

Felon Disenfranchisement Fact Sheet

State Disenfranchisement Laws

- 46 states and the District of Columbia have disenfranchisement laws that deprive inmates of the right to vote.
- In 32 states, convicted offenders may not vote while they are on parole, and 29 of these states disenfranchise offenders on probation.
- 10 states disenfranchise for life all ex-offenders who have fully served their sentences: Alabama, Delaware, Florida, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia, Wyoming. Four others permanently disenfranchise some ex-offenders: Arizona, Maryland, Tennessee and Washington.
- Most state disenfranchisement laws provide that conviction of any felony or any crime that is punishable by imprisonment is a basis for losing the right to vote. The crime need not involve electoral processes, nor be classified as violent or otherwise serious.
- State disenfranchisement statutes typically provide methods of restoring civil rights, including the right to vote. However, frequently the process for restoring voting rights is burdensome at best and, at worst, illusory. For example:
 - Eight states require a pardon or order from the governor.
 - In Alabama, ex-offenders who apply for a pardon are required to provide DNA samples.
 - In Virginia, ex-felons (both violent and non-violent offenses) are required to wait five years before applying for a pardon, but persons convicted of a drug offense must wait seven years. Of Virginia's 200,000 ex-offenders, only 404 had their vote restored in the last two years.
 - In Mississippi, an ex-convict who wants to vote must either secure an executive order from the governor or get a state legislator to introduce a bill on his behalf. The bill must pass by a two-thirds majority of each house and be signed by the governor. In 1990, 20 people in Mississippi tried to restore their right to vote by legislation, two of the bills were vetoed.
- Disenfranchisement laws vary widely from state to state, making a national crazy quilt of disqualifications and restoration procedures. State voting laws also govern eligibility to vote in federal elections. In Massachusetts, therefore, a convicted burglar may vote in national

elections while in prison; in Indiana he cannot. A person convicted of theft in New Jersey automatically regains the right to vote after release from prison, while in New Mexico such an offender is denied the vote for the rest of her life unless she can secure a pardon from the governor.

- In at least 16 states, federal offenders cannot use the state procedure for restoring one or more of their civil rights, either because state law restores that right to state offenders only through a pardon and federal offenders are ineligible for a state pardon or because the state procedure for restoring rights is unavailable for certain types of offenses or offenders. The only method provided by federal law for restoring voting rights to ex-offenders is a Presidential pardon.

Who is affected?

- An estimated 3.9 million Americans, or one in fifty adults, currently are temporarily or permanently ineligible to vote because of a felony conviction.
- 1.4 million persons disenfranchised for a felony conviction are ex-offenders who have completed their criminal sentences. Another 1.4 million of the disenfranchised are on probation or parole.
- 1.4 million African American men, or 13 percent of the black adult male population, are disenfranchised, reflecting a rate of disenfranchisement that is seven times the national average.
- More than one-third (36 percent) of the total disenfranchised population are black men.
- In seven states one in four black men is permanently disenfranchised.
- 95% of all black males who are permanently disenfranchised in the United States live in four states: Alabama, Florida, Mississippi and Virginia. In each of these states, disenfranchised black males constitute roughly 12% of the total black voting age population in the state.
- In Alabama and Florida, 31 percent of all black men are permanently disenfranchised.
- In 12 other states, 16 to 28% of black men are currently disenfranchised, many permanently.

Incarceration Data and Trends

- Given current rates of incarceration, in the future as many as 40% of black men may permanently lose their right to vote in states that disenfranchise ex-offenders.

- 49% of state and federal prisoners in 1997 were black and 17% were Hispanic.
- 71% of those sentenced to state prisons in 1995 were convicted of non-violent crimes, including 31% for drug offenses, and 29% for property offenses.
- In the ten-year period, 1985-95, the number of African Americans in state prisons increased by 132% compared to an increase of 109% for white prisoners. For drug offenses, there was a 707% rise in the number of imprisoned blacks, compared to 306% for whites.

State Legislative Activity

- Enhanced Voting Rights Activity in 11 States:

In Alabama, Florida, Pennsylvania, and Nevada, members of the legislature have proposed the automatic restoration of ex-felons' voting rights, and in Connecticut, restoration of voting rights for probationers and parolees.

The Delaware legislature is considering the restoration of voting rights for certain ex-felons after a five-year post-release period.

In Virginia, the state legislature appointed a subcommittee to examine issues of disenfranchisement of convicted felons.

In Nevada and Illinois, initiatives are being undertaken to ensure that information is provided to ex-felons with respect to the restoration of their voting rights. The Illinois bill would empower correctional officials to register ex-offenders as they leave prison.

Legislation to remove the lifetime ban on ex-offender voting is proposed in Kentucky and Tennessee, but not likely to pass.

In 1997, Texas repealed its two-year waiting period before ex-offenders may restore their right to vote.

