

Foreword

The United States continues to stand alone among the major industrialized nations in permitting an entire category of citizens—former felons—to be cut off from the democratic process. The practice of many states denying voting rights to ex-felons represents a vestige from a time when suffrage was denied to whole classes of our population based on race, gender, religion, national origin, and property. Over the past two centuries, however, these restrictions, along with post-Civil War exclusions such as the poll tax and literacy requirements, have been eliminated to conform with our basic American notion of equality. I believe that the time has also come to eliminate this class voting restriction and to join the community of nations in this regard.

Almost every state prohibits inmates from voting while incarcerated for a felony offense. Voting rights are not, however, restored with any uniformity upon release from prison, with 36 states prohibiting ex-felons from voting while they are on parole and 31 of these states excluding felony probationers as well. Three states completely deny the vote to ex-offenders. Another 10 states disenfranchise certain categories of ex-offenders and permit application for restoration of rights for specified offenses only after a waiting period through cumbersome administrative proceedings.

The denial of suffrage to these individuals is no small matter and should be the focus of academic scrutiny. A recent study by the Sentencing Project reveals that some 4.7 million Americans, or one in 43 adults have currently or permanently lost their voting rights as a result of a felony conviction. This includes an estimated 1.4 million African American men, or 13 percent of the total population of black adult men, a rate seven times the national average. Hispanic citizens are also disproportionately disenfranchised. These numbers not only illustrate the magnitude of the injustice, they also show the impact of excluding this group from the electoral process. In the state of Florida alone, an estimated 600,000 ex-felons were unable to vote in

the 2000 presidential election. Denying their voice may have literally changed the history of this nation.

In addition to diminishing the legitimacy of our democratic process, denying voting rights to ex-offenders is inconsistent with the goal of rehabilitation. Instead of reintegrating such individuals into society, felony voting restrictions only serve to reaffirm their feelings of alienation and isolation. As the National Advisory Commission on Criminal Justice Standards and Goals has concluded, “if correction is to reintegrate an offender into free society, the offender must retain all attributes of citizenship.” The purpose of correctional facilities throughout our history has been to make an offender fit to re-enter society. We should honor the principle that once a felon has served his time, he is ready to be a functioning member of society. Voting must then be allowed, as the most basic constitutive act of citizenship.

A growing number of commentators, most recently former Secretary of the Department of Housing and Urban Development Jack Kemp, have taken the position that, as a matter of law, the federal government should act to restore the fundamental right to vote for ex-offenders. Since 1999, I have introduced legislation to assist ex-felons in regaining their voting rights. The legislation would apply only to persons who have been released from prison, and it would apply only to federal elections. As such, my bill is fully consistent with constitutional requirements protecting state prerogatives to establish general voting qualifications. The legislation has been supported by a broad coalition of groups interested in voting and civil rights, including the NAACP, ACLU, National Council of Churches, National Urban League, Human Rights Watch, and Lawyers Committee for Civil Rights.

Many states are also beginning to take the lead on this issue. Alabama, Iowa, Maryland, Connecticut, Delaware, and New Mexico have all scaled back voting bans on ex-felons who have paid the price for their crimes and now want to participate in the democratic process as citizens. The growing roster of states that allow ex-felons to vote is encouraging, but is not a substitute for a uniform federal voting requirement. A person’s basic constitutional rights simply should not vary due to geography or their ability to traverse complex administrative proceedings.

Our nation has seen the slow enfranchisement of all of its citizens. Though it has been a painful process, we have always moved forward, giving more and more citizens the right to vote. Still, Elizabeth Hull, in the book you hold in your hands, argues compellingly that the battle for civil rights will not be won until ex-felons are afforded the same voting rights enjoyed by all Americans.

The war on drugs and the explosion of the prison population has created a sense of urgency around this issue because ex-felon disenfranchisement touches an ever-expanding number of families. Along with the razor-thin margins of the past election cycles, these circumstances may finally create sufficient momentum for this issue to receive a fair hearing at the federal level.

