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PRESERVATION

THE WHITE HOUSE

WASHINGTON

March 29, 2000

MEMORANDUM FOR MARIA ECHAVESTE

FROM: BETH NOLAN *Bm*  
MEREDITH CABE *me*

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. 14<sup>th</sup> 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.

## Felon Disenfranchisement - Some Options

CRIME -  
~~EX-OFFENDERS~~  
 PRISONERS  
 VOTING

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.

03/20/00 MON 02:30 FAX

## **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.

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

SONYERS, 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.

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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

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## 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).

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

LOAD-DATE: March 03, 1999

2ND REFERENCE of Level 1 printed in FULL format.

FULL TEXT OF BILLS

105th CONGRESS, 1ST SESSION  
IN THE HOUSE OF REPRESENTATIVES  
AS INTRODUCED IN THE HOUSE

H. R. 1957

1999 H.R. 1957; 105 H.R. 1957

<=1> Retrieve Bill Tracking Report

SYNOPSIS:

A bill to provide fairness in voter participation.

DATE OF INTRODUCTION: May 26, 1999

SPONSOR(S):

Sponsor and Cosponsors as of 06/02/1999

DAVIS, DANNY K (D-IL) - Sponsor

TEXT:

106TH CONGRESS

1ST SESSION

H. R. 1957

To provide fairness in voter participation.

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IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1999

Mr. DAVIS of Illinois introduced the following bill; which was referred  
to the Committee on the Judiciary

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A BILL

To provide fairness in voter participation.

\* 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 "Constitutional Protection of the Right to  
Vote Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The right to vote is the most basic constitutive act of  
citizenship. The right to vote should not be abridged by the United  
States or any State on account of race, color, gender, or previous  
condition of servitude. Fundamental fairness requires that all  
members of society who have reached voting age, including  
rehabilitated ex-felons, be given a right to the ballot in State and

H. R. 1957

Federal elections.

(2) The lack of a nationwide uniform standard regarding ex-felons and eligibility to vote has led to a crazy quilt of laws, where in some States ex-felons are barred from voting for life. Currently, it is estimated that 3.9 million United States citizens are disenfranchised, including over one million who have completed their sentences. State disenfranchisement laws have had an adverse affect on African Americans. Thirteen percent of African American men, or 1.4 million, are currently disenfranchised because of such laws.

(3) While State law determines the qualifications for voting, Congress must ensure that the citizens' right to the ballot is unabridged. Disenfranchisement laws are vestiges of medieval times when citizens who committed crimes suffered civil death and were banished from society. These laws serve no purpose in a free and democratic country toward the reintroduction of individuals back into society. After an individual has served a sentence of imprisonment and is no longer on probation or parole, that individual should be eligible to participate in Federal and State elections.

#### SEC. 3. RIGHTS OF CITIZENS.

The right of a citizen of the United States to vote shall not be denied or abridged because that citizen has been convicted of a criminal offense, unless such citizen is, at the time of the vote, serving a felony sentence in a correctional institution or facility or is otherwise under the supervision or actual or constructive custody of a governmental authority pursuant to that conviction.

#### SEC. 4. NOTICE TO PERSONS RELEASED.

Not later than 90 days after the date of the enactment of this Act, each correctional institution or facility shall establish and carry out a system of notice to ensure that persons being released from that institution or facility are informed of the right to vote protected by this Act.

#### SEC. 5. DEFINITION.

As used in this Act, 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.

SUBJECT: SENTENCING (90%); CAMPAIGNS &  
ELECTIONS (89%); PRISONS (88%); PROBATION & PAROLE (74%);

LOAD-DATE: June 02, 1999



# 'Ex-convicts hope to regain right to vote

1 million are no longer behind bars, but remain barred from the process

By Richard Willing  
USA TODAY

One of the first things Bob Frantz did after returning home from prison in 1997 was visit the Bucks County courthouse in eastern Pennsylvania to register to vote.

Or try to.

"They told me I had to wait until five years after my sentence was finished," says Frantz, who served 5½ years for assault. "I thought: ... 'This isn't right. I did my time. Now they tell me I've got five more (years) to do before I'm out from under.'"

Frantz is a recruit in the national campaign to restore voting rights to convicted felons.

Led by an alliance of black

state legislators and grass-roots prison reform groups, the effort has prompted pending legislation in Maryland, Pennsylvania and Delaware.

Lawmakers in Alabama, Nevada, Florida, Virginia and Connecticut are considering offering similar bills. A proposal to restore the right to vote in federal elections is before the House Judiciary Committee.

Frantz, a 61-year-old former engineer, is among an estimated 1 million former convicts who have completed their sentences but remain barred from voting by state laws.

Some view recovering their voting rights as a matter of justice. Forfeiting a civil right, they argue, shouldn't be part of a criminal sentence.

Others, such as former Pennsylvania attorney general Ernest Preate, say regaining the vote can be a vital part of rehabilitation.

"It's a way of society saying: 'OK, you're back. Let's move on,'" says Preate, who spent most of 1996 in a federal prison after pleading guilty to a corruption-related fraud charge. Mujahid Ramadan, Nevada's former director of state drug policy, says restoring the right to vote is also an empowerment issue. About 36% of present or former convicts who are barred from voting are black, according to a 1998 study by Human Rights Watch, a liberal advocacy group.

"That's a lot (of African-Americans) that should have that stake in the system who aren't there," says Ramadan, who directs Nevada Partners, a non-profit group that finds em-

ployment for former prisoners.

Opponents say losing the right to vote is a traditional part of a felon's sentence, based on European laws that predate the nation's founding. They also say people who have committed serious crimes can't be trusted to participate in civic life.

According to the Sentencing Project, a Washington-based advocacy group that favors voting rights for ex-convicts, convicted felons in 32 states are not allowed to vote until they complete parole.

In 10 states, ex-convicts are barred from voting for life.

Voting by ex-convicts who committed federal felonies is governed by the laws of the states in which they reside.

Thus far, the movement to restore voting rights has encountered little resistance, in part because it has not attracted much attention. But some states that once allowed felons to vote have retrenched.

The Massachusetts Legislature is expected later this year to consider amending the state constitution to eliminate inmate voting.

In 1998, Utah voters stripped that state's inmates of the vote by a 4-1 ratio. And in Oregon last year, legislators closed a gap in state law that permitted federal prisoners to vote in state and local elections.

Yamhill County Clerk Charles Stern says he raised the issue after six federal inmates at a Sheridan, Ore., prison registered to vote.

"There are 4,800 people in Sheridan, and 2,500 — the prisoners — don't want to be there," Stern says. "They could have a serious impact on a bond issue or a school board election. And that's a little alarming."

# It's Time I Shed My Ex-Convict Status

For 30 years I've lived a good life—so why should I have to tell a potential employer about my past?

By WALTER SCANLON

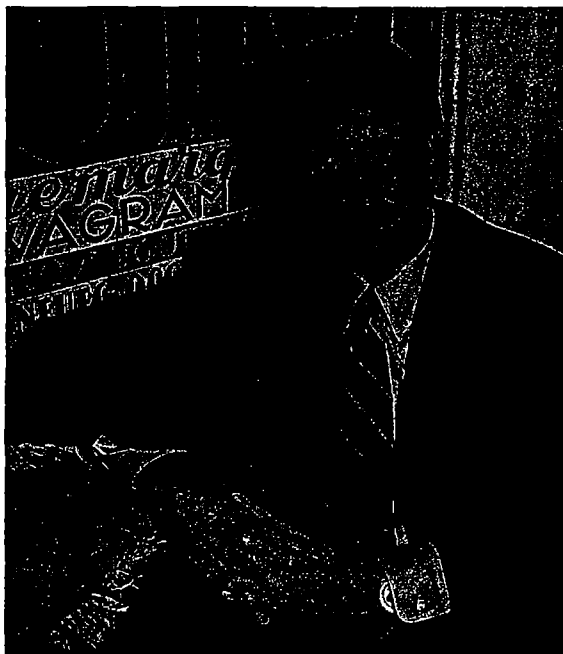
**T**HIRTY YEARS AGO I DECIDED to drastically turn my life around. With a state-issued olive suit on my back, a high-school equivalency diploma and \$40 travel money in my pocket, I became an ex-convict. I had done my time—almost five years in all—and now had the opportunity to redeem myself. I felt almost optimistic. As the huge outer gate of New York state's Clinton Prison slammed behind me, the discharge officer bid me farewell: "Get your act together," he bellowed with a mix of sincerity and humor. "I don't want to see you back here any time soon." A Department of Corrections van sat rumbling at the prison's checkpoint—my ride to the Greyhound bus depot.

