates the work of police departments. Over the past 25 years there has been a powerful movement toward “community policing,” a strategy in which cooperation and collaboration between police and citizens is an important feature of law enforcement.³⁹ Central to effective community policing is a strong partnership in which the police and citizens make important decisions together about agency policies, practices, and direction.⁴⁰

“I THINK IT IS BETTER TO REMOVE ANY OBSTACLES THAT STAND IN THE WAY OF OFFENDERS RESUMING A FULL, HEALTHY PRODUCTIVE LIFE...ONCE YOU’VE CLEARED THE FOUR WALLS OF THE JAIL, YOUR RIGHT TO VOTE SHOULD BE RESTORED.”

*Miami Police Chief John F. Timoney,
President, Police Executive Research Forum*

Hubert Williams, President of the Police Foundation, explains how continued disenfranchisement can impede police work:

Effective policing relies on collaborative partnerships with people that live in the community. But when an entire group of people are effectively excluded from the community – creating a pariah class, if you will – you can’t have meaningful partnerships, and the police’s ability to prevent and deter crime suffers as a result. To have effective policing we need to bring people back as whole citizens, with both the rights and responsibilities that come with being members of the community.⁴¹

Moreover, there is absolutely no credible evidence showing that continuing to disenfranchise people after release from prison serves any legitimate law enforcement purpose. This is not surprising. Criminal justice experts typically point to four accepted purposes of criminal penalties: incapacitation from committing new crimes, deterrence, retribution, and rehabilitation.⁴² Post-incarceration disenfranchisement does not further any of these goals.

- **Incapacitation, Deterrence, Retribution**

Under the incapacitation theory, the right to vote would be denied as a means of preventing crimes related to voting. But states are hard pressed to identify evidence that people with felony convictions are prone to commit offenses affecting the integrity of elections, and there is no evidence that people on probation and parole have a greater propensity for voter fraud in the states where they are entitled to vote.

Similarly, there is no basis for concluding that continuing to disenfranchise people after release from prison serves to deter them from committing new crimes. Deterrence flows from the other penal consequences of a felony conviction, namely a term of incarceration and significant fines. It is unlikely that a person who is not dissuaded by the prospect of a prison sentence will be deterred by the threat of losing his right to vote.

The law enforcement community and society at large now recognize that a punishment can be morally justified as retribution only if it is proportionate in severity and duration to the crime in question. Continuing to disenfranchise people who have been released from prison is unjustifiably severe. To deny the vote to individuals who are out of prison is to disregard the assessment of the sentencing judge or jury and the corrections officials who, after careful review of each individual's circumstances, deemed them fit to re-enter society.

- **Rehabilitation**

Law enforcement officials recognize that voting rights and rehabilitation are closely connected. Writing in support of Rhode Island's recent successful referendum establishing automatic post-incarceration voting rights restoration, Providence Police Chief Dean Esserman explained: "Denying the vote to people who have completed their prison sentence disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation."⁴³ Similarly, a Kentucky prosecutor seeking to change his state's archaic disenfranchisement laws wrote: "Voting shows a commitment to the future of the community."⁴⁴ In testimony

THERE IS ABSOLUTELY NO CREDIBLE EVIDENCE SHOWING THAT CONTINUING TO DISENFRANCHISE PEOPLE AFTER RELEASE FROM PRISON SERVES ANY LEGITIMATE LAW ENFORCEMENT PURPOSE.

before the Maryland Legislature, a member of the National Black Police Association testified that rights restoration "promotes the successful reintegration of formerly incarcerated people, preventing further

crime and making our neighborhoods safer."⁴⁵ Finally, the American Probation and Parole Association recently released a resolution calling for restoration of voting rights upon completion of prison, finding that "disenfranchisement laws work against the successful re-entry of offenders."⁴⁶

The intuitive link between civic participation and successful reentry thus should not be ignored by policymakers striving to reduce crime. Restoring the right to vote sends the message that people are welcomed back as integral members of their home communities. It invests them in our democracy while reminding them of the reciprocal responsibilities that citizens share. Shutting people out of the democratic process has the opposite effect: it stymies reintegration by treating people with conviction histories as a "pariah class."

EMPOWERING FAMILIES AND COMMUNITIES

Disenfranchisement harms families and entire communities. Studies show that denying the vote to one person has a ripple effect, dramatically decreasing the political power of urban and minority communities.