Representative John Conyers, Jr.
Member of Congress, Michigan 14th District
Ranking Member, House Committee on the Judiciary

1 Introduction

In the 2000 presidential election, 4,686,539 Americans—more than 2 percent of the voting-age population—were barred from the polls.¹ In a country that has extended the suffrage to virtually every other class of citizens, this group alone was deemed unworthy of exercising what the Supreme Court has called “the right preservative of all other rights,” the franchise.² We are talking about former convicts, men and women who have completed not only their sentences but often their paroles and the terms of their probation as well, yet in many states are still prohibited from casting a ballot.

Until the 2000 election, disenfranchisement was a “non-issue,” something about which even well-educated individuals were largely unaware. The excruciatingly close 2000 presidential election changed that. In what seems record time, the issue ballooned into a “phenomenon,” generating editorials, television specials, academic conferences, advocacy groups, proposals for legislative reform, and much public soul-searching, as thoughtful Americans began weighing the human and institutional costs of marginalizing millions of their fellow citizens.

To grasp how many “fellow citizens” are unable to vote because of a felony conviction, imagine this: If all of them congregated in a single geographical area, it would become the nation’s second-largest city, right behind New York. It would be larger than Los Angeles or Chicago. If those deprived of their suffrage lived in a single state, it would be the country’s twenty-sixth-most populous—right after Kentucky, right before South Carolina.³ (See disenfranchisement numbers in Table 1.)

Ex-felons pay taxes, go to work, raise their children, and are generally indistinguishable from their fellow citizens in all but one respect: They have no say in the way their communities are governed. Unlike voters, they can’t stop the deterioration of their neighborhood schools or prevent yet another waste incinerator from

Table 1. Disenfranchisement Rates in the United States (January 1, 2004)

State	Felon Prisoners	Probation	Parolees	Total Ineligible Felons	Voting-Age Population	Disfranchised Rate (%)
Alabama	28,440	39,652	6,950	55,216	3,425,842	1.61
Alaska	4,431	5,406	927	8,061	470,024	1.72
Arizona	30,741	65,805	5,367	69,011	4,194,395	1.65
Arkansas	12,378	28,126	13,694	40,135	2,069,578	1.94
California	163,361	0	110,338	273,699	26,647,974	1.03
Colorado	19,085	0	6,559	25,644	3,456,281	0.74
Connecticut	20,525	0	2,599	23,124	2,684,496	0.86
Delaware	6,879	18,921	529	16,869	629,012	2.68
D.C.	0	0	0	0	448,818	0.00
Florida	80,352	287,641	4,952	229,125	13,441,589	1.70
Georgia	47,004	424,385	22,135	281,332	6,534,901	4.31
Hawaii	5,635	0	0	5,635	980,145	0.57
Idaho	5,825	32,220	2,329	24,264	1,025,470	2.37
Illinois	43,186	0	0	43,186	9,518,511	0.45
Indiana	22,576	0	0	22,576	4,635,693	0.49
Iowa	8,395	20,885	3,099	21,937	2,274,202	0.96
Kansas	9,009	14,551	4,145	20,430	2,049,542	1.00
Kentucky	16,377	28,696	7,572	38,297	3,157,230	1.21
Louisiana	36,091	36,677	25,065	79,495	3,358,475	2.37
Maine	0	0	0	0	1,038,834	0.00

State	Felon Prisoners	Probation	Parolees	Total Ineligible Felons	Voting-Age Population	Disfranchised Rate (%)
Maryland	24,186	77,875	13,742	76,866	4,200,864	1.83
Massachusetts	10,511	0	0	10,511	4,956,251	0.21
Michigan	49,524	0	0	49,524	7,616,370	0.65
Minnesota	7,612	110,725	3,596	66,571	3,872,377	1.72
Mississippi	20,542	19,116	1,816	31,916	2,139,838	1.49
Missouri	30,649	55,610	15,220	73,674	4,344,701	1.70
Montana	3,440	0	0	3,440	715,516	0.48
Nebraska	4,103	18,412	650	13,959	1,316,507	1.06
Nevada	10,527	12,159	4,126	20,733	1,737,785	1.19
New Hampshire	2,483	0	0	2,483	1,000,677	0.25
New Jersey	28,213	124,281	13,248	103,602	6,573,016	1.58
New Mexico	6,173	16,136	2,407	16,648	1,403,012	1.19
New York	65,914	0	55,853	121,767	14,790,563	0.82
North Carolina	33,334	113,161	2,677	92,592	6,414,826	1.44
North Dakota	1,168	0	0	1,168	490,193	0.24
Ohio	45,831	0	0	45,831	8,680,824	0.53
Oklahoma	23,004	28,326	4,047	41,214	2,664,546	1.55
Oregon	12,422	0	0	12,422	2,766,949	0.45
Pennsylvania	40,545	0	0	40,545	9,615,192	0.42
Rhode Island	3,569	25,929	392	16,926	842,974	2.01
South Carolina	24,247	40,047	3,210	47,481	3,174,275	1.50
South Dakota	3,059	0	0	3,059	576,223	0.53
Tennessee	25,409	42,836	7,967	54,794	4,516,712	1.21
Texas	164,222	431,989	102,271	482,488	16,263,943	2.97