- Recent Measures to Further Restrict Voting Rights in 5 States:

Until recently the Louisiana Constitution stipulated that "a first offender never previously convicted of a felony" was to be automatically pardoned upon the completion of his or her sentence. In October 1999, the electorate voted in favor of a constitutional amendment effectively limiting this provision to certain felony offenses.

Pennsylvania added a five-year waiting period before ex-offenders can restore their right to vote.

Over 80 percent of the Utah electorate voted in favor of disenfranchising inmates in November 1998.

Last year in Oregon, legislators closed a gap in state law that permitted federal prisoners to vote in state and local elections.

In Massachusetts, the state legislature is considering a constitutional amendment that would eliminate inmate voting.

Federal Legislative Activity

- In Congress, the Subcommittee on the Constitution of the House Judiciary Committee held a hearing on October 21, 1999 on H.R. 906, the "Civic Participation and Rehabilitation Act of 1999," a bill that would restore the right to vote in federal elections to ex-felons.
- One primary concern raised by this and similar federal legislation is whether Congress has the authority to pass such legislation. Opponents argue that Article 1, Section 2 of the Constitution gives states the power to determine the qualifications of voters in all elections, state and federal; and that Section 2 of the Fourteenth Amendment assumes and therefore authorizes states to disenfranchise offenders. Proponents of such measures find constitutional authority for the legislation in several places, including Article 1, Section 4 which gives Congress broad power to regulate federal elections; and the equal protection clause of the Fourteenth Amendment.

Recent Litigation

- In New Hampshire, inmates' voting rights have recently been restored after a state constitutional challenge.
- In Washington, a legal challenge has been brought to the Washington State Constitution on the grounds that the provision which disenfranchises persons convicted of felony offenses violates the Voting Rights Act.

Felon Disenfranchisement - Some Options

March 10, 2000

1. The Federal Bureau of Prisons' Release Preparation Program includes classes on a range of topics and requires staff to "help an inmate obtain proper identification (social security card, driver's license, birth certificate, and/or any other documents needed by the inmate) prior to release." However, the Bureau currently does not provide inmates any information regarding, or assistance with, voter registration or restoration of voting rights. In states where ex-offenders automatically have their right to vote restored upon release from prison, registering them as voters could be a required step in this program. In states where there is a process for restoration of voting rights, the Release Preparation Program could be required to go beyond simply informing ex-offenders of that process and actually help them with obtaining the necessary forms or taking the required steps to become registered voters.
2. The Department of Justice, Office of Pardon Attorney is updating its 1996 state by state survey of disenfranchisement statutes. This resource should be more widely disseminated, even though it is very technical.
3. The Department of Justice is considering developing short, easy to read pamphlets for each state which explain the requirements for restoring voting rights, for distribution to probation officers, court officials and ex-offenders. This user-friendly information could also be provided in appropriate places on the Department's web site. Representatives of the Department could conduct outreach and provide training.
4. The federal government could provide funding to state prisons to include restoration of voting rights as part of their ex-offender re-entry programs.
5. The Administration could establish a federal process for the removal of civil disabilities for federal offenders, while leaving the conviction in place, without affecting state laws. There is no general federal statutory procedure whereby civil rights may be restored after federal conviction. A Presidential pardon restores civil rights lost as a result of conviction, including the right to vote. As part of the pardon power, the President could establish a process akin to clemency by which the conviction would stand but the ex-offender's civil rights would be restored.
6. The Department of Justice potentially has jurisdiction under Title VI or the Voting Rights Act to require the enforcement of state laws that permit persons incarcerated in jail to vote. The Department could bring suit when jails refuse to allow absentee ballots to reach eligible voters.
7. Senior Administration officials could raise this issue in speeches in order to draw attention to the unfairness of permanent disenfranchisement for one mistake; that restoring rights of

citizenship is important to personal responsibility; highlight examples of reformed community members and young adults in programs like YouthBuild who make the case for being able to vote; and acknowledge the racially disproportionate impact of these arbitrary laws.

8. The Administration could develop partnerships with churches and civil groups by providing public information and technical assistance on ex-offender voting and other re-entry issues.

MEETING ON VOTING BY FELONS

June 29, 2000

You are scheduled to meet with a small internal group to discuss the issue of voting by felons. Counsel's office drafted a memorandum for you that reviewed legislation that is currently pending in Congress to require states to allow individuals convicted of a crimes to vote in federal elections unless they are felons who are in prison at the time of the election (see attached). Bill Lann Lee also sent you a very informative memo and some options (see attached). A list of these and other options are listed below:

Change the Current Laws

1. Support H.R. 906, the Civic Participation and Rehabilitation Act of 1999, legislation introduced by Representative Conyers (D-MI) to require states to allow individuals convicted of a crimes to vote in federal elections unless they are felons who are in prison at the time of the election (see attached). Counsel's office points out and some constitutional scholars have argued that this legislation maybe unconstitutional. However, others have argued that this legislation could be held constitutional.