As we pulled away, the towering walls, razor wire and iron gates of the prison grew even more awesome, and the looming gun towers more ominous. It was a bright early autumn morning, my 32d birthday was days away, and the last 10 years of my life had been spent in and out of men's shelters, hospitals and prisons. I wanted to make it this time.

Alcohol and other drugs had been my failing. Realizing I would need help, I sought an organization of other recovering addicts. Within a few days I landed a job in a metal-plating factory and rented a tiny furnished room. On the urging of a new friend who had a similar past, I soon took my first college course. My first grade was a disappointing C, but before long I was scoring A's and B's. I also got better jobs, eventually landing a counseling job in a substance-abuse treatment program. On job applications, I left questions about past arrests and convictions blank. I'd read that this would probably go unnoticed and, if it didn't, it would be better to discuss such

matters in person. Time passed and, in a few short years, I completed college. I went on to get my master's degree and, using my graduate thesis as its foundation, I wrote a book on drugs in the workplace.

Today I live a full life, enjoying what most people enjoy: movies, books, theater,



*Today I live a full life, enjoying what most people enjoy: books, theater, good food and good friends*

good food and good friends. My significant other is a South Asian woman and her diverse circle of friends has enriched my life. My annual income as a substance-abuse specialist is adequate, my standing in the community solid and my commitment to continued recovery is permanent.

All of these qualities notwithstanding, I remain, irrevocably, an ex-convict. Although the years have removed all but hazy memories of addiction, hospitalizations, street living and prison, I secretly

carry the baggage of a former offender. As my qualifications for higher-level positions grew, so, too, did the potential for a more detailed scrutiny of my past. Opportunities for better jobs that colleagues took for granted were not so available to me. On virtually every job application, the question continued to haunt me: "Have you ever been convicted of a felony or misdemeanor or denied bond in any state?" Staring blankly at the application, I would often wonder, will this nightmare ever end? For minorities, who have a higher rate of incarceration, the nightmare is even more likely to occur.

To the average person, the ex-convict is an individual of questionable character. And without the experience of meeting a rehabilitated offender, there is little chance that this image will change. It is reinforced by the fact that the only thing usually newsworthy about an ex-convict is bad news—another arrest.

Yet the real news is that many former offenders are, like me, rehabilitated members of society. No one would guess at our pasts. We don't deserve kudos for not committing crimes, but our failings should not supersede decades of personal growth and responsible citizenship. Unfortunately, that's often what happens.

Under employment discrimination laws, hiring decisions cannot be made on the basis of age, sex or the color of a person's skin. A job applicant does not have to reveal a disability or medical condition, including former drug dependence. Employability is based on the ability to perform the essential function of the job. Yet the former offender, whose past may be directly related to substance abuse, is expected to reveal his transgression.

No one is born an ex-convict; the title is earned and the individual must accept responsibility. Yet wouldn't it be nice if there were an ex-ex-con status? It would feel good not to panic at the sight of a job application and that dreaded ques-

tion: "Have you ever been convicted of a felony or misdemeanor or denied bond in any state?" This question, without exclusionary criteria (i.e., within the last 10 years), serves no one's interest. To those of us who have paid our debt to society, it's a form of discrimination that undermines our efforts to continue to rebuild our lives.

SCANLON is a chemical-dependency interventionist and workplace management consultant.

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# CORRECTIONS

August 1998

Magazine



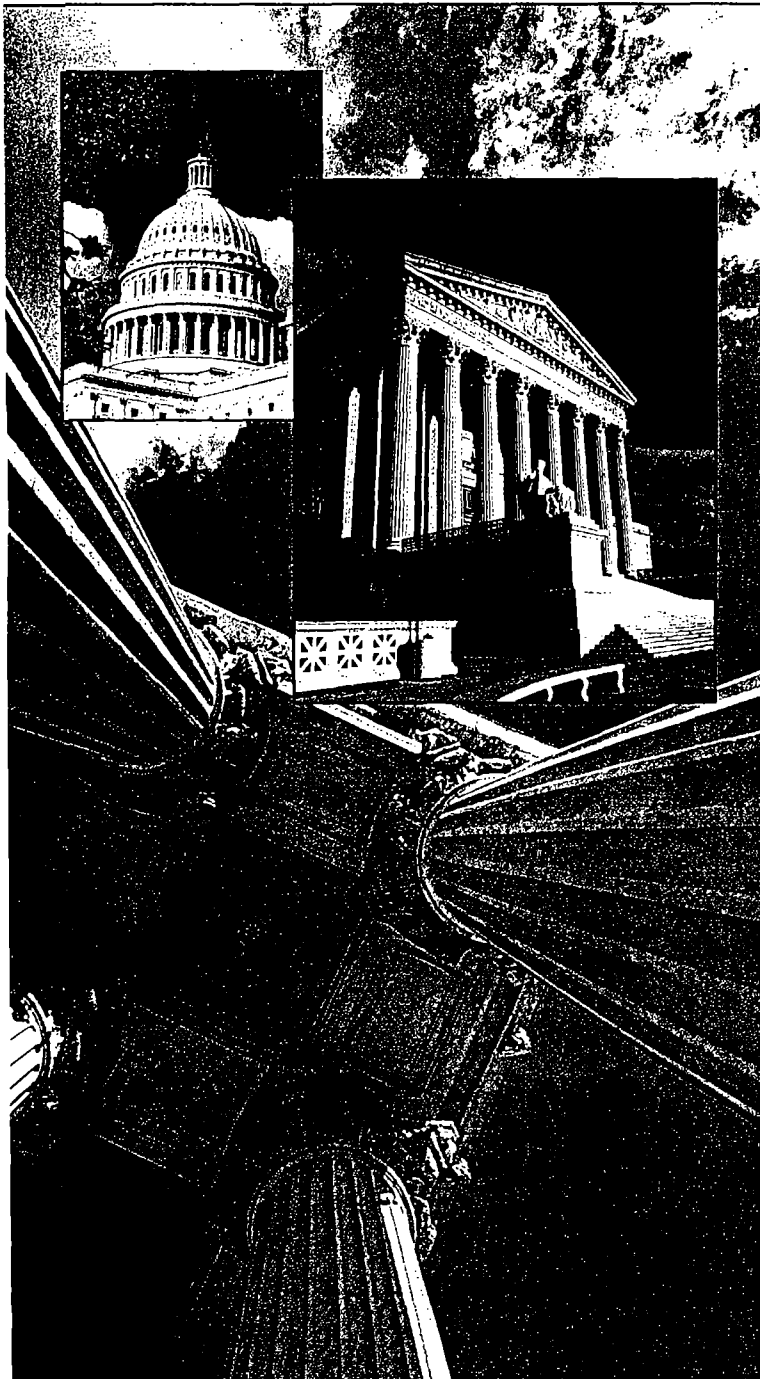
## Legal & Legislative Issues

DETROIT CONVENTION  
★ ISSUE ★

## **C O N T E N T S**

Vol. 60, No. 5

### **Legal and Legislative Issues**



**60**

**William C. Collins and  
Darlene C. Grant**  
The Prison Litigation Reform Act

**64**

**Elizabeth Alexander**  
We Can Work It Out: Settlements Are Still  
Possible After PLRA

**68**

**Susan M. Kuzma**  
Civil Disabilities of Convicted Felons

**74**

**Dora B. Schriro**  
Reducing Inmate Litigation

**80**

**Patricia Puritz and Mary Ann Scali**  
Civil Rights of Institutionalized Persons

**84**

**Kathie Winckler**  
Getting in the Ring: The Texas Crime Bill  
Work Group

**88**

**Jim Kyle**  
The Privatization Debate Continues

# Civil Disabilities of Convicted Felons

A  
State-by-State  
Survey  
Finds  
Considerable  
Variation Among  
Jurisdictions



By Susan M. Kuzma

**Y**ou've just been released from prison after serving a sentence for a felony conviction and you have begun to reconstruct your life. You've paid your debt to society. Or have you? When it comes to voting, owning a gun or applying for an occupational license, an offender may soon learn that the consequences of a felony conviction linger long after the sentence has been served.