(continued)

Table 1. *Continued*

State	Felon Prisoners	Probation	Parolees	Total Ineligible Felons	Voting-Age Population	Disfranchised Rate (%)
Utah	5,594	0	0	5,594	1,645,373	0.34
Vermont	0	0	0	0	488,177	0.00
Virginia	34,733	41,663	4,834	60,399	5,695,264	1.06
Washington	16,284	172,814	105	102,796	4,732,168	2.17
West Virginia	4,703	1,143	6,864	12,139	1,430,277	0.85
Wisconsin	22,366	55,336	11,966	62,000	4,192,517	1.48
Wyoming	1,809	4,662	578	4,718	386,177	1.22
Federal prisons	170,461	86,459	30,599	244,281	N.A.	N.A.
U.S. Total	1,456,927	2,481,644	502,428	3,200,177	221,285,099	1.45

Source: The United States Elections Project, <http://elections.gmu.edu/Turnout%20Tables.xls>, accessed June 22, 2005.

Note: States vary considerably in their disenfranchisement laws, particularly in regard to parolees and probationers. This table calculates the number of ineligible, disenfranchised felons (column 5) to include all felon prisoners and parolees (columns 2 and 4), as well as half of probationers (column 3), an estimate drawn from Department of Justice reports. In blank cells, persons in the category are not specifically subject to disenfranchisement. Fourteen states have discretionary forms of post-correctional voting restriction; for these states, the total of the disenfranchised is minimally estimated as the number of felon prisoners, since statistics on recidivism, deaths, and migration of felons are largely nonexistent. In Maine and Vermont, where they are allowed to vote, no prisoners are listed. The United States totals include persons in the federal corrections system.

moving in nearby. In a 1951 federal case, Judge Henry Wingate observed that disenfranchisement was “the harshest civil sanction imposed by civil society. When brought beneath the axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box ... the disinherited must sit idly by while others elect his civil leaders and ... choose the fiscal and governmental policies which govern him and his family.”⁴

As striking as the sheer number of citizens barred from the polls is the arbitrary and even capricious way they forfeit their fundamental civic right. As the Department of Justice itself has concluded, disenfranchisement laws “governing the same rights and privileges vary widely from state to state, making something of a crazy-quilt of disqualifications and restoration procedures.”⁵

A particular act may or may not trigger disenfranchisement, depending upon whether it’s classified as a felony or a misdemeanor. Although felonies, in theory, are usually crimes serious enough to warrant at least a one-year prison sentence,⁶ in reality it is often anybody’s guess why a particular act is classified as such. Moreover, since an act may be considered a felony, misdemeanor, or even permissible conduct, depending upon the state, two people might engage in the same behavior, but only one might lose his right to vote. In Florida someone convicted of “public indecency” might be disenfranchised for life, whereas in New York State such an exhibitionist would receive at most a slap on the wrist.⁷

States also categorize as felonies activities that in many other countries would not rise to “misdemeanor” status—prompting Human Rights Watch to conclude that “the extent of disenfranchisement is even more disturbing given that the right to vote can be lost for relatively minor offenses such as shoplifting.”⁸ In Maryland, for instance, roughly five hundred offenses are considered felonies, or what the state calls “infamous crimes.” They include, in addition to such serious acts as assault and murder, relatively innocuous ones such as passing bad checks, using fake IDs, and possessing fireworks without a license.⁹ Alabama denies voting rights to anyone convicted of vagrancy;¹⁰ North Dakota imposes the same fate on those who break a water pipe, and Texas includes scoundrels who steal “any wool, mohair or edible meat.”¹¹