Actions under Current Law

2. The Federal Bureau of Prisons' Release Preparation program includes classes on a range of topics and requires staff to help an inmate obtain proper identification (Social Security numbers, driver's license, birth certification or any other documents needed) to prior to release.
 - In states where ex-offenders automatically have the right to vote when released, registering them as voters could be a required step of the Release program.
 - In states where there is process for restoration of voting rights, the Release program could be required to go beyond simply informing the ex-offender of that process and actually help them with obtaining the necessary forms or taking the required steps to become registered voters.
3. The Administration could establish a federal process for the removal of civil disabilities for federal offenders, while leaving the conviction in place, without affecting state laws. There is no general federal statutory procedure whereby civil rights may be restored after federal convictions. Currently, under a presidential pardon, civil rights lost as result of a conviction are restored, including the right to vote. As part of that pardon power, the President could establish a process akin to clemency by which the conviction would stand but the ex-offender's civil rights would be restored.

4. In states that allow ex-offenders the right to vote, the Department of Justice/Civil Rights Division potentially has jurisdiction under Title VI or the Voting Rights Act to require the enforcement of state laws that permit persons incarcerated in jail to vote. The Department could bring suit when jails refuse to allow ballots to reach eligible voters.

Education/Outreach/Research

5. Senior Administration officials could raise this issue to draw attention to the unfairness of permanent disenfranchisement; that restoring rights of citizenship is important to personal responsibility; highlight examples of reformed community members and young adults (YouthBuild program); and acknowledge the racially disproportionate impact of these arbitrary laws.
6. The Department of Justice is considering developing short, easy to read pamphlets for each state which explain the requirements for restoring voting rights, for distribution to probation officers, courts officials and ex-offenders. This information could be widely distributed and could be used by DOJ to conduct outreach and provide training.
7. The federal government could provide funding to state prisons to include restoration of voting rights as part of state's ex-offender re-entry programs.
8. The Federal government could provide grants and/or development partnership with churches, civil rights groups and other CBOs on ex-offender voting and other re-entry issues.
9. The Department of Justice, Office of Pardon Attorney, is updating its 1996 state by state survey of disenfranchisement statutes. This resource could be highlighted and widely distributed but it is somewhat technical.

March 29, 2000

MEMORANDUM FOR MARIA ECHAVESTE

FROM: BETH NOLAN
MEREDITH CABE

cc: DEANNE BENOS
ERIC LIU
LEANNE SHIMABUKURO

SUBJECT: Restoration of Voting Rights to Felons Released from Confinement – H.R. 906

Pursuant to our earlier conversation, the Counsel's Office and DPC have met regarding the issue of restoration of voting rights to convicted felons once they are released from confinement. Below we have set out a brief outline of the current federal legislation addressing the issue, and some of the legal issues that may arise.

I. Current Law

Currently, states vary widely in the voting rights they accord individuals who have been convicted of crimes. Four states do not restrict voting rights at all, and even incarcerated felons are allowed to vote. In the other forty-six states and the District of Columbia, however, voting rights are restricted to some degree based on a criminal conviction. Thirty-two continue to deny offenders the right to vote while they are on parole, and twenty-nine do not allow probationers to vote. Fourteen states disqualify anyone who has been convicted of a felony, regardless of whether that person has completed his or her sentence (barring clemency or some other process that would restore the individual's right to vote).

II. Proposed Legislation

H.R. 906, the "Civic Participation and Rehabilitation Act of 1999," was introduced on March 2, 1999 (copy attached). The legislation would require states to allow individuals convicted of crimes to vote in federal elections unless they are felons who are incarcerated at the time of the election.

The legislation seeks to eliminate the discrepancies among states as to the right to vote in federal elections. It also seeks to rectify the disproportionate effect of criminal disenfranchisement provisions on minorities. The legislative history section of the bill reports that approximately 13% of all African-American males are disenfranchised because of these laws. The bill does not include statistics, but claims that Hispanic citizens are also disproportionately disenfranchised because they are disproportionately represented in the criminal justice system.

III. Possible Legal Issues

The Office of Legal Counsel at Justice has informally reviewed the legislation and has pointed out that there may be a question as to its constitutionality. The basic issue is whether Congress has the power to control voter qualifications, which is, except in a few circumstances, a power left to the states. The Constitution seems to permit states to disenfranchise otherwise qualified voters who have committed crimes. 14th Amend., Section 3. When there is a history of purposeful racial discrimination behind specific state voter requirements, however, the Supreme Court has held that Congress may legislate to prohibit that discrimination (e.g., literacy tests).

We should meet to expand on this discussion and to discuss some of the other issues the legislation presents.

Civic Participation and Rehabilitation Act of 1999 (Introduced in the House)

HR 906 IH

106th CONGRESS

1st Session

H. R. 906

To secure the Federal voting rights of persons who have been released from incarceration.