There is evidence that suggests that disenfranchisement of the head of a household discourages his or her entire family from civic participation. Many people first experience voting and political engagement through their parents – by joining them at a town meeting, attending a school board hearing, or accompanying them into the voting booth. A parent’s electoral participation plays a significant role in determining whether his child will become civically engaged. One study explains that a parent can provide critical information, the lack of which may discourage a first-time voter, including such basics as how to register and where to vote.⁴⁷ The study explains: “Parental political involvement can provide both behavior to model and campaign-relevant information that children rarely get from formal schooling.”⁴⁸ In fact, of the various factors included in the study, the parent’s political participation had the greatest effect on the child’s initial decision to vote.⁴⁹

The presence of disenfranchised individuals also affects the voter participation of other members of the community. Research suggests that disenfranchisement laws may affect voter turnout in neigh-

borhoods with high incarceration rates, even among people who are eligible to vote.⁵⁰ Voting is essentially a communal experience, and limitations on some members of the community have been shown to translate into lower overall participation.⁵¹ One study revealed lower voter turnout in the 1996 and 2000 presidential elections – particularly in African-American communities – in states with the most restrictive criminal disenfranchisement laws, and higher turnout in communities in states with less restrictive criminal disenfranchisement laws.⁵²

Throughout the country, low-income, urban communities have lost political influence as a result of felony disenfranchisement laws. In the last 25 years, as incarceration rates skyrocketed and African Americans were sent to prison at a rate seven times that of whites, the political power of minority communities has been decimated. The ripple effects of large-scale incarceration now extend well beyond the time individuals are in prison. It is

“HOW CAN I SET AN EXAMPLE FOR MY SON WHEN HIS OWN MOTHER, WHO IS DOING EVERYTHING IN HER WILL TO BE A POSITIVE INFLUENCE IN THE COMMUNITY, IS TOLD THAT SHE IS STILL, DESPITE HER EFFORTS, A SECOND-CLASS CITIZEN?”

*Koren Carbuccia, Pawtucket, Rhode Island
She voted for the first time in the 2008 presidential primary.*

a simple equation – communities with high rates of people with felony convictions have fewer votes to cast. Consequently, all residents of these communities, not just those with convictions, become less influential than residents of more affluent communities from which fewer people are sent to prison.

ASSURING FAIR AND ACCURATE VOTER ROLLS

Laws that continue to disenfranchise people after release from prison create the opportunity for erroneous purges of eligible citizens from the voting rolls, are difficult to administer, and generate needless confusion among election officials and the public. While administrative fixes may seem like a minor concern compared with the democratic and societal imperatives discussed above, competent election administration is critical to assuring that everyone who is eligible to vote is allowed to cast a ballot on Election Day. Restoring voting rights to people as soon as they are released from prison relieves all of the administrative problems identified in the real-life examples described below.

- **Unlawful Purges**

Florida's infamous purges of supposedly ineligible felons from its voter rolls are prime examples of ways in which post-incarceration disenfranchisement creates opportunities for erroneous – even malicious – removal of eligible citizens from registration lists. In 2000, Katherine Harris, who was both the Secretary of State and the state co-chair of George W. Bush's presidential campaign, implemented a program purging any Florida voter whose name shared 80 percent of the letters of a name in a nationwide felon database; a California felon named John Michaelson would cause an eligible Floridian named John Michaels to be purged. Unsurprisingly, over half of those who appealed the

“TODAY WE BEGIN THE PROCESS OF RESTORING OUR VOTE AND RECLAIMING OUR VOICES. WE HAVE CREATED A NEW CONSTITUENCY IN OUR STATE, ONE THAT WANTS TO BE ENGAGED AND WANTS TO BE PART OF THE POLITICAL PROCESS.”

*Kimberly Haven, Baltimore, Maryland
A change in Maryland law allowed her to register to vote in July, 2007.*

purge after the 2000 election were deemed eligible to vote – but by then they already had lost their most fundamental right of citizenship.⁵³

In 2004, Florida again developed a now discredited list of potential felons for the purpose of facilitating a purge. This time, fortunately, the

state was forced to withdraw that list before the election. Government data obtained by the Brennan Center proved that the list included many citizens whose voting rights had been restored.⁵⁴ Investigative journalists discovered that the list included thousands

of people who had been granted clemency and that it was racially biased, containing 22,000 African Americans but only 61 Hispanics.⁵⁵

- **Bureaucratic Breakdown**

Alabama attempted to streamline voting rights restoration in 2003 by requiring expedited processing of certain applications for clemency. The system created different eligibility requirements for various categories of offenses, and required applicants not only to have completed their sentence but also to have paid all court-imposed fees, fines, and victim restitution. A study conducted by the Brennan Center demonstrated that the new procedures resulted in a complete administrative breakdown. More than 80 percent of the applications were not processed within the statutory time limits, and the Board of Pardons and Parole – the agency responsible for administering the system – completely failed to respond to dozens of applications.⁵⁶

The confusing eligibility categories also trapped many eligible voters in a Catch-22. People convicted of non-disenfranchising crimes were improperly told by elections officials that they needed to go through the restoration process. The Board of Pardons and Parole then denied their restoration applications because people who were not legally disenfranchised in the first place did not need their rights restored. Thousands of potential voters were caught in this tangled bureaucratic web.