What are legislators to do if ballots are cast by too many “undesirables”—classes of voters, say, whom they presume would support the “wrong” sort of candidate? They can attach a “felony” label to activity associated with these troublemakers and thereby expunge at least some of their names from the voting rosters. Florida state senator Daryl Jones observed, in one illustrative case, that in 2000 the Republican legislature proposed a bill that would have increased from 365 to 366 days the jail sentence for anyone who cashes two welfare checks after gaining employment. What’s the purpose of adding one more day? The offense then becomes a felony, and “you take one more person off the voter rolls ... it’s been going on in Tallahassee for years.”¹²

Whether or not lawbreakers lose their franchise depends not only on how their misdeeds are classified but on where they are committed (see Table 2). Anyone lucky enough to live, or commit their crime, in Maine or Vermont can vote even while they are behind bars. In the other forty-eight states, however, they lose their ballot while they are incarcerated; when, how, and even whether they can reclaim it once they are released depends upon the vagaries of each state’s law. In some places ex-convicts’ rights are restored once they complete probation and parole, in others, after they complete the terms of their sentence and then wait a prescribed period of time. A few jurisdictions seldom if ever restore voting rights to applicants who have committed one of several specified offenses,¹³ or are recidivists, or fail to complete a cumbersome and often expensive clemency procedure.¹⁴ (See categories of felons disenfranchised under state law, Table 2.)

In Louisiana only ex-felons convicted prior to the adoption of the 1974 state constitution can vote upon their release,¹⁵ whereas in Washington only those convicted after the state enacted statutory changes in 1984 enjoy this privilege.¹⁶ Sixteen other states are particularly unaccommodating to anyone who has broken federal law; they won’t re-enfranchise these wrongdoers unless they secure a pardon from the president of the United States.¹⁷

Among the fifteen states and the District of Columbia that restore voting rights to individuals as soon as they are released from prison, many are relatively liberal—Ohio, Massachusetts, Hawaii, Oregon, Michigan, and Pennsylvania—but some have more conservative political cultures, such as Idaho, Utah, Montana, and

Table 2. Categories of Felons Disenfranchised under State Law
(January 1, 2004)

State	Prison	Probation	Parole	Ex-felons
Alabama	Y	Y	Y	By pardon (prior to 2003; permanent disenfranchisement)
Alaska	Y	Y	Y	
Arizona	Y	Y	Y	2d felony
Arkansas	Y	Y		
California	Y		Y	
Colorado	Y		Y	
Connecticut	Y	Prior to 2002	Y	
Delaware	Y	Y	Y	Five-year waiting period (prior to June 2000; permanent disenfranchisement)
D.C.	Y			
Florida	Y	Y	Y	Y
Georgia	Y	Y	Y	
Hawaii	Y			
Idaho	Y			
Illinois	Y			
Indiana	Y			
Iowa	Y	Y	Y	Y
Kansas	Y	Y (adopted in 2002)	Y (adopted in 2002)	
Kentucky	Y	Y	Y	Y
Louisiana	Y			
Maine				
Maryland	Y	Y	Y	Three-year waiting period (prior to 2002; three-year waiting period and permanent disenfranchisement after 2d violent felony)
Massachusetts	Post-2000			
Michigan	Y			
Minnesota	Y	Y	Y	
Mississippi	Y	Y	Y	Y
Missouri	Y	Y	Y	

(continued)

Table 2. *Continued*

State	Prison	Probation	Parole	Ex-felons
Montana	Y			
Nebraska	Y	Y	Y	
Nevada	Y	Y	Y	All except first-time nonviolent offenders (prior to 2003: All)
New Hampshire	Y			
New Jersey	Y	Y	Y	
New Mexico	Y	Y	Y	Prior to 2002
New York	Y		Y	
North Carolina	Y	Y	Y	
North Dakota	Y			
Ohio	Y			
Oklahoma	Y	Y	Y	
Oregon	Y			
Pennsylvania	Y			
Rhode Island	Y	Y	Y	
South Carolina	Y	Y	Y	
South Dakota	Y			
Tennessee	Y	Y	Y	Prior to 1986
Texas	Y	Y	Y	For two years
Utah	Y			
Vermont				
Virginia	Y	Y	Y	Five-year waiting period for some ex-felons; seven years for drug offenders
Washington	Y	Y	Y	Prior to 1984
West Virginia	Y	Y	Y	
Wisconsin	Y	Y	Y	
Wyoming	Y	Y	Y	All except first-time nonviolent offenders, five-year wait (prior to March 2003: All)
U.S. Total	49	29	32	14

