# **MAKING EVERY VOTE COUNT**

Reforming Felony Disenfranchisement Policies and Practices in California

By Maya Harris



#### About the Author

This report was written by Maya Harris, Executive Director of the ACLU of Northern California. As head of the 75-year-old organization, Harris is a statewide leader on civil rights and civil liberties issues and oversees the work of 50 staff members, including nine attorneys and three lobbyists in Sacramento. With 55,000 members, the ACLU-NC is the largest affiliate in the nation. Harris joined the ACLU-NC as Director of the affiliate's Racial Justice Project and later became the Associate Director, developing and implementing the ACLU-NC's priority campaigns and overseeing the Policy Department, including work in the areas of racial justice, police practices, and the death penalty. Harris served as lead counsel for the ACLU-NC in *League of Women Voters v. McPherson*, a successful lawsuit restoring the voting rights of over 100,000 Californians who were wrongfully disenfranchised under California's felony disenfranchisement law.

#### About the ACLU of Northern California

The ACLU of Northern California works to preserve and guarantee the protections of the U. S. Constitution's Bill of Rights. It extends these freedoms to segments of our population who have traditionally been denied their rights, including people of color; lesbians, gay men, bisexuals, and transgendered people; women; mental-health patients; prisoners; people with disabilities; and the poor. In addition to the litigation for which the ACLU-NC has been known over the past seven decades, the organization also educates the public, informs the media, lobbies legislators, organizes grassroots activists, and disseminates information about our constitutional freedoms through our membership and volunteer chapters.

# MAKING EVERY VOTE COUNT

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## **TABLE OF CONTENTS**

INTRODUCTION 2

EXECUTIVE SUMMARY 4

FELONY DISENFRANCHISEMENT:
CENTURIES OF RESTRICTING THE RIGHT TO VOTE

Historic Origins Current National Landscape On the World Stage California Context

PUBLIC OFFICIAL AND VOTER CONFUSION:
IMPLEMENTATION OF CALIFORNIA'S DISENFRANCHISEMENT LAW 20

Probation Departments
Sheriffs' Departments
Local Elections Officials
County Courts and Elections Officials
Secretary of State's Office
Department of Corrections and Rehabilitation

THE ROAD AHEAD: RECOMMENDATIONS FOR REFORM 46

Ensuring Existing Voting Rights Are Accessible and Enforced Expanding Voting Rights

CONCLUSION 53

ENDNOTES 54

BIBLIOGRAPHY 61



## Introduction

Throughout the history of the United States, access to the ballot box, especially for communities of color, has been a prominent topic in our ongoing national conversation about the vitality of our democracy. Who may or may not participate in the electoral process, and under what circumstances the government may unilaterally deny the vote to some citizens, has become a salient feature of that discussion in recent years.

The issue was spurred in part by Florida election officials—acting pursuant to that state's felony disenfranchisement laws—erroneously purging tens of thousands of voters from the rolls just prior to the 2000 presidential election. Officials eventually acknowledged the error, but only after they had denied these citizens, mostly African Americans, participation in what became the closest presidential election in American history.

Felony disenfranchisement laws are on the books in nearly every state in the Union. The scope of these laws vary from state to state, but they all disenfranchise people convicted of a felony offense for at least some period of time. Scores of individuals, disproportionately people of color, are barred from voting as a result of these laws. For example, nearly five million people were prohibited from voting in the November 2004 election due to a felony conviction—almost 2 million of them were African Americans. Most of these individuals were not incarcerated and many were convicted of a nonviolent crime.

The varied patchwork of felony disenfranchisement laws throughout the nation has created confusion in California and elsewhere about who is and is not eligible to vote. Cali-

fornia disenfranchises individuals only while in state prison or on parole for a felony conviction. However, research conducted by the ACLU of Northern California (hereinafter "ACLU-NC") from 2005 to 2008 revealed that individuals with felony convictions and relevant government agencies did not have accurate information about the limitations of California's felony disenfranchisement law. Through our phone surveys, for example, we learned that probation officers, sheriffs, and local elections officials incorrectly believed that individuals cannot vote ever again if they have a felony conviction; cannot vote unless they have their conviction expunged; and/or cannot vote while on probation.