- **Chronic Confusion**

Rules that continue to disenfranchise people after release from prison often lead to widespread confusion among both elections officials and people with criminal records.⁵⁷ The confusion illegally disenfranchises eligible voters and exposes to prosecution ineligible voters who mistakenly believe that they are entitled to vote.

New York disenfranchises people while they are in prison and on parole, and voting rights are restored automatically upon release from supervision. People on probation never lose the right to vote. The system appears simple on its face, but interviews with election officials repeatedly uncovered widespread confusion and misinformation.⁵⁸ In 2003, more than half of the local Boards of Elections were requiring people with convictions to provide documentation before registering to vote. Some of the requested documents did not exist; others required burdensome application processes and long waiting periods.⁵⁹ Although the State Board of Elections promptly issued corrective instructions, 2005 interviews with election officials revealed that a third of the local boards still continued to require improper documentation, and a third also improperly advised researchers that people could not vote while on probation.⁶⁰

Washington and **Wisconsin** disenfranchise people until they have completed probation and parole. The Washington law caused much controversy in the dead-heat gubernatorial election in 2004. Scores of people with felony convictions apparently voted without knowing that it was illegal, and others were prevented from voting although their rights should have been restored.⁶¹ The confusion, attributable in part to the multiplicity of government agencies involved, led the Secretary of State to conclude, “the simplest way to fix confusion over tracking felons would be to automatically restore voting rights when people are released from prison”⁶²

Wisconsin’s 2004 election was also hotly contested, and various irregularities led to inflated claims of widespread fraud, including allegations that people on probation and parole had voted illegally. These charges led to overzealous prosecutions of people who had done nothing more than cast a vote. Elizabeth Mitchell-Frazier faced felony charges alleging that she had voted while on probation for a felony conviction.⁶³ A year later the charges were dropped when Ms. Mitchell-Frazier proved that she had been convicted only of a misdemeanor.⁶⁴ Kimberly Prude spent more than a year in prison after being prosecuted for voting while on probation. After hearing the Rev. Al Sharpton speak at a rally, Ms. Prude was inspired and marched along with fellow Wisconsin citizens to register to vote, believing that she was eligible since she was not in prison. Although Ms. Prude’s original crime was not serious enough to warrant a prison sentence, her mistaken belief that she was eligible to vote landed her behind bars.⁶⁵

- **One Simple Solution**

None of these problems would have arisen had these states restored voting rights to their citizens upon release from prison. Allowing people to vote as soon as they are released from prison simplifies election administration – if they are not in prison, they are eligible to vote. There is no longer any need to coordinate complicated data matches, administer convoluted eligibility requirements, or sort through thousands of restoration applications. The policy saves valuable time, energy and resources, and avoids burdensome lawsuits.

III. THE TIME IS NOW

While there has been significant reform over the past decade, millions of U.S. citizens continue to be denied the right to vote.⁶⁶ There is still much work to be done before America can realize its promise of a truly representative democracy, but the country is ready and the time is now.

Governors, legislators, and voters have taken bold steps towards restoring the right to vote to people with felony convictions. Some recent, important reforms include:

- **Iowa** – On Independence Day, July 4, 2005, Governor Tom Vilsack signed an executive order restoring voting rights to 80,000 Iowa citizens who had completed their sentences.
- **Rhode Island** – On Election Day 2006, Rhode Island voters were the first in the country to approve a state constitutional amendment authorizing automatic restoration of voting rights to people as soon as they are released from prison.
- **Florida** – In April 2007, Governor Charlie Crist issued new clemency rules ending that state's policy of permanent disenfranchisement for all felony offenders.
- **Maryland** – Also in April 2007, Governor Martin O'Malley signed a law streamlining the state's complicated restoration system by automatically restoring voting rights upon completion of sentence.
- **North Carolina** – In August 2007, Governor Mike Easley signed a law requiring elections and corrections agencies to inform individuals about their right to vote and the voter registration process.
- **Louisiana** – In June 2008, Governor Bobby Jindal signed a law requiring the Department of Corrections to inform individuals who have completed their sentences about their right to vote and provide them with a voter registration form.
- **Washington** – In May 2009, Governor Chris Gregoire signed a law that automatically restored voting rights to people as soon as they complete prison, probation and parole and eliminated the requirement that people pay all fees, fines and restitution, including surcharges and accrued interest, before being allowed to vote.