IN THE HOUSE OF REPRESENTATIVES

March 2, 1999

Mr. CONYERS (for himself, Mr. FROST, Mr. RANGEL, Ms. JACKSON-LEE of Texas, Mr. MEEHAN, Ms. WATERS, Mr. CLYBURN, Mr. LEWIS of Georgia, Mrs. MEEK of Florida, Mr. DAVIS of Illinois, Mr. BROWN of Ohio, Mr. MEEKS of New York, Mr. THOMPSON of Mississippi, Mr. RUSH, Mr. OWENS, Ms. KILPATRICK, Mr. WYNN, Mr. JACKSON of Illinois, Mr. HASTINGS of Florida, Mr. FATTAH, Ms. LEE, Mr. CUMMINGS, Mr. HILLIARD, Mr. BRADY of Pennsylvania, Mr. FORD, Mrs. JONES of Ohio, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To secure the Federal voting rights of persons who have been released from incarceration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Civic Participation and Rehabilitation Act of 1999'.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The right to vote is the most basic constitutive act of citizenship and regaining the right to vote reintegrates offenders into free society. The right to vote may not be abridged or denied by the United States or by any State on account of race, color, gender or previous condition of servitude. Basic constitutional principles of fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. Congress has ultimate supervisory power over Federal elections, an authority which has repeatedly been upheld by the Supreme Court.

(2) Congress finds three areas where discrepancies in State laws regarding felony convictions lead to unfairness in

Federal elections: (A) there is no uniform standard for voting in Federal elections which leads to an unfair disparity

and unequal participation in Federal elections based solely on where a person lives; (B) laws governing the

restoration of voting rights after a felony conviction are unequal throughout the country and persons in some States

can easily regain their voting rights while in other States persons effectively lose their right to vote permanently;

and (C) State disenfranchisement laws disproportionately impact ethnic minorities.

(3) Although State law determines the qualifications for voting, Congress must ensure that those laws are in

accordance with the Constitution. Current laws vary throughout the country resulting in discrepancies regarding

which citizens may vote in Federal elections.

(4) An estimated 3,900,000 Americans, or one in fifty adults, currently cannot vote as a result of a felony

conviction. Women represent about a half million of this total. Disenfranchisement results from varying State laws

that restrict voting while under some form of criminal justice supervision or after the completion of a felony

sentence in some States. Four States do not disenfranchise felons at all (Maine, Massachusetts, New Hampshire,

and Vermont). Forty-six States and the District of Columbia have disenfranchisement laws that deprive convicted

offenders of the right to vote while they are in prison. In thirty-two States, convicted offenders may not vote while

they are on parole and in twenty-nine States probationers may not vote. Fourteen States disenfranchise ex-offenders who have fully served their sentences, regardless of the nature or seriousness of the offense.

Three-fourths (73%) of the 3,900,000 disqualified voters are not in prison, but are on probation, parole or are

ex-offenders.

(5) In those States that disenfranchise ex-offenders, the right to vote can be regained in theory, but in practice this

possibility is often illusory. In eight States, a pardon or order from the Governor is required. In two States,

ex-offenders must obtain action by the parole or pardon board. Offenders convicted of a Federal offense often

have additional barriers to regaining voting rights. In at least 16 States, Federal offenders cannot use the State

procedure for restoring their civil rights. The only method provided by Federal law for restoring voting rights to

ex-offenders is a Presidential pardon. Few persons who seek to have their right to vote restored have the financial

and political resources needed to succeed.

(6) Thirteen percent of the African American adult male population, or 1,400,000 African American men, are

disenfranchised. Given current rates of incarceration, three in ten of the next generation of black men will be

disenfranchised at some point during their lifetime. Hispanic citizens are also disproportionately disenfranchised since they are disproportionately represented in the criminal justice system.

(7) These discrepancies should be addressed by Congress. Basic concepts of fundamental fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. This Act will restore fairness in the Federal election process and promote reintegration of former offenders into a life as law abiding citizens of the United States.

SEC. 3. RIGHTS OF CITIZENS.

The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.

SEC. 4. ENFORCEMENT.

(a) ATTORNEY GENERAL- The Attorney General may, in a civil action, obtain such declaratory or injunctive relief as is necessary to remedy a violation of this Act.

(b) PRIVATE RIGHT OF ACTION-

(1) A person who is aggrieved by a violation of this Act may provide written notice of the violation to the chief election official of the State involved.

(2) Except as provided in paragraph (3), if the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may, in a civil action obtain declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action to obtain declaratory or injunctive relief with respect to the violation.

SEC. 5. DEFINITIONS.

For purposes of this Act--

(1) the term 'correctional institution or facility' means any prison, penitentiary, jail, or other institution or facility for the confinement of individuals convicted of criminal offenses, whether publicly or privately operated, except that such term does not include any residential community treatment center (or similar public or private facility);

(2) the term 'election' means--

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party held to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; or

(D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President; and

(3) the term 'Federal office' means the office of President or Vice President of the United States, or of Senator or

Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

SEC. 6. RELATION TO OTHER LAWS.