Because conviction of a felony or service of a prison sentence upon felony conviction commonly triggers the loss of various civil rights and limits an offender's ability to engage in various occupations, the reality of life in the late 20th century is that an increasing number of people are or will become subject to disabilities, a term used here to broadly encompass all collateral consequences of conviction beyond the sentence authorized by a criminal statute.

These disabilities take many forms in many arenas, both state and federal, as established and explained by constitution, statute, regulation, rule and court decision, and they may endure long beyond the date of conviction. While intuition may apprise us of the existence of certain disabilities, intuition is not always accurate and disabilities are not always intuitive. Finding out about disabilities is not always a simple task, either, even if it occurred to someone to ask whether a particular disability exists.

These circumstances may explain why a survey on disabilities, titled *Civil Disabilities of Convicted Felons: A State-by-State Survey*, published by the Office of the Pardon Attorney of the U.S. Department of Justice in October 1992 and then updated in October 1996, has been so popular. Despite its rather narrow topic and, one might suppose, limited audience, the survey has become a frequently requested item, and the office's October 1996 update of the survey has been even more in demand. The increased demand is some indication of the survey's utility, as is the frequency with which the office receives thank-you letters from survey recipients who comment on the paucity of compiled and readily available information about disabilities.



## Data Collection

Collecting information about the existence and nature of various disabilities and methods for their removal was a natural outgrowth of the work of the Office of the Pardon Attorney, since removal of disabilities is one of the reasons people seek pardon. Compilation of the information was a challenge, due to the variety of state laws on the subject, the complexity of issues concerning application of disabilities and the difficulty in obtaining current, accurate and detailed information about disabilities. The Office of the Pardon Attorney decided to limit the scope of the survey in order to publish it before the information became outdated.

The survey concentrates primarily on felony convictions, and covers only a limited number of disabilities. The publication contains an entry for each state and the District of Columbia, and focuses on the effects of a felony conviction on three core civil rights: voting, holding state office and sitting on a state jury. Each state's entry also includes examples of occupational disabilities and (in the 1996 edition) notes whether that state has a sex offender registration law. Separate sections in each entry discuss the state's methods for restoring rights lost as a result of conviction, and the loss and restoration of state firearms privileges. The survey also includes a chapter on federally imposed disabilities and federal procedures for restoring rights lost as a result of conviction.

## An Overview of Disabilities

Many disabilities are imposed by state, not federal, law, even for federal convictions. With regard to voting, the U.S. Constitution recognizes the right of states to determine the qualifications of electors, even in a federal election, and the 14th Amendment recognizes the ability of states to disenfranchise for conviction of a crime. The theory that allows states to impose other disqualifications upon conviction of a federal crime is not always articulated, but the ability of states to do so seems to be accepted (or not to have been seriously questioned). Similarly, the ability of one state to impose disabilities upon residents who were convicted in another state also seems accepted.

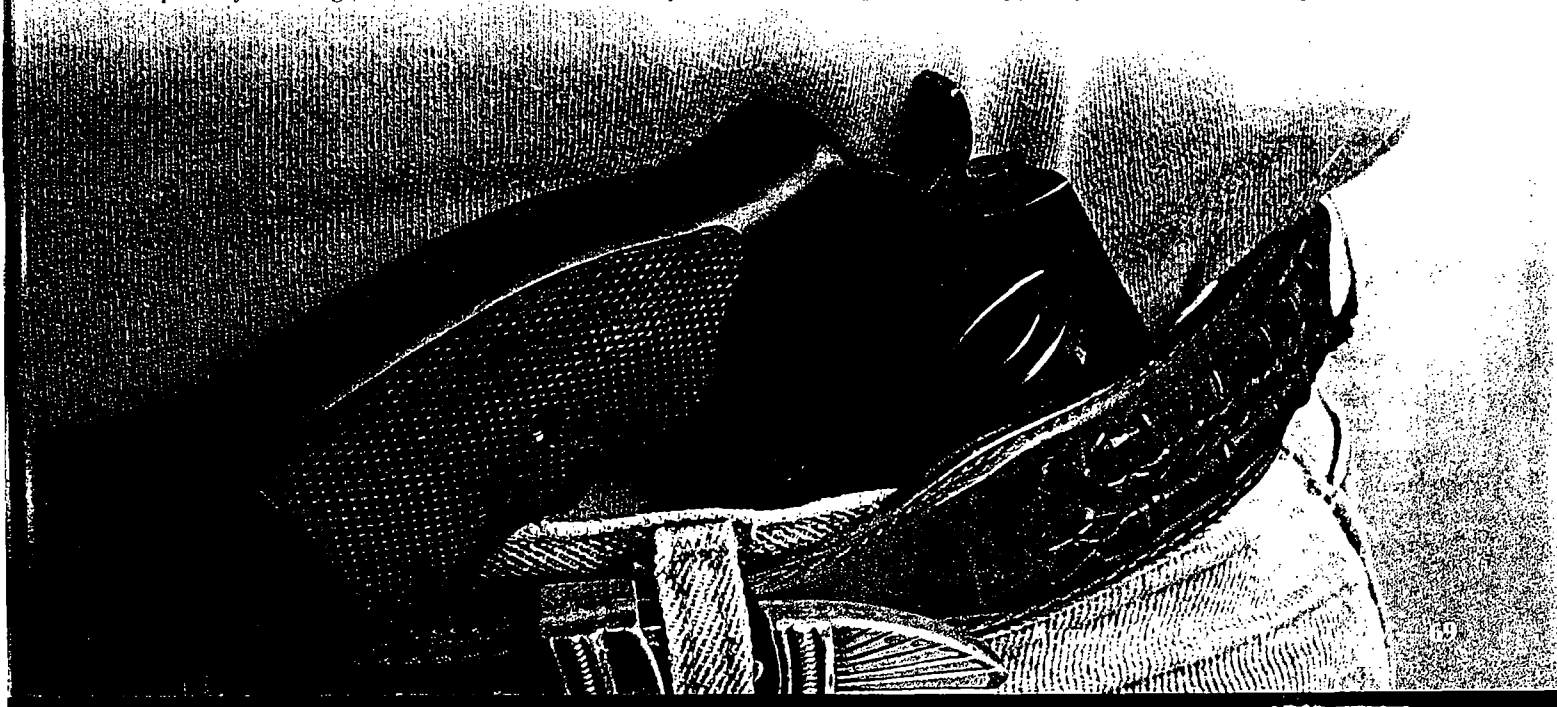
The primary civic rights at the state level that may be

affected by felony conviction are the rights to vote, hold public office and sit on a jury. Whether considered a "right" or a "privilege," the ability to possess firearms is, under federal law, nearly always impaired by a felony conviction, and the laws of nearly all states also provide for some type of firearms disability upon at least some offenders.

Loss, suspension or restriction of a professional or occupational license may result from a felony conviction, as well as disqualification from obtaining such a license in the future. Felons may be precluded from being bonded or from serving as a notary public. A felon may be required to register with a local law enforcement agency. A conviction may result in deportation or other adverse immigration-related consequences. A felony conviction may be grounds for impeachment if the felon testifies as a witness. Prolonged incarceration upon conviction may be grounds for divorce. The consequences listed here are exemplary, not exhaustive.

There are varying patterns among the states in whether and for how long disabilities are imposed. The possibilities range from losing virtually no rights, to losing rights only while incarcerated, to losing all rights unless pardoned, and everything in between. Generally, the right to vote is most frequently lost but also is the most commonly restored, either by release from incarceration, service of sentence or passage of time. Conversely, the right to sit as a juror is the most difficult to regain once lost. State firearms disabilities take various forms as well, differing on such issues as the offenses for which a disability is imposed (such as whether it extends to all felonies or only to some smaller category of felonies such as violent offenses), the scope of the disability (such as whether it extends to long guns, handguns or both), the duration of the disability and the method for its removal.