The public also supports restoring voting rights. A 2002 telephone survey of 1,000 Americans found that substantial majorities (64 percent and 62 percent, respectively) supported allowing people on probation and parole to vote.⁶⁷ A 2006 survey found that 60 percent of Americans think the right to vote is an important factor in a person's successful reintegration into society after incarceration.⁶⁸ And the Election Day victory in Rhode Island demonstrates that the voting public supports voting by all people who are living and working in the community.

Several national organizations representing law enforcement officials, legal professionals, and the faith community recognize the fundamental unfairness of continuing to exclude people from the franchise when they re-enter the community. Organizations that support restoring voting rights to people on probation and parole include:

- American Bar Association,
- American Law Institute,
- American Probation and Parole Association,
- Association of Paroling Authorities International,
- National Black Police Association,
- National Hispanic Christian Leadership Conference,
- National Organization of Black Law Enforcement Executives,
- Prison Fellowship,
- Protestants for the Common Good,
- Sojourners,
- United Church of Christ, General Board of Church and Society, and
- United Methodist Church, General Board of Church and Society.

The mainstream media also understands the importance of restoring voting rights. Dozens of papers and magazines across the country have run editorials urging restoration of voting rights including *Newsweek*, *Forbes*, the *Boston Globe*, the *Los Angeles Times*, and the *New York Times*.⁶⁹ In the last three years alone, the *New York Times* has published seventeen editorials calling for an end to felony disenfranchisement laws.⁷⁰

America is ready to consign Jim Crow to the past and to join other modern democracies, by extending the franchise to citizens with felony convictions as they re-enter society. For stronger citizens and safer communities, the time for change is now.

IV. POLICY RECOMMENDATIONS

Laws restoring voting rights to people living in the community should not only change voter eligibility rules but also guarantee that the new rules are widely understood and consistently enforced. The Brennan Center proposes that such laws include the following elements to ensure that citizens can actually exercise the rights that are restored on paper.

- **Restoration:** Automatically restore voting rights to people on probation and parole. Ensure that restoration is not contingent upon payment of fees, fines, restitution, or other legal financial obligations. Citizens released from prison may not be released from liability for payment, but the debt will not preclude exercise of the franchise.
- **Notice:** Ensure that criminal defendants are informed: (1) before conviction and sentencing to prison, that they will lose their voting rights; and (2) upon release from prison and/or release to community supervision, that they are again eligible to register and vote.
- **Voter Registration:** Make the Department of Corrections and Probation and Parole authorities responsible for assisting with voluntary voter registration. Ensure that all citizens are subject to the same application procedures.
- **Statewide Voter Registration Database:** Ensure that names on the state's computerized list of registered voters are marked inactive upon a person's imprisonment and then reactivated upon release from incarceration by electronic information-sharing between criminal justice agencies and elections agencies.
- **Education:** Make the state's chief election official responsible for educating other government agencies and the public about the new law.

States that currently have automatic post-incarceration voting rights restoration but do not include all of these provisions should amend their laws to add the missing elements. The Brennan Center for Justice has drafted a model bill incorporating all of these provisions, to which policymakers may look for guidance, and we would be happy to provide assistance in making any needed amendments. The bill is included as an Appendix to this proposal.

V. APPENDIX: COMPONENTS OF A VOTING RIGHTS RESTORATION BILL

A bill to restore voting rights to people with felony convictions should have several sections, including **Title, Findings, Purpose, Restoration of Rights, Notice, Voter Registration, Maintaining a Statewide Voter Registration Database, Education, Conforming Amendments, and Effective Date**. This memorandum will describe each section and identify any relevant strategy decisions to be made. The memo also provides examples of legislative language to use in each section. Of course, every state is different, and every coalition will need legal help in drafting a bill tailored to its state.

TITLE

The bill needs a name. The “[Name of State] Restoration of Voting Rights Act” is a typical title.

FINDINGS

The findings section states the facts and principles that make the bill necessary. Ordinarily, the findings should include:

- A statement about how important voting is to democracy;
- A statement about how political participation helps with rehabilitation and reintegration into the community;
- A statement about how many people in the state have lost their right to vote because of felony convictions;
- A statement about the harms of disfranchisement in minority communities;
- A statement about how the bill will streamline the process by which the government restores rights to people with criminal convictions and thus save the taxpayers money.