At the state level, through three recent statewide elections, the voting rights of individuals confined in jail as a condition of felony probation were in a confused state of flux due to conflicting interpretations of the felony disenfranchisement law by two of the state's top constitutional officers. The ACLU-NC and cocounsel, the Social Justice Law Project, brought a lawsuit (League of Women Voters v. McPherson) to clarify the scope of California's felony disenfranchisement law and the court ultimately resolved the issue, confirming that these individuals are eligible to vote. Compounding the confusion, relevant state agencies such as the Secretary of State's Office and the California Department of Corrections and Rehabilitation (CDCR) fail to provide adequate information about the voting rights of individuals with felony convictions.

The result: Beyond the more than quarter million voters who are legally disenfranchised in California while in state prison and on parole,

countless other citizens are effectively disenfranchised because of the lack of information or misinformation provided to them about their voting rights.

These are the circumstances that led us to undertake this project and bring the full range of our advocacy strategies to bear (litigation, public education, policy advocacy, and collaborating with coalition partners in grassroots organizing), with an initial goal of ensuring that every eligible voter knows his or her voting rights and is able to freely exercise those rights.

A critical component of achieving this initial goal is requiring that those institutions that have ultimate responsibility for ensuring that every vote counts, and those that have the most interaction with individuals who have been involved in the criminal justice system, understand the law and provide accurate information so that they do not inadvertently misinform individuals about their voting rights or create inappropriate barriers to the exercise of those rights. While some agencies have taken important steps in this regard and we have seen glimpses of inspired leadership at the local level, there is more work to be done.

And, ultimately, ensuring existing voting rights are accessible and enforced is only a first step that makes the most of a fundamentally flawed system. It does not address the underlying fact that this unnecessary and unfair felony disenfranchisement law is on the books at all.

Voting rights should be extended to all Californians. Two states—Maine and Vermont—already allow everyone to vote, regardless of whether they are in prison or jail or on probation or parole. In the international community, the United States is one of only a handful of countries in the world that prohibits nonincarcerated citizens from voting and among the few that disenfranchises the incarcerated. As the largest and most diverse state in the nation. California can and should do better.

Felony disenfranchisement makes our state and our nation no safer, no stronger, no greater—nor more just. It is time we reevaluate these policies of exclusion and fully realize our commitment to democratic inclusion.

~ Maya Harris

# **Executive Summary**

Historic Origins. In 1870, the nation approved the 15th Amendment to the United States Constitution extending the right to vote to former slaves. But, in the decades that followed, a variety of Jim Crow laws were enacted to prevent newly enfranchised black voters from exercising their rights. More than a century later, one remnant of those exclusionary laws remains on the books and continues to deny scores of people of color the right to vote: felony disenfranchisement.

**Current National Landscape.** Nearly every state in the union—Maine and Vermont being the only exceptions—disenfranchises people convicted of a felony offense for at least some period of time. As a result of these laws, as of 2004, more than five million citizens have currently or permanently lost their voting rights. While racially neutral on their face, felony disenfranchisement laws have had a severe, racially-disparate impact.

The effect of these laws in stripping citizens of the right to vote has dramatically increased as a result of the extraordinary expansion of the United States' criminal justice system over the past few decades, primarily as a result of the "War on Drugs." This broad-scale disenfranchisement has had significant consequences that extend beyond the individual, diluting the political power and voice of whole communities and impacting public safety by undermining reintegration.

**On the World Stage.** The United States is wildly out of step with the international community in banning whole populations from the ballot box. It is one of only a handful of countries that prohibits non-incarcerated citizens from voting for the rest of their lives, and

among the few that disenfranchises the incarcerated

**California Context.** California disenfranchises individuals in state prison or on parole for any felony conviction. Like felony disenfranchisement laws nationally, California's law has had a widespread impact, barring hundreds of thousands of citizens from the ballot box for extended periods of time—a disproportionate number of whom are people of color.

Beyond the quarter-million voters who are *legally* disenfranchised in California, countless other citizens with criminal convictions are effectively disenfranchised because of the lack of information or misinformation provided to them about their voting rights.

**Public Official and Voter Confusion** in California. The varied patchwork of felony disenfranchisement laws throughout the nation, as well as the recent conflicting interpretations of California law (later resolved by *League of Women Voters v. McPherson*), has created confusion—among both individuals with felony convictions and the governmental actors who interact with this population—about who is and is not eligible to vote in California.

Through phone surveys, Public Records Act requests, and other research conducted in 48 northern California counties from 2005 to 2008, the ACLU-NC discovered:

Several probation offices, sheriffs' departments, and local elections offices did not have accurate information about the scope—or limitation—of California's felony disenfranchisement law. As a result, they have at times provided misinformation or no information about voting rights.