Occupational and professional disabilities also vary, particularly concerning the extent to which a conviction affects licensing or employment decisions. For example, some states do not permit a conviction to be the sole basis for denying employment or licensing unless the conviction is related to the occupation or profession; some disabilities may be imposed only for certain kinds of convictions; and some occupational disabilities are imposed only for a certain length of time. Typically, law enforcement agencies are



not subject to such restrictions on considering convictions in making licensing decisions.

Restoration procedures vary considerably from state to state, and even from right to right. Methods for restoring rights may consist of passage of time, successful pursuit of an administrative procedure, successful pursuit of a court remedy or a pardon. So-called "first-offender" pardons, expungement (generally, the sealing or physical destruction of the records of a conviction), reduction of a charge from a felony to a misdemeanor, and set-aside procedures (such as allowing a finding of guilt or conviction to be set aside after the offender successfully completes a period of probation) are other methods for avoiding the collateral consequences of a felony conviction. The availability of such procedures and their specific effects, however, vary considerably from jurisdiction to jurisdiction. For example, a first-offender pardon may restore civic rights but not be effective to restore firearms privileges.

## Interpretational Issues

Although the states' laws vary considerably, the determination of whether a disability or a restoration procedure applies in various circumstances may raise issues of interpretation. The generalization that disabilities arise from felony convictions requires explanation, since the definition of a particular disability may not necessarily use the term "felony." In addition, some disabilities are imposed only upon conviction of specified felonies, and some may be imposed upon conviction of certain misdemeanors. For example, the federal felon-in-possession statute, generally prohibiting the possession of a firearm by a convicted felon, does not actually use the word "felon" or "felony." Instead, the phrase "crime punishable by imprisonment for a term exceeding one year" is used to define the disability; that phrase, in turn, is defined largely by what it does not include, although the statute provides that what constitutes a conviction of a crime is determined in accordance with the law of the jurisdiction in which the proceedings were held.

State constitutional or statutory provisions may likewise use particular phrases in describing the kinds of convictions that trigger the disability, such as "infamous crime," "crime of moral turpitude," "crime punishable by imprisonment in the penitentiary," and so on. These phrases may not translate well to out-of-state or federal convictions, however, and state statutory provisions may not expressly address whether and how the disabilities apply to such convictions.

Even when the term "felony" is used, questions can arise, for that word does not have a uniform meaning. What happens when the law of the state of conviction differs from the law of the state of residence with regard to what "felony" means, or with regard to whether the conduct constitutes a felony? For example, the state of conviction may provide that a crime is a felony if the legislature designates it a felony, whereas the state of residence may provide that a crime is a felony if it is punishable by a term of imprisonment exceeding one year. A defendant convicted of a crime for which the authorized penalty is two years imprisonment, but which is designated a misdemeanor by the legis-

lature, would be a misdemeanor in the convicting state's view, but a felon by the definition of the state of residence.

Similar questions may arise with regard to military convictions, since military offenses are not classified as felonies or misdemeanors, and may result from conduct that would not even constitute a crime, let alone a felony, under the civilian law in a particular state. Some states' laws permit resolution of such interpretational problems by providing that the disability applies only when the conduct would constitute a felony under the law of the state imposing the disability (the state of residence).

Questions of interpretation also arise regarding the effect of a restoration of rights by the state of conviction. What happens when a felon receives a restoration of rights in the state of conviction, but then moves to another state? Can the second state impose disabilities upon the offender? Can a state other than the state of conviction restore the rights of an offender? Procedures for restoring rights may be unavailable to offenders convicted in another jurisdiction, although the state imposing the disability may recognize relief granted in the state of conviction. The reasons for these limitations may be both substantive (differences in philosophy regarding punishment and rehabilitation) and practical (difficulty in obtaining records from another state).

With regard to federal convictions, some states seem to take the position that the state can impose a disability upon conviction of a federal crime, but only the president of the United States can remove the disability by granting a pardon. Their apparent rationale is that the Supremacy Clause of the U.S. Constitution prohibits a state from removing disabilities and disqualifications imposed by state law. A similar theory, however, does not seem to lead states to refrain from imposing the disability in the first place. A number of states permit federal offenders to employ procedures for restoring rights that are available to state offenders, but for practical reasons, some state procedures may be available only to state offenders. For example, procedures to set aside a conviction and to reduce a charge from a felony to a misdemeanor are remedies available only to state offenders, as is expungement, generally.

The point at which a person is considered to have been "convicted" also may vary from state to state and from context to context. Is a defendant considered "convicted" once a finding of guilt is made or a plea of guilty is entered, or is he or she not convicted for the purposes of triggering a disability until a sentence is imposed? Must the conviction be final, in that the appeal is concluded or the time for appeal run, before the defendant is considered "convicted"? In some contexts, a person may not be considered "convicted" if he or she pleaded *nolo contendere* (no contest) to the offense. Laws imposing disabilities may not address these issues expressly, thereby leaving unresolved issues for interpretation.

Another important consideration in determining the applicability of a disability is the date of the conviction in relation to the effective date of the constitutional or statutory provision imposing the disability. Many disabilities are prospective only, applying only to crimes committed on or after a certain date. Thus, whether a disability applies at all

*Continued on page 72*

## Civil Disabilities of Convicted Felons

Continued from page 70

may depend on the date of conviction. Similarly, restoration procedures change over time, and close examination must be given to whether the procedure in effect at the time restoration is sought necessarily applies, or whether the procedure in effect at the time of the conduct that led to conviction (or some other time) might apply instead.

## Change Over Time

The law had changed considerably between the time the research for the 1992 survey was completed and four years later, when the survey was updated. The more recent laws reflected more restrictions on access to firearms by persons convicted of a crime. Also of interest was the emergence of disabilities for persons adjudicated delinquent for acts that would constitute crimes if prosecuted in adult court, such as firearms disabilities that last beyond the age of majority. Specific disabilities for sex offenders, including sex offender registration requirements and occupational disabilities in fields such as teaching and child care, became common in the years following the survey's first edition. Perhaps as a result of the influence of the drafting process for sex offender registration laws, newer laws are more likely to specifically address the treatment of federal and out-of-state convictions in defining disabilities and procedures to restore rights.

A major body of case law interpreting state laws defining disabilities has continued to develop as a result of prosecutions under the federal felon-in-possession statute. This statute defines the federal firearms disability imposed upon conviction of a state felon, in part, by whether the felon's civil rights have been restored.

Federal firearms laws may also become a force in the development of the law regarding expungement of convictions. The recently enacted federal firearms disability, for persons convicted of misdemeanor crimes involving domestic violence, has been applied to convictions predating the enactment of the disability. This disability, unlike the disability imposed upon conviction of a felony, contains no exception for law enforcement personnel, who must be able to possess and carry a firearm in order to keep their jobs and who, perhaps surprisingly, have been reportedly affected by the new law in sufficient numbers for the issue to be reported. Some affected persons have sought expungement or set-aside of their convictions in order to avoid the application of the disability.

## Conclusion

Whether to impose disabilities upon convicted persons, what kinds of disabilities, and for how long have been subjects of discussion for some time. Both the American Law Institute's *Model Penal Code* and the American Bar Association's *Standards for Criminal Justice* address these issues. Laws imposing disabilities reflect a struggle between the competing interests of clarity and flexibility, punishment and rehabilitation, and protection of the community and reintegration of the offender into society. The coherence and consistency with which the laws resolve these compet-

ing interests vary from state to state, and piecemeal handling of disabilities is not uncommon. The result may be undesirable complexity, inflexibility or internal inconsistency, which raises questions about the ability of an offender to comply with the laws, the ability of society to enforce those laws, and the impact of the laws on the goal of reintegrating the offender into a law-abiding society.