Here, for example, are the findings from a bill that became law in Rhode Island in 2006:

1. Voting is both 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 to reintegrate into society. Voting is an essential part of reassuming the duties of full citizenship.

2. Rhode Island is the only state in New England that denies the vote to people convicted of felonies, not only while they are in prison, but also while they are living in the community under the supervision of parole or probation officials.
3. As a result of this extended disfranchisement, Rhode Island deprives a greater proportion of its residents of voting rights than any other state in the region. More than 15,500 Rhode Islanders have lost the right to vote because of a felony conviction. Of these, 86% are not in prison: they have either been released or their convictions did not result in actual incarceration. Rhode Island has the second highest rate of people on probation in the nation.
4. Criminal disfranchisement in Rhode Island has a disproportionate impact on minority communities. The rate of disfranchisement of African-American voters is more than six times the statewide rate. Hispanics lose the vote at more than 2.5 times the statewide average. One in five black men and one in eleven Hispanic men are barred from voting in Rhode Island. By denying so many the right to vote, criminal disfranchisement laws dilute the political power of entire minority communities. Because these communities are concentrated in cities, the urban vote is also suppressed, with the rate of disfranchisement in urban areas 3.5 times the rate in the rest of the state.
5. Extending disfranchisement beyond a person's term of incarceration complicates the process of restoring the right to vote. Under current law, a person may regain that right when released from incarceration if no parole follows, when discharged from parole, or when probation is completed. This system requires the involvement of many government agencies in the restoration process. This bill would simplify restoration by making people eligible to vote once they have served their time in prison, 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.

PURPOSE

This section states the purpose of the bill, explaining why it should be enacted. For example:

The purposes of this act are to strengthen democratic institutions by increasing participation in the voting process, to help people who have completed their incarceration to become productive members of society, and to streamline procedures for restoring their right to vote.

RESTORATION OF RIGHTS

This section restores voting rights to people with felony convictions. Before it is drafted, the state coalition needs to make an important strategy decision: how great a change in state law to seek? Here are some possibilities:

- Full restoration, including the right to vote from prison;
- Restoration upon release from incarceration;
- Restoration upon completion of parole (people on probation can vote);
- Restoration upon completion of parole or probation;
- Restoration upon “completion of sentence” (*beware*: this may require a person to pay all fines, restitution, and court costs before being allowed to vote);
- Restoration upon completion of sentence and expiration of a waiting period.

What is possible will depend in part on whether the state in question disfranchises people in its *state constitution*. Each state has its own constitution, and each one is unique. Laws passed by a state legislature cannot conflict with the constitution of that state. Some of the state constitutions have provisions relevant to the voting rights of people with criminal convictions. Some provisions pose no bar to restoration by legislation alone. In other states, however, restoration is impossible without an amendment to the state constitution. The amendment process differs from state to state, but it is usually multi-layered and generally involves a public referendum (popular vote) on the amendment.

The political climate may also set limits. Some state coalitions are committed to full restoration, including the right to vote while in prison, but few states are prepared to go that far. At the other end of the spectrum, some laws, like one passed in March 2005 in Nebraska, would restore rights only when a person has completed parole or probation and waited an additional two years. This can be a step forward in a state that previously disenfranchised people permanently.

Where possible, there are many advantages to proposing legislation that would restore voting rights as soon as a person returns to the community. This approach re-enfranchises more people than most plausible alternatives. In addition, election officials can understand and follow this rule: a person who is living in the community and appears at a polling place should not be barred from voting because of any criminal record – once the person is out, the person is eligible. This system also concentrates the restoration process in the Department of Corrections, without the need to involve probation and parole officials.

A restoration of rights section may look like this:

The right of an individual to vote in any election shall not be denied or abridged because that individual has been convicted of a criminal offense, unless said individual is serving a felony sentence in a correctional facility at the time of the election.

OR

A person who has lost the right of suffrage because of such person's incarceration upon a felony conviction shall be restored the right to vote when that person is discharged from incarceration.

NOTICE

A good bill should require notice both before conviction or sentencing and before release from prison. These are typical notice provisions for a bill that restores rights immediately following incarceration:

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.

As part of the release process leading to the discharge of a person who has been disenfranchised because of incarceration upon a felony conviction, the Department of Corrections shall notify that person in writing that voting rights will be restored.