- Many offices lacked written policies or effective procedures in this regard.
- County courts and elections offices lacked adequate procedures for protecting against erroneous voter purging.
- The Secretary of State's Office and the Department of Corrections and Rehabilitation did not have adequate information about voting rights for individuals with felony convictions.

**Recommendations.** Momentum has recently grown for bipartisan reform as several states have scaled back their felony disenfranchisement restrictions and instituted better procedures for ensuring access to the ballot for individuals with criminal convictions. California should reform its felony disenfranchisement policies and practices to:

Ensure existing voting rights are accessible and enforced.

- The State Legislature should mandate more effective voting procedures through new legislation, such as notifying individuals who lose and regain their voting rights; notifying individuals when they are purged from voter rolls; and developing adequate criteria for cancellation of voter registration.
- The Secretary of State should play a leadership role in protecting voting rights for Californians with felony convictions by developing specific, targeted materials clearly explaining their voting rights; disseminating this information throughout the state; instituting uniform criteria and procedures for timely, secure jail voting; and training staff who respond to inquiries about voting rights.
- Local elections officials should develop specific, targeted materials; post this information on their websites; train elections staff who respond to inquiries about voting rights; and es-

- tablish written procedures for collaborating with jails to ensure eligible jail inmates have timely access to voting.
- County probation officials should proactively inform probationers of their voting rights by posting information in probation office waiting areas and on websites, and by training probation staff.
- County sheriffs should proactively inform jail inmates about their voting rights by posting information inside jail facilities, in jail waiting areas, and on websites; working with local elections officials to establish effective jail voting procedures; and training jail personnel.
- The California Department of Corrections and Rehabilitation should proactively inform parolees that their voting rights are automatically restored upon completion of their state prison and parole term.
- California senators and representatives should support and advance federal legislation protecting voting rights for individuals with felony convictions.

Expand voting rights.

- Restore voting rights to individuals in state prison and on parole. Maine, Vermont, Puerto Rico and most mature democracies around the globe allow all citizens to vote.
- At a minimum, restore voting rights to individuals on parole. These individuals are living, working, and raising their families in the community and would benefit in their reintegration by participating in the life of their community through voting instead of wearing the badge of second-class citizenship.

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# Felony Disenfranchisement

Centuries of Restricting the Right to Vote

## **Historic Origins**

In 1870, seeking to make good on the promise of equality articulated in the Declaration of Independence and the Emancipation Proclamation, the nation approved the 15th Amendment to the United States Constitution extending the right to vote to former slaves. But, in the decades that followed, a variety of Jim Crow laws were enacted to prevent newly enfranchised black voters from exercising their rights. More than a century later, one remnant of those exclusionary laws remains on the books and continues to deny scores of people of color the right to vote: felony disenfranchisement.

Felony disenfranchisement laws were developed long before the passage of the 15th Amendment. In medieval Europe, "infamous" offenders suffered "civil death," where they effectively died in the eyes of the law and lost many rights, including the right to participate in the electoral process. This practice was imported to North America by the English colonists. 2

These criminal disenfranchisement laws garnered new attention and momentum once the right to vote was extended to former slaves, and Southern states began looking for raceneutral means of excluding blacks from the franchise.<sup>3</sup> Many of these laws were passed or expanded after passage of the 15th Amendment, and some states explicitly tailored their laws to better achieve their desired effect.<sup>4</sup>

The number of states with criminal disenfranchisement laws exponentially increased from just over half at the onset of the Civil War to nearly 87 percent by the end of Reconstruction—with more to come shortly thereafter.<sup>5</sup> Some Southern states specifically wrote or amended their criminal disenfranchisement laws to increase their effect on black voters by focusing on crimes that were believed to be committed by blacks, but not those presumed to be committed by whites.<sup>6</sup>

Comments at the various "disenfranchising conventions" held during this period underscore the discriminatory motivations behind these laws. As one Virginia lawmaker explained in 1906: "This plan. . .will eliminate the darkey as a political factor in this State in less than five years, so that in no single county of the Commonwealth will there be the least concern felt for the complete supremacy of the white race in the affairs of government."