(a) Nothing in this Act shall be construed to prohibit the States enacting any State law which affords the right to vote in any election for Federal office on terms less restrictive than those established by this Act.

(b) The rights and remedies established by this Act are in addition to all other rights and remedies provided by law, and

neither rights and remedies established by this Act shall supersede, restrict, or limit the application of the Voting Rights

Act of 1965 (42 U.S.C. 1973 et seq.) or the National Voter Registration Act (42 U.S.C. 1973-gg).

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9TH REFERENCE of Level 1 printed in FULL format.

FULL TEXT OF BILLS

106th CONGRESS, 1ST SESSION
IN THE HOUSE OF REPRESENTATIVES
AS INTRODUCED IN THE HOUSE

H. R. 906

1999 H.R. 906; 106 H.R. 906

<=1> Retrieve Bill Tracking Report

SYNOPSIS:

A bill to secure the Federal voting rights of persons who have been released from incarceration.

DATE OF INTRODUCTION: March 02, 1999

SPONSOR(S):

Sponsor and Cosponsors as of 03/03/1999

CONYERS, JOHN JR (D-MI) - Sponsor
BRADY, ROBERT A (D-PA) - Cosponsor
BROWN, SHERROD (D-OH) - Cosponsor
CLYBURN, JAMES E (D-SC) - Cosponsor
CUMMINGS, ELIJAH EUGENE (D-MD) - Cosponsor
DAVIS, DANNY K (D-IL) - Cosponsor
FATTAH, CHAKA (D-PA) - Cosponsor
FORD, HAROLD JR (D-TN) - Cosponsor
FROST, MARTIN (D-TX) - Cosponsor
HASTINGS, ALCEE LAMAR (D-FL) - Cosponsor
HILLIARD, EARL FREDERICK (D-AL) - Cosponsor
JACKSON, JESSE L JR (D-IL) - Cosponsor
JONES, STEPHANIE TUBBS (D-OH) - Cosponsor
KILPATRICK, CAROLYN CHEEKS (D-MI) - Cosponsor
LEE, BARBARA (D-CA) - Cosponsor
LEE, SHEILA JACKSON (D-TX) - Cosponsor
LEWIS, JOHN R (D-GA) - Cosponsor
MEEHAN, MARTIN T (D-MA) - Cosponsor
MEEK, CARRIE P (D-FL) - Cosponsor
MEEKS, GREGORY W (D-NY) - Cosponsor
OWENS, MAJOR ROBERT ODELL (D-NY) - Cosponsor
RANGEL, CHARLES B (D-NY) - Cosponsor
RUSH, BOBBY LEE (D-IL) - Cosponsor
SCHAKOWSKY, JANICE D (D-IL) - Cosponsor
THOMPSON, BENNIE G (D-MS) - Cosponsor
WATERS, MAXINE (D-CA) - Cosponsor
WYNN, ALBERT R (D-MD) - Cosponsor

TEXT:

106TH CONGRESS
1ST SESSION

H. R. 906

To secure the Federal voting rights of persons who have been released

H. R. 906

from incarceration.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1999

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(2) Congress finds three areas where discrepancies in State laws regarding felony convictions lead to unfairness in Federal elections:

(A) there is no uniform standard for voting in Federal elections which leads to an unfair disparity and unequal participation in Federal elections based solely on where a person lives; (B) laws governing the restoration of voting rights after a felony conviction are unequal throughout the country and persons in some States can easily regain their voting rights while in other States persons effectively lose their right to vote permanently; and (C) State disenfranchisement laws disproportionately impact ethnic minorities.

(3) Although State law determines the qualifications for voting, Congress must ensure that those laws are in accordance with the Constitution. Current laws vary throughout the country resulting in discrepancies regarding which citizens may vote in Federal elections.

(4) An estimated 3,900,000 Americans, or one in fifty adults,

currently cannot vote as a result of a felony conviction. Women represent about a half million of this total. Disenfranchisement results from varying State laws that restrict voting while under some form of criminal justice supervision or after the completion of a felony sentence in some States. Four States do not disenfranchise felons at all (Maine, Massachusetts, New Hampshire, and Vermont). Forty-six States and the District of Columbia have disenfranchisement laws that deprive convicted offenders of the right to vote while they are in prison. In thirty-two States, convicted offenders may not vote while they are on parole and in twenty-nine States probationers may not vote. Fourteen States disenfranchise ex-offenders who have fully served their sentences, regardless of the nature or seriousness of the offense. Three-fourths (73%) of the 3,900,000 disqualified voters are not in prison, but are on probation, parole or are ex-offenders.

(5) In those States that disenfranchise ex-offenders, the right to vote can be regained in theory, but in practice this possibility is often illusory. In eight States, a pardon or order from the Governor is required. In two States, ex-offenders must obtain action by the parole or pardon board. Offenders convicted of a Federal offense often have additional barriers to regaining voting rights. In at least 16 States, Federal offenders cannot use the State procedure for restoring their civil rights. The only method provided by Federal law for restoring voting rights to ex-offenders is a Presidential pardon. Few persons who seek to have their right to vote restored have the financial and political resources needed to succeed.