The ultimate goal is to ensure law-abidingness. At a minimum, that means following laws imposing disabilities, which, in turn, renders it essential that offenders be able to obtain information to enable them to follow these laws. Logic suggests that the more complex or obscure these laws are, the harder they are to follow. Further, since conviction for a crime may prevent full and equal participation in various aspects of the civic and economic life of the community, the societal justifications and objectives for imposing the disabilities should be well-defined, and the scope of disabilities defined with the laws' goals in mind. Broad, indefinite or after-the-fact restrictions on the ability of persons convicted of crimes to engage in particular activities require careful consideration and reflection about whether the rigidity and severity of such an approach is justified by identifiable societal gains in protecting the community. Further worthy of consideration is the handling of disabilities for persons convicted in other jurisdictions. While practical constraints may make it difficult or undesirable for a state to entertain requests for restoration of rights from persons convicted in other jurisdictions, consideration can be given to recognizing relief granted by the state of conviction.

There are clearly two sides to the reintegration debate, as was well-illustrated by the question a secretary who worked temporarily in the Office of the Pardon Attorney, once asked. After a week of showing considerable interest in clemency, she hesitantly said, "I really believe that people should be given a second chance. But if I'm competing for a job with someone who's been convicted of a crime why should he be equal with me? I never did anything wrong." It's a tough question to answer. It's a tough issue for society as a whole to resolve. When has an offender paid his debt to society?

The price for crime can't be too cheap, lest no one follow the law. Yet, do we achieve another bad result by making it impossible to stop paying for having committed a crime? The goal in all aspects of the criminal justice system is, through a careful balancing of competing interests, to arrive at a resolution that supports, rewards and celebrates law-abidingness, even — and perhaps especially — among the latecomers. The way in which disabilities are defined is one piece of this complex puzzle.

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*Susan M. Kuzma is deputy pardon attorney with the Office of the Pardon Attorney, U.S. Department of Justice. The survey, Civil Disabilities of Convicted Felons: A State-by-State Survey, is available free of charge and can be obtained by writing the office at 500 First St. N.W., Suite 400, Washington, D.C. 20530.*

TESTIMONY OF  
HILARY O. SHELTON  
DIRECTOR OF THE WASHINGTON BUREAU OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
BEFORE THE HOUSE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION  
HEARING ON H.R. 906,  
THE CIVIC PARTICIPATION AND REHABILITATION ACT  
OF 1999

October 21, 1999

Thank you, Chairman Canady and distinguished members of this panel for inviting me to testify before you today on this important subject. I would especially like to thank Congressman John Conyers for all of his work on this issue, as well as Ranking Member Watt for helping to bring attention to this issue.

My name is Hilary O. Shelton and I currently serve as the Director of the Washington Bureau of the National Association for the Advancement of Colored People, or the NAACP. The NAACP is the nation's oldest and, with over 600,000 card-carrying members and 1,700 branches nationwide, largest grassroots civil rights organization. I am here today to share with you our association's strong support of H.R. 906, the "Civic Participation and Rehabilitation Act of 1999." This legislation would restore voting rights to ex-felony offenders. In fact, in February of this year the NAACP national Board of Directors voted unanimously to endorse H.R. 906 and make it one of the association's top legislative priorities for the 106th Congress.

H.R. 906 is crucial to the NAACP for a number of reasons. Voting is a fundamental American right, and the fact that almost 4 million Americans, or 1 in 50 American adults, are not allowed to vote is an insult to our Constitution and to the Bill of Rights. Many of these Americans have paid their debt to society and want to be reintegrated fully into their communities. Yet in too many states, the law bars them from participating in what may well be our most basic American responsibility of citizenship.

As you have heard from previous speakers, though this legislation would have a wide-ranging impact on every ethnic group, it affects ethnic minority Americans at a vastly disparate rate. In fact, 13% of all African American males today - 1.4 million American men - are prohibited from voting.

There are several reasons for this lopsided representation, and the question of disproportionate minority confinement could and probably should be the subject of another hearing in and of itself. However, one of the primary reasons that African Americans find themselves disproportionately barred from the ballot

box is our national so-called "war on drugs." Our country's effort over the last decade to eliminate the scourge of drugs from our society has had a much more severe impact on African Americans and other ethnic minorities than on their Caucasian counterparts. Between 1985 and 1995, there was a 707% increase in the number of African Americans in state prison for a drug related offense, compared to a 306% increase for Caucasians over the same period. Furthermore, although African Americans make up only 12 percent of the U.S. population, 15 percent of our country's drug users, and 17 percent of cocaine users, African Americans represent 33 percent of all Federal drug convictions and 57 percent of all Federal cocaine convictions.

But the war on drugs is not the only cause of the disproportionate minority disenfranchisement. According to the Justice Policy Institute, as we convict and incarcerate more and more people for nonviolent offenses, African Americans and Hispanic Americans comprised a growing number of the people we send to prison. In the 1930s, 75 percent of the people entering state and federal prison were Caucasian, which roughly reflected the demographics of our nation. As of March, 1999, ethnic minorities represent 70 percent of all new prison admissions, and more than half of all Americans behind bars.

Thus African Americans and other Americans of color are being kept out of the electoral process at an unequal rate, even after they have paid their debt to society.

Also troubling to our organization is the fact that state laws vary dramatically when it comes to defining a felony, and that states have very different processes through which an ex-felon must go to regain his or her civic rights. It is therefore often difficult for ex-offenders to know what, if anything, they can do to regain their right to vote. The extreme policies of some states have even led to real problems. Two cases in point are Alabama and Florida. In both of these states more than 30 percent of all African American men have lost their rights to vote forever, some for seemingly minor and certainly non-violent offenses. In Alabama, for example, it is possible to lose your right to vote forever if you write one bad check. Most states require specific gubernatorial action, and in 16 states federal ex-felons need a presidential pardon to regain their voting rights.

America expects felons to come out of our penal system prepared to act as productive members of society. We believe ex-felons should support their families and their communities. This is not an unreasonable expectation, but we need in turn to support them in their efforts. Because voting is such an integral part of being a productive member of American society, we should be encouraging ex-felons to vote, not prohibiting them.

In my travels across the nation, I have had the opportunity to talk to many ex-felons, some of whom committed crimes that never even warranted jail time, who are deeply troubled by the fact that they are not able to participate in our nation's democratic process. As Joe Loya, a disenfranchised ex-offender so eloquently said, "without a vote, a voice, I am a ghost inhabiting a citizen's space ... I want to walk calmly into a polling place with other citizens, to carry my placid ballot into the booth, check off my choices, then drop my conscience in the common box."

Throughout the world, the right to vote is seen as one of the paramount signs of personal liberty and freedom. Few Americans were not touched by the pictures of Black South Africans waiting in line, sometimes for several days, to vote for the first time in their lives. It is hypocritical of the United States to hold the right to vote up as a real test of true democracy, and yet to fail that very test here at home.

Felony voting restrictions are the last vestige of voting prohibitions in the United States. When the U.S. was founded only wealthy white men were allowed to vote. Women, ethnic minorities, those who were illiterate and the poor were excluded. With continued national enlightenment, these restrictions have all been eliminated over time, often with much debate and rancor. I am certain that the issue of allowing ex-felons to vote once they are released into society is not one that will be settled without a fair amount of heated debate. Yet I have faith that the morally correct path, blazed by the inspiration of a more democratic union, shall ultimately prevail, and that this imperfection in our society too shall be corrected.

I would like to take just a minute to focus on two elements of H.R. 906 that I think are important. First, the legislation is constitutional. As we have heard from a previous witness, this bill is carefully crafted so as to avoid any constitutional tangles. If any members of this subcommittee would like any further proof, we also have opinions of several other constitutional scholars who all agree that this legislation passes muster.

Secondly, I would like to emphasize that this bill very specifically provides that Americans who have been convicted of a felony may have their voting rights restored only upon release. The title of H.R. 906 is the "Civic Participation and Rehabilitation Act of 1999." The focus of this legislation is to help men and women who have served their time successfully reintegrate themselves into society. H.R. 906 establishes a national, uniform policy under which all Americans, after they have served their time in prison, may register to vote in federal elections and thus take one important step towards reestablishing himself or herself as a productive member of our society.