Source: The United States Elections Project, <http://elections.gmu.edu/Turnout%20Tables.xls>, accessed June 22, 2005.

Note: Y = Yes

Louisiana. Even so, the general political climate of a particular state is no guarantee that a person will be able to regain the franchise upon release from prison. Ex-felons have a particularly hard time retrieving their vote in historically progressive Washington State.¹⁸

States that impose restrictions disenfranchise, on average, 1.2 percent of their voting-age citizens.¹⁹ The actual numbers vary

greatly, however: In 2000 Florida alone stripped the vote from 827,207 former prisoners—more than 7 percent of its voting-age population. Texas denied suffrage to some 525,967 people—3.54 percent of its electorate; together these two states prohibited some 1,353,174 people from voting—almost 29 percent of the citizens nationwide who were unable to participate in the 2000 presidential election. The top five disenfranchisers—Florida, Texas, Virginia, California, and Alabama—account for more than half this total.²⁰ (See Table 3 for disenfranchisement rates as a percentage of the voting-age population as of January 1, 1999.)

Still more striking is the racial impact (Table 4). More than 1.8 million of those barred from the polls are African Americans,²¹ prompting the U.S. Civil Rights Commission to conclude that the disenfranchisement of ex-convicts is “the biggest hindrance to black voting since the poll tax.”²²

In the 2000 presidential election 7.48 percent of black men were disenfranchised—a rate seven times the national average (Table 4). In southern and border states, collectively, the rate was 25 percent, and in Florida an astonishing 16.02 percent of black men could not cast a ballot.²³ Racial disparities exist in virtually every state that penalizes ex-felons.²⁴ One out of every four persons who have lost their right to vote in Iowa, Washington, and Wyoming is black or Hispanic, and in New Mexico, according to a Santa Fe newspaper, as many as 45 percent of the state’s black males have been barred from the polls—“the highest ratio in the country” (Table 4).²⁵

Hispanics lag behind blacks, but they’re catching up; as I note in Chapter 3, they now constitute more than 10 percent of the disenfranchised population. They are now more likely than African Americans to have lost their vote in seven states, and they fare particularly badly in three—California, Florida, and Texas (which in 2000 disenfranchised 104,597, 107,194, and 156,564 Hispanics, respectively).²⁶

These statistics are worrisome. Democracy is dealt a blow whenever citizens are prohibited from voting, but the blow is even more damaging when a disproportionate number of these citizens are racial or ethnic minorities. Even at full voting strength they have difficulty safeguarding their interests through the political process, and when hundreds of thousands of their members are stripped of the franchise, these difficulties are vastly compounded.

Table 3. Disenfranchised Population as a Percentage of Voting-Age Population (January 1, 1999)

State	Disenfranchisement rate (%)	State	Disenfranchisement rate (%)
Alabama	6.21	Montana	0.44
Alaska	1.70	Nebraska	0.56
Arizona	3.58	Nevada	4.56
Arkansas	2.61	New Hampshire	0.26
California	1.18	New Jersey	2.40
Colorado	0.69	New Mexico	5.52
Connecticut	1.85	New York	1.00
Delaware	5.63	North Carolina	1.31
D.C.	2.44	North Dakota	0.20
Florida	6.24	Ohio	0.60
Georgia	2.80	Oklahoma	1.93
Hawaii	0.42	Oregon	0.38
Idaho	1.40	Pennsylvania	0.40
Illinois	0.51	Rhode Island	2.09
Indiana	0.46	South Carolina	1.72
Iowa	4.14	South Dakota	0.47
Kansas	0.76	Tennessee**	2.03
Kentucky	4.24	Texas	3.64
Louisiana	1.10	Utah	0.57
Maine	0.00	Vermont	0.00
Maryland	3.20	Virginia	5.33
Massachusetts*	0.00	Washington**	3.33
Michigan	0.65	West Virginia	0.60
Minnesota	1.07	Wisconsin	1.32
Mississippi	5.28	Wyoming	4.55
Missouri	1.84	National Total	2.09