(6) Thirteen percent of the African American adult male population, or 1,400,000 African American men, are disenfranchised. Given current rates of incarceration, three in ten of the next generation of black men will be disenfranchised at some point during their lifetime. Hispanic citizens are also disproportionately disenfranchised since they are disproportionately represented in the criminal justice system.

(7) These discrepancies should be addressed by Congress. Basic concepts of fundamental fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. This Act will restore fairness in the Federal election process and promote reintegration of former offenders into a life as law abiding citizens of the United States.

SEC. 3. RIGHTS OF CITIZENS.

The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.

SEC. 4. ENFORCEMENT.

(a) ATTORNEY GENERAL.-THE ATTORNEY GENERAL MAY, IN A CIVIL ACTION, OBTAIN SUCH DECLARATORY OR INJUNCTIVE RELIEF AS IS NECESSARY TO REMEDY A VIOLATION OF THIS ACT.

(B) PRIVATE RIGHT OF ACTION.-

(1) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS ACT MAY PROVIDE WRITTEN NOTICE OF THE VIOLATION TO THE CHIEF ELECTION OFFICIAL OF THE STATE INVOLVED.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3), IF THE VIOLATION IS NOT CORRECTED WITHIN 90 DAYS AFTER RECEIPT OF A NOTICE UNDER PARAGRAPH (1), OR WITHIN 20 DAYS AFTER RECEIPT OF THE NOTICE IF THE VIOLATION

OCCURRED WITHIN 120 DAYS BEFORE THE DATE OF AN ELECTION FOR FEDERAL OFFICE, THE AGGRIEVED PERSON MAY, IN A CIVIL ACTION OBTAIN DECLARATORY OR INJUNCTIVE RELIEF WITH RESPECT TO THE VIOLATION.

(3) IF THE VIOLATION OCCURRED WITHIN 30 DAYS BEFORE THE DATE OF AN ELECTION FOR FEDERAL OFFICE, THE AGGRIEVED PERSON NEED NOT PROVIDE NOTICE TO THE CHIEF ELECTION OFFICIAL OF THE STATE UNDER PARAGRAPH (1) BEFORE BRINGING A CIVIL ACTION TO OBTAIN DECLARATORY OR INJUNCTIVE RELIEF WITH RESPECT TO THE VIOLATION.

SEC. 5. DEFINITIONS.

For purposes of this Act-

(1) the term "correctional institution or facility" means any prison, penitentiary, jail, or other institution or facility for the confinement of individuals convicted of criminal offenses, whether publicly or privately operated, except that such term does not include any residential community treatment center (or similar public or private facility);

(2) the term "election" means-

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party held to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; or

(D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President; and

(3) the term "Federal office" means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

SEC. 6. RELATION TO OTHER LAWS.

(a) Nothing in this Act shall be construed to prohibit the States enacting any State law which affords the right to vote in any election for Federal office on terms less restrictive than those established by this Act.

(b) The rights and remedies established by this Act are in addition to all other rights and remedies provided by law, and neither rights and remedies established by this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) or the National Voter Registration Act (42 U.S.C. 1973-gg).

SUBJECT: CAMPAIGNS & ELECTIONS (94%); PROBATION & PAROLE (91%); PRIMARY ELECTIONS (91%); ELECTION LAW (91%); EQUAL PROTECTION (91%);

LOAD-DATE: March 03, 1999

March 29, 2000

MEMORANDUM FOR MARIA ECHAVESTE

FROM: BETH NOLAN
MEREDITH CABE

cc: DEANNE BENOS
ERIC LIU
LEANNE SHIMABUKURO

SUBJECT: Restoration of Voting Rights to Felons Released from Confinement – H.R. 906

Pursuant to our earlier conversation, the Counsel's Office and DPC have met regarding the issue of restoration of voting rights to convicted felons once they are released from confinement. Below we have set out a brief outline of the current federal legislation addressing the issue, and some of the legal issues that may arise.

I. Current Law

Currently, states vary widely in the voting rights they accord individuals who have been convicted of crimes. Four states do not restrict voting rights at all, and even incarcerated felons are allowed to vote. In the other forty-six states and the District of Columbia, however, voting rights are restricted to some degree based on a criminal conviction. Thirty-two continue to deny offenders the right to vote while they are on parole, and twenty-nine do not allow probationers to vote. Fourteen states disqualify anyone who has been convicted of a felony, regardless of whether that person has completed his or her sentence (barring clemency or some other process that would restore the individual's right to vote).

II. Proposed Legislation

H.R. 906, the "Civic Participation and Rehabilitation Act of 1999," was introduced on March 2, 1999 (copy attached). The legislation would require states to allow individuals convicted of crimes to vote in federal elections unless they are felons who are incarcerated at the time of the election.