VOTER REGISTRATION

Assuming the bill restores the right to vote when a person gets out of prison, this section should require the Department of Corrections to assist people in registering to vote just before they are released. The best option is to make the Department of Corrections a "voter registration agency." Under a federal law passed in 1993, the National Voter Registration Act, the states should have designated certain social welfare agencies as "voter registration agencies." These agencies must offer people assistance with voter registration in a non-coercive way. Because laws establishing this system already exist in most states, the bill can "piggyback" by adding the Department of Corrections to the existing list of voter registration agencies. The bill should refer to the existing state law.

Here is an example:

The Department of Corrections shall act as a voter registration agency in accordance with § [xxx] 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 Department of Corrections shall 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 [appropriate registration agency] in the county where the registrant resides.

MAINTAINING A STATEWIDE VOTER REGISTRATION DATABASE

States are in the process of creating centralized voter registration databases that will contain electronic information about all registered voters, in accordance with the federal Help America Vote Act. The names of eligible and registered ex-felons need to be included in these databases. In most states, the secretary of state is the chief election official and is responsible for maintaining the database.

When a person just out of prison registers or re-registers to vote, that person's name should be added to the database even without special provisions in the bill. Just in case that system has gaps, however, the bill can include other avenues for transmitting names to the secretary of state and adding these names to the database.

Here are some typical provisions:

The Department of Corrections shall, on or before the 15th day of each month, transmit to the secretary of state two 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:

- name,
- date of birth,
- date of entry of judgment of conviction,
- sentence,
- last four digits of social security number, or driver's license number, if available.

The secretary of state shall ensure that the statewide voter registration database 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 voter registration database in the same manner as all other names are added to that database.

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.

EDUCATION

State officials and the public should learn about the changes in the law that would result from passage of the bill. The bill should therefore require relevant training and education.

Here are some relevant provisions:

The Secretary of State shall develop and implement a program to educate attorneys; judges; election officials; corrections officials, including parole and probation officers; 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 (x) of this section.
2. The Department of Corrections is prepared to assist people with registration to vote in anticipation of their discharge from incarceration, including by forwarding their completed voter registration forms to the [appropriate registration agencies].
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 Department of Corrections is prepared to transmit to the Secretary of State the information specified in subsection (x) of this section.

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 disenfranchising or not, is made available through a single publication to government officials and the public.

CONFORMING AMENDMENTS

The bill will need to amend various provisions of pre-existing state law that would otherwise conflict with it. This is a job for the lawyer or lawyers who do the drafting.

EFFECTIVE DATE

Finally, the bill will need an effective date. Different states have different rules and customs about when bills take effect as law. To ensure that the bill protects people who were sentenced or discharged before its effective date, however, a provision like the following is necessary:

Voting rights shall be restored in accordance with this act to all [name of state] 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 act.

* * * * *

These model provisions can help in drafting or evaluating a bill. It is also extremely helpful to have local, experienced criminal defense lawyers who understand how the bill would work in practice and can recommend improvements.

VI. ENDNOTES

- 1 For ease of reference, we include within the term “post-incarceration restoration” those who have been sentenced to probation and therefore return to the community without serving any term of imprisonment.
- 2 Kentucky’s requirement for restoration of voting rights is one of the most burdensome in the nation. Kentucky’s Constitution grants the Governor discretionary power to restore voting rights. KY CONST. § 145. Individuals seeking to have their rights restored after completing their full sentence can submit an application to the Governor. In 2004, then Governor Ernie Fletcher imposed additional burdens on applicants, requiring submission of a written statement explaining why they want their voting rights and believe their rights should be restored, along with three character references. The Governor also required that the application be presented to the prosecutors in the jurisdiction where the applicant lives and where the felony was committed for a recommendation on whether voting rights should be restored. The effect of these additional requirements is clear: In 2003-2004, 53% of applicants were approved for restoration; in 2005-2006 only 28% were approved. See League of Women Voters of Kentucky, *Felony Disenfranchisement in the Commonwealth of Kentucky* 5 (Oct. 2006), http://www.lwvky.org/Felony_Dis_Report.pdf. In March 2008, Governor Steve Beshear eliminated the requirements of a filing fee, personal statement and letters of references.