Because voting is such an integral part of being a productive member of American society, the NAACP has and will continue to support and work tirelessly for Congressman Conyers' legislation, the "Civic Participation and Rehabilitation Act of 1999." I hope that every member of this panel, and indeed of this Congress, will take a look at this bill. I have also included in my testimony two charts that I feel do a good job of illustrating the disparity between states as well as the severity of the problem facing African Americans. I hope that all the members of this panel will review these graphs and consider their impact on society.

Thank you again, Chairman Canady and Ranking Member Watt, for taking the time to address this issue today. I am willing to answer any questions you may have at this point, and I am available at any time in the future to discuss this problem at greater length.

## **TESTIMONY OF MARC MAUER**

**Assistant Director**

**The Sentencing Project**

**Before the**

**Constitution Subcommittee**

**House Judiciary Committee**

**on**

**Felony Voter Disenfranchisement**

**Thursday, October 21, 1999**

My name is Marc Mauer and I am the Assistant Director of The Sentencing Project, a national non-profit organization based in Washington. The Sentencing Project was founded in 1986 to conduct research on criminal justice policy issues and to provide technical assistance to state and local jurisdictions on sentencing options. My observations on the issue of felon voting disenfranchisement are based on research and programming work I have conducted over the past twenty-five years.

In 1998 I co-authored a study with Human Rights Watch titled "Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States." In that study, we produced estimates of the number of persons subject to disenfranchisement as a result of a felony conviction and examined the history and rationale for these laws. I will try to summarize the most relevant issues from that study in my remarks today.

### History of Disenfranchisement Laws

Felony disenfranchisement laws have existed in many states since the founding of the nation two hundred years ago. At that time, only a minority of the newly-independent population was granted the right to vote. Women, African Americans, the poor, and illiterates were all specifically excluded from the voting population, along with convicted felons. All of these other groups, of course, are permitted to vote today and we now look back on the period of their exclusion with a great deal of national embarrassment. The only significant group still disenfranchised are felons and ex-felons.

In this regard, the United States stands at an extreme end of the spectrum in comparison to other democratic nations. In no other democracy are convicted offenders who have served their sentences disenfranchised for life, as is done in a number of our states. A few countries restrict the right to vote for a short period after the conclusion of a prison term, but only in the case of persons convicted of electoral offenses. And, in fact, many countries - including France, Germany, Israel, Norway, and Poland - permit persons in prison to vote as well.

After the Civil War, the felony voting restrictions took on new significance in some Southern states. Along with other ostensibly race-neutral voting barriers - literacy tests, poll taxes, and grandfather clauses - the felony voting laws were tailored in some states specifically to disenfranchise newly-empowered blacks. In South Carolina and Alabama, for example, legislators explicitly crafted laws that resulted in disenfranchisement for crimes supposedly committed more frequently by blacks and excluded offenses believed to be primarily committed by whites. While the felony voting restrictions in place today contain no such direct racial intent, their application has resulted in substantial racial disparities nevertheless, for a complex set of reasons.

### Voting Restrictions and Impact

Currently, 46 states prohibit prisoners serving a felony sentence from voting. (The four states that permit inmates to vote are Maine, Massachusetts, New Hampshire, and Vermont.) In addition, 32 states deny the vote to persons on probation and/or parole, and in 14 states a felony conviction can result in disenfranchisement for life. Voting in federal elections is determined by the voting laws in place in one's state of residence.

There are today an estimated 3.9 million Americans, representing two percent of the adult population, who cannot vote as a result of a felony conviction. Of these, 1.4 million are persons who have fully completed their felony sentence but reside in one of the states that impose lifetime disenfranchisement.

States that disenfranchise for life generally have some type of mechanism in place whereby ex-felons can apply to have their civil rights restored. Typically, ex-felons are required to obtain a pardon from the governor or action by a board of pardons or parole. In practice, it is often extremely cumbersome to engage in this process and few ex-offenders have the financial and political resources needed to succeed. In Virginia, for example, only 404 ex-felons had their voting rights restored in a recent two-year period, of a total of 200,000 such persons in the state. In Mississippi, ex-offenders must either secure an executive order from the governor or have a state legislator introduce a bill on their behalf and obtain a two-thirds vote in the legislature.

The differing voting restrictions in each state result in participation in the electoral process that is in part based on one's state of residence. An ex-felon in West Virginia can vote for President, but an ex-felon in Virginia cannot. Similarly, if an ex-felon moves from Virginia to West Virginia, he or she regains the right to vote, while a shift from West Virginia to Virginia would result in the loss of the vote.

As a result of the high proportion of minorities in the criminal justice system, felony voting restrictions have had a very disproportionate racial impact. Our study estimated that 1.4 million African American men, representing 13 percent of the black adult male population, cannot vote as a result of a current or prior felony sentence. In ten states, more than one in five black men is currently disenfranchised. Given current rates of felony convictions and incarceration, we can expect that in the next generation of black men 30-40 percent will lose the right to vote for some or all of their adult lives.

### Rationale for Restoring Voting Rights

Given the increasing numbers of persons in the criminal justice system, the felony voting restrictions are resulting in increasing numbers of Americans losing their voting rights each year. There are several reasons why policymakers should consider reversing this trend by examining relevant legislation:

#### *1. Participation in voting aids in rehabilitation and public safety.*

When offenders are sentenced to prison or probation for a felony conviction, their sentence incorporates a loss of liberty and other punitive measures. What is sometimes forgotten, though, is that 95% of all prisoners (and, of course, all probationers) will return to the community after serving their sentence. If society is to encourage their participation in legitimate activities, it needs to foster a sense of obligation and responsibility among offenders. One clear means of doing so is through participation in the electoral process. Those persons who believe they have a stake in the welfare of their community are less likely to engage in illegal activities that will bring harm to individuals.

For ex-offenders in particular, felony voting restrictions conflict with the longstanding principle that once an offender has "paid his debt to society" he should be free to join the community again as a full member. Exclusion from the electoral process instead sends a message that this "debt" can never be paid in full.

#### *2. Felony voting restrictions are antiquated.*

Many of the voting restrictions currently in place were enacted over a century ago and have rarely been examined since that time. In many instances the rationale originally offered for such policies holds little relevance to current conditions. One finds in the legislative history and legal cases references to these laws as being necessary to protect the "purity" of the electoral process or to protect against fraud. For offenders convicted of such crimes as bribery, treason, or electoral fraud, this might represent a legitimate concern. It is difficult to understand, though, how a person convicted of stealing a car or writing a bad check twenty years ago presents a threat to the electoral process itself.

### *3. Voting restrictions should not serve as a form of punishment.*

Another rationale offered for the disenfranchisement laws is that they constitute a legitimate punishment that accompanies a felony conviction. Here, too, it is not clear what useful purpose is served by such statutes, and particularly so for persons who have completed their sentences. When a person is convicted of a felony offense, the punishment imposed will inevitably curtail some of the individual's rights, but these are generally related to public safety concerns. For offenders sentenced to prison, the restrictions imposed are generally those required to maintain the security of the institution. Thus, a prisoner can subscribe to a weekly newsmagazine, but not to a publication that provides information on how to produce explosive devices. Restrictions placed on parolees are designed to reduce the risk of criminal activity by, for example, prohibiting them from associating with known criminals. But there is no rational crime control purpose that is served by prohibiting an ex-offender from voting.

Further, voting restrictions are imposed without any action by a judge and without any sense of proportionality. Thus, offenders convicted of larceny lose their voting rights along with mass murderers. This can result in persons convicted of a single relatively minor crime, even one committed before reaching voting age, being turned into political "outcasts" for life.

### *4. Felony voting restrictions exacerbate racial tensions.*

Whether intended or not, disenfranchisement laws have had a significantly disproportionate impact on African Americans, and one that is increasing each year. While there need to be consequences for persons who violate the law, unnecessary policies such as the felony voting restrictions serve only to communicate a message of exclusion from the political process. If we are to promote racial harmony in our society, it is vital to make our democracy as inclusive as possible.

## Conclusion

Laws in the United States that disenfranchise persons convicted of a felony offense are resulting in greater numbers of persons being excluded from the ballot box as the number of persons under criminal justice supervision continues to expand. These laws have also had a significant impact on racial minorities and run counter to society's legitimate interest in promoting the development of law-abiding ex-offenders who have a stake in the well-being of their community.