The legislation seeks to eliminate the discrepancies among states as to the right to vote in federal elections. It also seeks to rectify the disproportionate effect of criminal disenfranchisement provisions on minorities. The legislative history section of the bill reports that approximately 13% of all African-American males are disenfranchised because of these laws. The bill does not include statistics, but claims that Hispanic citizens are also disproportionately disenfranchised because they are disproportionately represented in the criminal justice system.

III. Possible Legal Issues

The Office of Legal Counsel at Justice has informally reviewed the legislation and has pointed out that there may be a question as to its constitutionality. The basic issue is whether Congress has the power to control voter qualifications, which is, except in a few circumstances, a power left to the states. The Constitution seems to permit states to disenfranchise otherwise qualified voters who have committed crimes. 14th Amend., Section 3. When there is a history of purposeful racial discrimination behind specific state voter requirements, however, the Supreme Court has held that Congress may legislate to prohibit that discrimination (e.g., literacy tests).

We should meet to expand on this discussion and to discuss some of the other issues the legislation presents.

9TH REFERENCE of Level 1 printed in FULL format.

FULL TEXT OF BILLS

106th CONGRESS, 1ST SESSION
IN THE HOUSE OF REPRESENTATIVES
AS INTRODUCED IN THE HOUSE

H. R. 906

1999 H.R. 906; 106 H.R. 906

<=1> Retrieve Bill Tracking Report

SYNOPSIS:

A bill to secure the Federal voting rights of persons who have been released from incarceration.

DATE OF INTRODUCTION: March 02, 1999

SPONSOR(S):

Sponsor and Cosponsors as of 03/03/1999

CONYERS, JOHN JR (D-MI) - Sponsor
BRADY, ROBERT A (D-PA) - Cosponsor
BROWN, SHERROD (D-OH) - Cosponsor
CLYBURN, JAMES E (D-SC) - Cosponsor
CUMMINGS, ELIJAH EUGENE (D-MD) - Cosponsor
DAVIS, DANNY K (D-IL) - Cosponsor
FATTAH, CHAKA (D-PA) - Cosponsor
FORD, HAROLD JR (D-TN) - Cosponsor
FROST, MARTIN (D-TX) - Cosponsor
HASTINGS, ALCEE LAMAR (D-FL) - Cosponsor
HILLIARD, EARL FREDERICK (D-AL) - Cosponsor
JACKSON, JESSE L JR (D-IL) - Cosponsor
JONES, STEPHANIE TUBBS (D-OH) - Cosponsor
KILPATRICK, CAROLYN CHEEKS (D-MI) - Cosponsor
LEE, BARBARA (D-CA) - Cosponsor
LEE, SHEILA JACKSON (D-TX) - Cosponsor
LEWIS, JOHN R (D-GA) - Cosponsor
MEEHAN, MARTIN T (D-MA) - Cosponsor
NEEK, CARRIE P (D-FL) - Cosponsor
NEEKS, GREGORY W (D-NY) - Cosponsor
OWENS, MAJOR ROBERT ODELL (D-NY) - Cosponsor
RANGEL, CHARLES B (D-NY) - Cosponsor
RUSH, BOBBY LEE (D-IL) - Cosponsor
SCHAKOWSKY, JANICE D (D-IL) - Cosponsor
THOMPSON, BENNIE G (D-MS) - Cosponsor
WATERS, MAXINE (D-CA) - Cosponsor
WYNN, ALBERT R (D-MD) - Cosponsor

*clean
copy to
attach
to memo*

TEXT:

106TH CONGRESS
1ST SESSION

H. R. 906

to secure the Federal voting rights of persons who have been released

H. R. 906

from incarceration.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1999

Mr. CONYERS (for himself, Mr. FROST, Mr. RANGEL, Ms. JACKSON-LEE of Texas, Mr. MEEHAN, Ms. WATERS, Mr. CLYBURN, Mr. LEWIS of Georgia, Mrs. MEEK of Florida, Mr. DAVIS of Illinois, Mr. BROWN of Ohio, Mr. MEEKS of New York, Mr. THOMPSON of Mississippi, Mr. RUSH, Mr. OWENS, Ms. KILPATRICK, Mr. WYNN, Mr. JACKSON of Illinois, Mr. HASTINGS of Florida, Mr. FATTAH, Ms. LEE, Mr. CUMMINGS, Mr. HILLIARD, Mr. BRADY of Pennsylvania, Mr. FORD, Mrs. JONES of Ohio, and Ms. SCHAKOWSKY)

introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To secure the Federal voting rights of persons who have been released from incarceration.

* Be it enacted by the Senate and House of Representatives of the United*
States of America in Congress assembled, *

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civic Participation and Rehabilitation Act of 1999".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The right to vote is the most basic constitutive act of citizenship and regaining the right to vote reintegrates offenders into free society. The right to vote may not be abridged or denied by the United States or by any State on account of race, color, gender or previous condition of servitude. Basic constitutional principles of fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. Congress has ultimate supervisory power over Federal elections, an authority which has repeatedly been upheld by the Supreme Court.