In Virginia individuals regain the right to vote through one of two onerous procedures. Persons convicted of non-violent offenses that do not involve drug manufacturing or distribution can petition the local court, which then makes a recommendation for approval by the Governor. Applicants who opt for this process must wait five years after they complete their sentence and must demonstrate civic responsibility through community or comparable service. Individuals can also apply directly to the governor three to five years after completion of sentence depending on the nature of the crime. In 2002, then Governor Mark Warner streamlined the process by reducing a 16-page clemency application down to two pages. Although Governor Warner approved the largest number of applications of any governor in the last twenty years, only 685 applicants were approved during his four-year term. His predecessor approved only 60 during his term in office. Marc Mauer & Tushar Kansal, The Sentencing Project, *Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States* (2005), http://sentencingproject.org/Admin/Documents/publications/fd_barredforlife.pdf.
- 3 Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 29 (2000).
- 4 *Id.* at 111, 116.
- 5 *Id.* at 218.
- 6 *Id.* at 255.
- 7 *Id.* at 263, 269.
- 8 U.S. Census Bureau, *U.S. and World Population Clocks*, <http://www.census.gov/main/www/popclock.html> (last visited May 26, 2006).
- 9 There are 5.3 million people disenfranchised in the United States, Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 76 (2006), and approximately seven million prisoners in the rest of the world, not all of whom are disenfranchised, see International Centre for Prison Studies, *Entire World—Prison Population Totals*, <http://www.prisonstudies.org>.

- 10 Laleh Ispahani, American Civil Liberties Union, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies* 4 (2006), available at http://www.aclu.org/pdfs/votingrights/outofstep_20060525.pdf.
- 11 *Hirst v. United Kingdom (No. 2)*, app. no 74025/01, slip op. ¶¶ 33-34 (ECHR Oct. 6, 2005); Ispahani, *supra* note 10, at 6.
- 12 *See Sauvé v. Canada*, [2002] S.C.R. 519; *Hirst*; HCJ 2757/96 *Alrai v. Minister of the Interior* [1996] IscrSC 50(2) 18; *Minister of Home Affairs v. National Institute of Crime Prevention and the Re-integration of Offenders (NICRO)* 2004 (5) BCLR 445 (CC) (S. Afr.).
- 13 The European Court of Human Rights opined that “the right to vote is not a privilege. . . . Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates.” *Hirst*, slip op. ¶¶ 59, 62. The principle of “universal and equal suffrage” derives in part from the International Covenant on Civil and Political Rights, art. 25, Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by the United States in 1992). The Constitutional Court of South Africa noted its special duty to “respect[] and protect[]” suffrage in a nation where “denial of the right to vote was used to entrench white supremacy and to marginalise the great majority of the people.” *NICRO* 2004 (5) BCLR 445 (CC) ¶ 47. In Israel, so profound is the Supreme Court’s commitment to protecting the franchise that it declined, in the absence of specific statutory authorization, to revoke the voting rights of the person convicted of assassinating Prime Minister Yitzhak Rabin. HCJ 2757/96 *Alrai* [1996] IscrSC 50(2) 18 ¶ 7.
- 14 Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Geneva, Switz., July 10-28, 2006, *Concluding Observation*, ¶ 35; available at <http://www.brennancenter.org/page/-/Democracy/ICCPR.CO.2006.pdf>.
- 15 148 Cong. Rec. 1489, 1494 (2002) (statement of Sen. McConnell).
- 16 Manza & Uggen, *supra* note 9, at 56-57; Angela Behrens, Christopher Uggen & Jeff Manza, *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. Soc. 559, 560-61 (2003); Alec C. Ewald, “Civil Death”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 Wis. L. Rev. 1045, 1087-88.
- 17 Behrens et al., *supra* note 16, at 560; Ewald, *supra* note 16, at 1087.
- 18 Keyssar, *supra* note 3, at 111; Ewald, *supra* note 16, at 1087.
- 19 *See, e.g., Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966) (poll tax); *Guinn v. United States*, 238 U.S. 347 (1915) (grandfather clause). *See also* Keyssar, *supra* note 3, at 111-12; Behrens et al., *supra* note 16, at 563; Ewald, *supra* note 16, at 1087.
- 20 Manza & Uggen, *supra* note 9, at 55, 238-39 tbl.A2.1 (A typo in the text indicates 28 states, but the table correctly lists 38).
- 21 Eric Foner, *Reconstruction: America’s Unfinished Revolution 1863-1877* 593 (1988); Ewald, *supra* note 16, at 1088-89.
- 22 Foner, *supra* note 21, at 205; Marc Mauer, *Race to Incarcerate* 131-32 (2006).
- 23 *See Hunter v. Underwood*, 471 U.S. 222 (1985).
- 24 The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (April 2007), <http://sentencingproject.org/pdfs/1046.pdf>.