The issue of felony voting disenfranchisement is not a question of whether there should be punishment for crime. It is instead a question of whether society is promoting practices and behaviors that will make for a more inclusive and democratic community. It is long past time to reconsider the wisdom of such policies.

**Statement of Representative Danny K. Davis**  
**Testimony Before the Constitution Subcommittee of**  
**House Judiciary Committee**

Mr. Chairman, and Members of the Subcommittee I want to thank you for the opportunity to testify on such an important issue. The question before us today tugs at the heart of our democracy and stirs the conscience of the nation. The question is whether ex-felons should be given the right to vote in federal elections after they have served their sentences. I believe they should. Therefore, I support Representative Conyers legislation H.R. 906, that would restore the right to vote in federal elections to ex-felons.

Our nation was founded on supposedly democratic principles. The forefathers of this nation pinned a great document called the Declaration of Independence, in that document they proclaimed that all men were created equal, and entitled to certain unalienable rights. But yet slavery was allowed to exist and women were not treated equal. We fought a bloody Civil War over slavery and still there is a sense that remnants of slavery remain. The right to vote must be intertwined with the Declaration of Independence and the Constitution. It is one of the most basic and fundamental rights of citizenship in a democracy. To deny the ballot box to individuals who have paid their debt to society is akin to rendering them voiceless in their own home.

Disenfranchisement laws are a vestige of medieval times when offenders were banished from the community and suffered what is likened to civil death. Brought from Europe to the colonies, they gained new political importance at the end of the 19<sup>th</sup> Century, when many Southern states revisited them as a way to exclude blacks from the vote. The fact that we legally deny people the right to vote after they have served their time is indeed troubling.

In forty-six states and the District of Columbia, criminal disenfranchisement laws deny the vote to all convicted adults in prison. Thirty-two states also disenfranchise felons on parole; twenty-nine disenfranchise those on probation. And fourteen states permanently disenfranchise ex-offenders who have fully served their sentences. Currently, an estimated 3.9 million U.S. citizens are disenfranchised, including over 1 million who have completed their sentences. Implementation of these laws have had tremendous impact on African American males. Thirteen percent of African American men or 1.4 million are disenfranchised. Of that number, 440,000 have completed their sentences and paid their debt to society. A report issued by the Sentencing Project in conjunction with Human Rights watch revealed that in Alabama and Florida, 31 percent of all Black men are permanently disenfranchised---unbelievable! In Iowa, Mississippi, New Mexico, Virginia, and Wyoming one in four or 24 to 28 percent of Black men are permanently disenfranchised. In Delaware, one in five black men or 20 percent are permanently disenfranchised. In Texas, one in five black men or 20 percent are permanently disenfranchised. And Black men represent less than 6 percent of the total U.S. population.

Clearly, this is not a White or a Black issue, this is a human rights issue, this is a test of democracy, and this is an American issue. It is clear that Blacks are disproportionately affected by these laws. An unacceptable trend is continuing in our nation with respect to prisons. We have what some have described as a prison industrial complex mentality, a new growth industry, a lock them up and throw away the key and deny them the right to vote when they get out. The impact of drugs, unemployment and antiquated sentencing laws have our prisons bursting at the seams. In the past 12 years the number of Americans in jails and prisons has doubled. At the end of 1985, there were 744,208 people locked up; by mid-1998, that number rose to 1.8 million. I suspect that the number will continue to rise.

Disenfranchisement laws are inconsistent with our democratic principles. With this bill we have a

unique opportunity to move from the dark ages to the light of a new sense of democracy and belonging for individuals who have paid their debt to society. If we are to live as an enlightened nation then we must not only talk rehabilitation, and reclamation but we must practice it. Moreover, rehabilitation and reclamation must not only include helping ex-felons get jobs and a place to live once they get back into society, but it must include encouraging and providing them opportunities to experience full citizenship, including the right to vote.

To those who will argue against this bill, I ask you, what will America gain by denying ex-felons the right to experience the fullness of this great democracy. Are you saying that the prodigal son or daughter can never again come home and be accepted as a full member of the family. Is that the standard we want for our nation? I hope not, and so Mr. Chairman, I urge, I implore, I importune this honorable committee to look favorably upon the Conyers Bill and make democracy available to all of our law abiding citizens.

Thank you.

**Testimony of  
Gillian E. Metzger**

**Staff Attorney, Brennan Center for Justice at New York University School of Law**

**Before the House Judiciary Committee**

**Subcommittee on the Constitution**

**on**

**Constitutional Issues Raised by the Civic Participation and Rehabilitation Act**

**October 21, 1999**

Mr. Chairman and members of the Committee:

Good morning. My name is Gillian Metzger. I am a staff attorney at the Brennan Center for Justice at New York University School of Law, and one of my areas of specialization is felon disenfranchisement. The mission of the Brennan Center is to develop and implement an innovative and nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms. Supporting efforts to eliminate restrictions on the right to vote, such as provisions disenfranchising criminal offenders, is an integral part of the Brennan Center's mission.

I am honored that you have invited me to testify before this Committee concerning H.R. 906, the Civic Participation and Rehabilitation Act of 1999, which would grant persons who have been released from incarceration the right to vote in federal elections. Attached to my testimony is a more detailed memo I wrote analyzing the constitutionality of H.R. 906.

I will be limiting my remarks to discussing Congress' authority to enact H.R. 906. I believe there are two possible bases for Congress' power to enact this bill: the Election Clause of Article I, section 4, combined with Congress' inherent power to regulate all federal elections, and Congress' enforcement powers under the Fourteenth and Fifteenth Amendments. In what follows, I first discuss the Election Clause and Congress' inherent power, identify possible arguments that could be raised against Congress' ability to enact H.R. 906 on this basis, and then explain why I don't believe that these arguments are sound. I then undertake a similar analysis of Congress' authority to enact H.R. 906 under its enforcement powers.

At the outset, the view that Congress has direct power to set the qualifications of voters in federal elections is supported by the Court's decision in *Oregon v. Mitchell*, 400 U.S. 112 (1970). *Mitchell* upheld Congress' ability to lower the age for voting in federal elections at the same time as it denied Congress' power to do so regarding state elections. Although a majority of Justices did not agree in *Mitchell* on the basis for Congress' power to lower the age for voting in federal elections -- with one basing it on the Elections Clause and the others on Congress' enforcement powers -- the Court itself has not viewed this disagreement as undercutting the import of *Mitchell*'s holding. Instead, it subsequently cited *Mitchell* for the proposition that "Congress has the power to establish voter qualifications" for

federal elections. *Kusper v. Pontikes*, 414 U.S. 51, 57 n. 11 (1973). Thus, under the Supreme Court's last pronouncement on the specific point of congressional power to set voter qualifications for federal elections, H.R. 906 is clearly constitutional.

### I. The Election Clause and Congress' Inherent Authority to Regulate Federal Elections

In assessing the constitutionality of H.R. 906, it is important to bear in mind that the bill only applies to federal elections. This fact is particularly important because of the very broad power that Congress has to regulate federal elections under the Elections Clause of Article I, section 4. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." Although the Elections Clause refers to regulations affecting the time, place, and manner of holding congressional elections, the Clause has been read expansively. For example, in *Buckley v. Valeo*, 424 U.S. 1, 14 n.16 (1976), the Supreme Court cited the Elections Clause as the basis for Congress' authority to enact the Federal Election Campaign Act, even though FECA relates to the manner of conducting campaigns for federal office as opposed to the manner of holding elections for federal office.

It is also now beyond dispute that Congress has a similar broad power to legislate in regard to presidential elections, despite the lack of a textual grant of such authority. In *Burroughs v. United States*, 290 U.S. 534 (1933), the Court sustained Congress's power to adopt the Corrupt Practices Act to regulate contributions and expenditures intended to influence the selection of presidential electors, notwithstanding that the power and manner of appointing presidential electors is entrusted to the states by Article 2, Section 1 and the Twelfth Amendment to the U.S. Constitution. In rejecting the claim that this Act exceeded Congress' powers, the Court ruled that Congress has a broad inherent power to safeguard the legitimacy of federal elections, concluding that such a power as "vital" to our Nation's "self-protection."