Source: John Mark Hansen, "Disenfranchisement of Felons," in "To Assure Pride and Confidence in the Electoral Process" (August 2001), report of the Task Force on the Federal Election System, Task Force Reports to Accompany the National Commission on Federal Election Reform (Ford/Carter Commission), part 8, 4–5. http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf, accessed June 15, 2005.

*In November 2000, Massachusetts voters passed an initiative to disenfranchise convicted felons during the period of their incarceration.

**Tennessee and Washington State deny the franchise to felons convicted before these states eased their laws in the 1980s.

Table 4. Disenfranchisement Population as a Percentage of Voting-Age Population, Categorized By Race (January 1, 1999)

State	Disenfranchisement rate		
	All (%)	Black (%)	White, Latino, and other non-African American (%)
Alabama	6.21	12.41	4.26
Alaska	1.70	5.65	1.55
Arizona	3.58	11.75	3.29
Arkansas	2.61	7.60	1.78
California	1.18	4.84	0.87
Colorado	0.69	4.07	0.55
Connecticut	1.85	6.42	1.73
Delaware	5.63	15.60	3.45
D.C.	2.44	4.18	0.58
Florida	6.24	13.77	5.07
Georgia	2.80	6.08	1.62
Hawaii	0.42	0.26	0.42
Idaho	1.40	4.05	0.47
Illinois	0.51	2.39	0.21
Indiana	0.46	5.24	0.07
Iowa	4.14	22.52	3.81
Kansas	0.76	5.22	0.50
Kentucky	4.24	14.96	3.46
Louisiana	1.10	2.87	0.36
Maine	0.00	0.00	0.00
Maryland	3.20	7.57	1.62
Massachusetts	0.00	0.00	0.00
Michigan	0.65	2.72	0.34
Minnesota	1.07	7.54	0.91
Mississippi	5.28	9.71	3.06
Missouri	1.84	6.56	1.31
Montana	0.44	3.33	0.43
Nebraska	0.56	3.83	0.42
Nevada	4.56	16.53	3.66
New Hampshire	0.26	1.91	0.25
New Jersey	2.40	9.73	1.25
New Mexico	5.52	24.78	5.00
New York	1.00	3.11	0.57
North Carolina	1.31	3.72	0.68
North Dakota	0.20	1.04	0.20
Ohio	0.60	3.10	0.30
Oklahoma	1.93	8.00	1.47
Oregon	0.38	2.74	0.32
Pennsylvania	0.40	2.56	0.19

(continued)

Table 4. *Continued*

State	Disenfranchisement rate		
	All (%)	Black (%)	White, Latino, and other non-African American (%)
Rhode Island	2.09	11.68	1.65
South Carolina	1.72	3.90	0.88
South Dakota	0.47	2.64	0.46
Tennessee	2.03	5.86	1.36
Texas	3.64	8.77	2.95
Utah	0.57	5.01	0.53
Vermont	0.00	0.00	0.00
Virginia	5.33	13.82	3.35
Washington	3.33	12.32	3.01
West Virginia	0.60	2.70	0.54
Wisconsin	1.32	10.61	0.86
Wyoming	4.55	14.94	4.46
Total U.S.	2.09	6.57	1.49

Source: John Mark Hansen, “Disenfranchisement of Felons,” in “To Assure Pride and Confidence in the Electoral Process” (August 2001), report of the Task Force on the Federal Election System, Task Force Reports to Accompany the National Commission on Federal Election Reform (Ford/Carter Commission), part 8, 4–5. http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf, accessed June 15, 2005.