(2) Congress finds three areas where discrepancies in State laws regarding felony convictions lead to unfairness in Federal elections:

(A) there is no uniform standard for voting in Federal elections which leads to an unfair disparity and unequal participation in Federal elections based solely on where a person lives; (B) laws governing the restoration of voting rights after a felony conviction are unequal throughout the country and persons in some States can easily regain their voting rights while in other States persons effectively lose their right to vote permanently; and (C) State disenfranchisement laws disproportionately impact ethnic minorities.

(3) Although State law determines the qualifications for voting, Congress must ensure that those laws are in accordance with the Constitution. Current laws vary throughout the country resulting in discrepancies regarding which citizens may vote in Federal elections.

(4) An estimated 3,900,000 Americans, or one in fifty adults,

currently cannot vote as a result of a felony conviction. Women represent about a half million of this total. Disenfranchisement results from varying State laws that restrict voting while under some form of criminal justice supervision or after the completion of a felony sentence in some States. Four States do not disenfranchise felons at all (Maine, Massachusetts, New Hampshire, and Vermont). Forty-six States and the District of Columbia have disenfranchisement laws that deprive convicted offenders of the right to vote while they are in prison. In thirty-two States, convicted offenders may not vote while they are on parole and in twenty-nine States probationers may not vote. Fourteen States disenfranchise ex-offenders who have fully served their sentences, regardless of the nature or seriousness of the offense. Three-fourths (73%) of the 3,900,000 disqualified voters are not in prison, but are on probation, parole or are ex-offenders.

(5) In those States that disenfranchise ex-offenders, the right to vote can be regained in theory, but in practice this possibility is often illusory. In eight States, a pardon or order from the Governor is required. In two States, ex-offenders must obtain action by the parole or pardon board. Offenders convicted of a Federal offense often have additional barriers to regaining voting rights. In at least 16 States, Federal offenders cannot use the State procedure for restoring their civil rights. The only method provided by Federal law for restoring voting rights to ex-offenders is a Presidential pardon. Few persons who seek to have their right to vote restored have the financial and political resources needed to succeed.

(6) Thirteen percent of the African American adult male population, or 1,400,000 African American men, are disenfranchised. Given current rates of incarceration, three in ten of the next generation of black men will be disenfranchised at some point during their lifetime. Hispanic citizens are also disproportionately disenfranchised since they are disproportionately represented in the criminal justice system.

(7) These discrepancies should be addressed by Congress. Basic concepts of fundamental fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. This Act will restore fairness in the Federal election process and promote reintegration of former offenders into a life as law abiding citizens of the United States.

SEC. 3. RIGHTS OF CITIZENS.

The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.

SEC. 4. ENFORCEMENT.

(a) ATTORNEY GENERAL.-THE ATTORNEY GENERAL MAY, IN A CIVIL ACTION, OBTAIN SUCH DECLARATORY OR INJUNCTIVE RELIEF AS IS NECESSARY TO REMEDY A VIOLATION OF THIS ACT.

(B) PRIVATE RIGHT OF ACTION.-

(1) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS ACT MAY PROVIDE WRITTEN NOTICE OF THE VIOLATION TO THE CHIEF ELECTION OFFICIAL OF THE STATE INVOLVED.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3), IF THE VIOLATION IS NOT CORRECTED WITHIN 90 DAYS AFTER RECEIPT OF A NOTICE UNDER PARAGRAPH (1), OR WITHIN 20 DAYS AFTER RECEIPT OF THE NOTICE IF THE VIOLATION

OCCURRED WITHIN 120 DAYS BEFORE THE DATE OF AN ELECTION FOR FEDERAL OFFICE, THE AGGRIEVED PERSON MAY, IN A CIVIL ACTION OBTAIN DECLARATORY OR INJUNCTIVE RELIEF WITH RESPECT TO THE VIOLATION.

(3) IF THE VIOLATION OCCURRED WITHIN 30 DAYS BEFORE THE DATE OF AN ELECTION FOR FEDERAL OFFICE, THE AGGRIEVED PERSON NEED NOT PROVIDE NOTICE TO THE CHIEF ELECTION OFFICIAL OF THE STATE UNDER PARAGRAPH (1) BEFORE BRINGING A CIVIL ACTION TO OBTAIN DECLARATORY OR INJUNCTIVE RELIEF WITH RESPECT TO THE VIOLATION.

SEC. 5. DEFINITIONS.

For purposes of this Act-

(1) the term "correctional institution or facility" means any prison, penitentiary, jail, or other institution or facility for the confinement of individuals convicted of criminal offenses, whether publicly or privately operated, except that such term does not include any residential community treatment center (or similar public or private facility);

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LOAD-DATE: March 03, 1999