As H.R. 906 details, there is currently a great deal of disparity among the states regarding when criminal offenders can vote. Fourteen States disenfranchise convicted offenders permanently, while 32 States disenfranchise felons on parole and 29 States disenfranchise felons on probation. As a result, criminal offenders' rights to vote in federal elections can vary tremendously according to the state in which they reside. H.R. 906 embodies the policy judgment that such disparities in citizens' fundamental rights based on the happenstance of geography are unwarranted, and threaten the integrity and legitimacy of federal government. This judgment is eminently reasonable, particularly given the disproportionate impact criminal disenfranchisement provisions have on minorities, and the Elections Clause gives Congress the authority to require states to adhere to its policy judgments regarding the conduct of federal elections.

Opponents of H.R. 906 have argued that notwithstanding Congress' broad power to regulate federal elections, Congress lacks the power to directly set qualifications of voters for federal elections by virtue of the Qualifications Clauses of Article I and the Seventeenth Amendment. These provide that the "Qualifications" of voters in Senate and House elections must be the same as the qualifications for voters in elections to the most populous branch of the state legislatures.

I believe this argument against the Elections Clause as a basis for Congress' authority to enact H.R. 906 fails, because it does not accord with Supreme Court precedent regarding the scope of the Qualifications Clauses. As the Supreme Court's decision in *Tashjian v. Republican Party*, 479 U.S. 208 (1986), makes clear, the Qualifications Clause of Article I, which the Seventeenth Amendment adopted verbatim, was not intended to limit congressional power. Instead, it was adopted rather to address the danger that a uniform rule for voting in federal elections, adopted in the Constitution itself or by Congress, would leave many citizens eligible to vote in state elections but not in congressional elections. The Framers feared that such a situation would lead to popular discontent and undermine support for the national government.

Thus, under *Tashjian*, all the Qualifications Clauses do is prevent either Congress or the states from

imposing a regulation that excludes persons qualified to vote in elections for the most populous branch of the state legislature from participating in congressional elections. But Congress' broad power to regulate federal elections remains otherwise unconstrained. As H.R. 906 expands rather than contracts the group of qualified voters in federal elections, it will not lead to the type of problem the Framers intended the Qualifications Clauses to address. Thus, it would appear that no Qualifications Clause issue is present here, and that Congress has power to enfranchise non-incarcerated criminal offenders pursuant to the Elections Clause.

This conclusion is reinforced by the Court's decision in *Mitchell*. While the Justices in the majority disagreed about the basis of Congress' power to require that 18 year olds be allowed to vote in federal elections, none believed that the Qualifications Clauses limited Congress' power to do so. The Court's reiteration of Congress' power to set qualifications for federal elections in *Kusper* also undercuts the claim that the Qualifications Clauses prevent Congress from being able to enact legislation enfranchising non-incarcerated offenders for federal elections.

## II. Congress' Enforcement Powers under the Fourteenth and Fifteenth Amendments

Congress's enforcement powers under the Fourteenth and Fifteenth Amendments provide an additional basis for congressional authority to enact H.R. 906. The right to vote, and the right to do so free of racial discrimination, are fundamental rights protected by the Fourteenth and Fifteenth Amendments, which Congress has explicit power to enforce. After the Civil War and enactment of the Fifteenth Amendment, numerous southern states adopted criminal disenfranchisement provisions, along with literacy tests and poll taxes, to exclude newly-enfranchised Black voters. And as H.R. 906 finds, criminal disenfranchisement provisions today continue to have a substantially greater impact on minorities, particularly African-American men. This disparate effect is particularly dramatic in states with laws that permanently disenfranchise criminal offenders. In some states, it is estimated that 30 percent of Black men are currently disenfranchised.

Both racially discriminatory intent and impact are therefore present in regard to criminal disenfranchisement provisions. Laws that are enacted out of racially discriminatory intent and have a discriminatory impact violate the Fourteenth Amendment generally, and violate the Fifteenth Amendment when they restrict the right to vote. *See, e.g., Washington v. Davis*, 426 U.S. 229, 239 (1976); *City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980). And Congress plainly has the power under its enforcement powers to prohibit measures that violate the Fourteenth and Fifteenth Amendments. Nor does it matter, in regard to Congress' authority to enact H.R. 906 pursuant to its enforcement power, that some felon disenfranchisement provisions were not adopted out of an invidious intent to discriminate. Congress has the power to adopt remedial legislation pursuant to its enforcement power even if in the process it prohibits some conduct which is not unconstitutional. *See City of Boerne v. Flores*, 117 S. Ct. 2157, 2163 (1997). For example, the Court has reaffirmed Congress' power to ban literacy tests, even though literacy tests could be adopted out of a legitimate desire to ensure an informed electorate and do not in themselves violate the Constitution. *See Lopez v. Monterey County*, 119 S. Ct. 693, 703 (1999).

Instead, all that is required for an exercise of congressional enforcement power to be legitimate is that Congress have reason to believe that "many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional." *City of Boerne*, 117 S. Ct. at 2170. The historical and contemporary record gives Congress ample reason to conclude that such a likelihood may exist in regard to many criminal disenfranchisement provisions.

The Court's recent decision in *City of Boerne v. Flores* does not preclude Congress's authority to enact H.R. 906 under its Fourteenth and Fifteenth Amendment enforcement powers. In *Boerne*, the Court concluded that the Religious Freedom Restoration Act, or RFRA, exceeded Congress' enforcement powers because in RFRA Congress did not merely prohibit restrictions on the right to exercise one's religion freely but expanded the scope of that right. Some opponents of H.R. 906 might argue, analogously, that H.R. 906 exceeds Congress' enforcement powers because the Supreme Court has held that felons do not have the same fundamental right to vote as other citizens. *See Richardson v. Ramirez*,

418 U.S. 24 (1974). But the Court has also held that felon disenfranchisement statutes are subject to the highest level of scrutiny insofar as they reflect discrimination on another ground, such as race. *See Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

Moreover, H.R. 906 and RFRA are significantly different measures. To begin with, H.R. 906 lacks the expansive scope that the Court found to undercut RFRA's remedial character. Rather than applying to almost all areas of state regulation, H.R. 906 is carefully targeted to a specific area -- regulation of federal elections -- where Congress' interests are paramount and congressional preemption frequently occurs. In addition, H.R. 906 is designed to take into account the states' penological interests, and only applies to non-incarcerated offenders. These are the offenders that the states themselves have concluded can and should be integrated into the community. Most importantly, H.R. 906 differs from RFRA in that it targets a type of voting qualification that historically has been used to deny voting rights on racial grounds, and that continues to have a disproportionate effect on minorities. In *Boerne*, the Court repeatedly emphasized that Congress has broad remedial power to act against voting practices and requirements of this type.

Even aside from this concern with preventing racial discrimination, Congress could act to enfranchise non-incarcerated offenders in federal elections based simply on its determination that laws disenfranchising non-incarcerated criminal offenders are arbitrary and irrational, and thus violate the Fourteenth Amendment's prohibition on arbitrary and irrational classifications. H. R. 906's findings -- that states vary tremendously in their approach to felon disenfranchisement, that imposition of disenfranchisement is often not connected to the seriousness or nature of the offense, that in many states there is no effective means by which to regain the right to vote, and that federal and state offenders have differing abilities to take advantage of whatever means of regaining the vote are available -- support a congressional determination that criminal disenfranchisement laws operate in an arbitrary and irrational fashion. It is also difficult to discern the purpose behind disenfranchisement provisions as they apply to non-incarcerated offenders, who the state does not believe need to be kept segregated from the community, particularly offenders convicted of crimes not related to elections.

In sum, I believe that both the Elections Clause, combined with Congress' broad power over federal elections, and Congress' enforcement powers under the Fourteenth and Fifteenth Amendments offer two separate bases for congressional authority to enact H.R. 906. Finally, although I have limited my remarks to an assessment of H.R. 906's constitutionality, I also strongly agree with its policy determination that non-incarcerated criminal offenders who are integrated into our communities physically, socially and economically should also be integrated into our communities politically.

Thank you.