U.S. Disenfranchisement Policy in Comparative Perspective

Virtually every other democratic nation in the world considers America’s disenfranchisement laws unjust and punitive. By virtue of these laws, ironically, the modern world’s first democracy now lags behind the same countries it once inspired—most of which have severely limited or abolished altogether restrictions on ex-felon suffrage. The trend among them, in fact, is to extend voting rights to individuals who are still behind bars—as South Africa, Canada, Israel, Japan, Kenya, Peru, Zimbabwe, Puerto Rico, and eighteen European countries now do.²⁷ In a recent Israeli election, an imprisoned felon even led the Shas Party in its successful campaign to win seats in the Knesset.²⁸

Even among the few developed countries that continue to impose some voting restrictions, the United States is exceptional. In

Finland and New Zealand ex-felons are barred from the polls for a few years following their discharge from prison—but only if they have been convicted of electoral fraud.²⁹ In Australia and New Zealand, Austria, Belgium, Italy, and Norway, released prisoners forfeit their voting rights only for major crimes. In this country, as noted above, the commission of even minor offenses, or offenses bearing no relationship to the electoral process, can result in long-term or even lifetime disenfranchisement.³⁰

Judges in France, Germany, and Greece can order the suspension of voting rights as an additional punishment for serious crimes—but, notably, the suspension is temporary and it is imposed only in a deliberate and calibrated manner. In many American states, conversely, convictions automatically trigger disenfranchisement. Often, neither judges nor defendants even realize that the vote, the constituent act of citizenship, is forfeited when a guilty verdict is announced.³¹

With respect to its disenfranchisement policies, the United States not only parts company with most other democracies but aligns itself with many of the world's most authoritarian regimes. Among the first actions Chilean dictator Augusto Pinochet took upon seizing power in 1973, for example, was to push through a constitutional amendment prohibiting ex-prisoners from voting for the rest of their lives.³² In contrast to authoritarian regimes, the bulk of which silence former prisoners, many countries that have thrown off totalitarian rule—such as Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Romania, and Russia—have restored ex-convicts' right to vote.³³ In this one respect the United States has more in common with Chile under Pinochet than with the newly liberated polities of eastern Europe.

Unlike the Chilean policy, however, which is fairly recent, many U.S. disenfranchisement provisions have been in force since the country's founding; indeed, they are apparently sanctioned by the Constitution itself. They have historically been justified on theoretical and practical grounds—that individuals who flout the social contract forfeit their right to participate in communal decision making, for instance, or that convicted felons might imperil the general welfare by supporting disreputable candidates or anti-social policies. (A more recent justification, discussed at some

length in Chapter 5, is seldom stated out loud: In the absence of disenfranchisement laws, ex-felons might swell the ranks of the Democratic Party.)

The Prospects for Reform

Members of this country's large and growing reform movement are mapping their strategy with care. They know that Americans have little sympathy for convicted felons in the abstract, but they take heart from two recent studies showing that such is the public's commitment to democratic principles that it supports—"by overwhelming majorities"—the restoration of voting rights to individuals who have completed their sentences and the terms of their parole.³⁴

Public support doesn't necessarily translate into public policy, of course. Whether a given state will in fact restore voting rights depends upon its particular history and political culture: Has it practiced wide-scale disenfranchisement in the past? Does its electorate favor policies that are relatively lenient or "tough on crime"? The party affiliation of a state's governing powers also influences its response: Would enfranchising former prisoners endanger incumbents or otherwise challenge the status quo? Would it antagonize key constituents?

The prospects for reform also depend on a host of other unpredictable and idiosyncratic factors, among which are the outcome of legal challenges mounted by public interest law groups and the presence of well-mobilized and savvy political action coalitions. International condemnation could also be a factor, accelerating reform the same way it did in the 1950s, when it targeted institutional racial segregation in the United States.

In this book I discuss the arguments for and against disenfranchisement policies and examine these policies from historical, political, penological, and philosophical perspectives. I also examine reform efforts undertaken by Congress and individual states, particularly those initiated after the 2000 presidential election.

In the final third of the book I examine the extent to which felon disenfranchisement is consistent with statutory, constitutional, and international law, and in the penultimate chapter I crawl out on a

limb and suggest that conferring voting rights even on citizens still behind bars might not be altogether outlandish.

While I would like to see ex-felons regain the vote, I respect those who support disenfranchisement on thoughtful and public-spirited (as opposed to merely reflexive or punitive) grounds, and I make a good-faith effort to accord their points of view due consideration.