- 25 Manza & Uggen, *supra* note 9, at p. 251-53, tbl A3.4. Note that this data was gathered in 2004. The eight states are: Alabama, Arizona, Delaware, Florida, Kentucky, Virginia, Washington, and Wyoming. Arizona, Kentucky, and Wyoming disenfranchise more than 20 percent of the African-American voting-age population.
- 26 See U.S. Dep't of Justice, *Prisoners in 2005* (Nov. 2006), <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf> and U.S. Census Bureau, *Population by Race: 1990-2000* (April 2001) <http://www.census.gov/population/cen2000/phc-t1/tab03.pdf>.
- 27 Mauer, *supra* note 22, at 139.
- 28 Ryan S. King and Marc Mauer, The Sentencing Project, *Distorted Priorities: Drug Offenders in State Prisons* 11 (2002), available at http://sentencingproject.org/Admin/Documents/publications/dp_distorted_priorities.pdf.
- 29 The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (April 2007), <http://sentencingproject.org/pdfs/1046.pdf>.
- 30 *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S.D. Miss. 1995).
- 31 George W. Bush, *State of the Union Address*, Jan. 20, 2004, available at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html>.
- 32 Christy A. Visher & Jeremy Travis, *Transition from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 97 (2003).
- 33 *Id.*
- 34 *Id.* at 98.
- 35 Web Broadcast: Newly Eligible Former Felons Register to Vote (Baltimore Grassroots Media 2007), <http://www.baltimoregrassrootsmedia.org/files/cd56b622a2e1b6c4cf8ca24efd5d8e8-66.html>.
- 36 The PEW Center on the States. *One in 31: The Long Reach of American Corrections* (March 2009), available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf; Mauer, *supra* note 22, at 1; see also The Sentencing Project, *Incarceration*, <http://sentencingproject.org/IssueAreaHome.aspx?IssueID=2> (last visited April 14, 2009).
- 37 Re-Entry Policy Council, *Charting the Safe & Successful Return of Prisoners to the Community* 1 (2003) available at <http://reentrypolicy.org/reentry/default.aspx>.
- 38 Measuring the causal relationship between voting rights and criminal behavior is difficult. But the one published study tracking the relationship between voting and recidivism did find “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 213 (2004). In fact, the study found that the former offenders who voted were half as likely to be re-arrested as those who did not. *Id.* at 205.
- 39 As of 1996, one study found that 90% of police departments in a sample of 281 cities reported that they used community policing strategies. Jihong Zhao et al., *The Status of Community Policing in American Cities*, 22 POLICING: INT’L J. OF POLICE STRATEGIES & MGMT. 74, 81 (1999).

- 40 Lorie Fridell, *The Defining Characteristics of Community Policing*, in COMMUNITY POLICING: PAST, PRESENT AND FUTURE 3, 5 (Lorie Fridell & Mary Ann Wycoff eds., 2004).
- 41 Hubert Williams, Executive Director, Police Foundation, Remarks at Voting Rights and Reintegration: A Role for Law Enforcement Convening, New York University School of Law (June 8, 2007).
- 42 Brief for The National Black Police Association et al. as Amici Curiae Supporting Appellants, *Farrakhan v. Gregoire*, No. CV-96-076 (filed Dec. 11, 2006), available at http://brennancenter.org/dynamic/subpages/download_file_47026.pdf.
- 43 Dean Esserman & H. Philip West, *Yes on Question 2 – Freed Felons Should Have a Voice*, PROVIDENCE JOURNAL, Sept. 25, 2006, at C4.
- 44 R. David Stengel, *Let's Simplify the Process for Disenfranchised Voters*, CENTRAL KENTUCKY NEWS-JOURNAL, Jan. 28, 2007, available at <http://www.cknj.com/articles/2007/01/28/opinion/02editorial.txt>.
- 45 *Voter Registration Protection Act: Hearing on S.B. 488 Before the S. Comm. on Education, Health & Environmental Affairs*, 2007 Leg., 423rd Sess. (Md. 2007) (written testimony of Ron Stalling, National Black Police Assoc.), http://www.brennancenter.org/dynamic/subpages/download_file_48135.pdf.
- 46 American Probation and Parole Ass'n, *Resolution Supporting Restoration of Voting Rights* (Oct. 17, 2007), available at http://www.appa-net.org/newsreleases/2007/APPA_Voting_Rights_Release.pdf.
- 47 Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 AM. POL. SCI. REV. 41, 43 (Mar. 2002).
- 48 *Id.*
- 49 *Id.* at 48.
- 50 Arman McLeod et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 VA. J. SOC. POL'Y & L. 66, 77-78 (2003); see also Marc Mauer, Joint Center for Political and Economic Studies, *Disenfranchising Felons Hurts Entire Communities* 5, 6 (May/June 2004), available at http://sentencingproject.org/Admin/Documents/publications/fd_focus.pdf.
- 51 Mauer, *supra* note 50, at 6.
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