A number of disenfranchisement tools were adopted during this period: poll taxes, literacy tests, understanding clauses, grandfather clauses.<sup>8</sup> But criminal disenfranchisement was a particularly subtle mechanism:

Narrower in scope than literacy tests or poll taxes and easier to justify than understanding or grandfather clauses, criminal disenfranchisement laws provided the Southern states with "insurance if courts struck down more blatantly unconstitutional clauses." The insurance has paid off: A century after the disenfranchising conventions, criminal disenfranchisement is the only substantial voting restriction of the era that remains in effect.<sup>9</sup>

Indeed, the effect of felony disenfranchisement laws dramatically increased after other

methods, such as literacy tests, were banned in later years and the rapid expansion of the criminal justice system began.<sup>10</sup>

## **Current National Landscape**

While poll taxes, literacy tests and grandfather clauses have long since been abandoned as un-American, nearly every state in the union—Maine and Vermont being the only exceptions—disenfranchises people convicted of a felony offense. In some states, the voting prohibition continues even though the individual has rejoined his or her community and fully paid his or her debt to society. Today, felony disenfranchisement laws remain the single greatest instrument excluding people of color from the political process. Indeed, "more black men are disqualified today by the operation of criminal disenfranchisement laws than were actually enfranchised by the passage of the Fifteenth Amendment in 1870."11

# Varying Degrees of Disenfranchisement across the United States

Forty-eight states and the District of Columbia prohibit people in prison from voting; 35 of those states additionally disenfranchise people on parole and/or probation. And in 10 states, a felony conviction can result in a lifetime ban. In those states, an "eighteen-year-old first-time offender who trades a guilty plea for a lenient nonprison sentence. . .may unwittingly sacrifice forever his right to vote."

As a result of these laws, as of 2004, an "estimated 5.3 million Americans, or one in forty-one adults, have currently or permanently lost

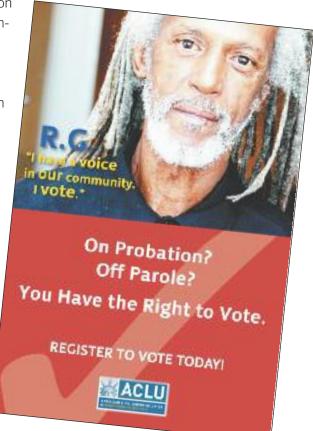
their voting rights as a result of a felony conviction." <sup>15</sup> The vast majority of these disenfranchised individuals are men, but nearly 800,000 are women. <sup>16</sup>

The vast majority of people prohibited from voting are not even incarcerated. Nearly three-quarters of the disenfranchised are people living and working in their home communities, either on probation or parole or having fully completed their sentences. <sup>17</sup> Most were convicted of a nonviolent crime, whether a drug offense, shoplifting, or writing a bad check

As significant as these numbers stand today, they are on the rise.<sup>18</sup>

## **Disproportionately Impacting People of Color**

While racially neutral on their face, felony disenfranchisement laws have had a severe. racially-disparate impact. Of the more than five million citizens denied the vote nationwide, 1.4 million are African-American men.<sup>19</sup> Only 2.5 percent of the general population is disenfranchised.<sup>20</sup> Yet, 13 percent of black men are barred from the ballot box—a rate seven times the national average.21 In





some states the disenfranchisement rate of African Americans is as much as 17 times higher than that of non-African Americans.<sup>22</sup>

At the current rate and pattern of incarceration, it has been forecast that three in 10 of the next generation of African-American men will be disenfranchised at some point in their lifetime and in states with the most restrictive laws, 40 percent of African-American men may permanently lose their right to vote.<sup>23</sup> Already, in "five states that deny the vote to exoffenders, one in four black men is *permanently* disenfranchised."<sup>24</sup>

Latinos are not far behind. While accurate data on Latino disenfranchisement are difficult to obtain,<sup>25</sup> a recent survey found a half-million Latinos disenfranchised in just the 10 states studied.<sup>26</sup>

## Increasing Effect with Unprecedented Expansion of Criminal Justice System

Although felony disenfranchisement laws have been on the books for more than a century, their effect in stripping citizens of the right to vote has dramatically increased as a result of the extraordinary expansion of the United States' criminal justice system over the past few decades.<sup>27</sup>

For a 50-year period, from the 1920s to the early 1970s, United States incarceration rates fluctuated within a narrow bank of approximately 110 prisoners per 100,000 people. . . . The model began to break down in the 1960s, however, as Republican presidential candidates Barry Goldwater (in 1964) and Richard Nixon (in 1968) and other conservative and moderate politicians (such as Nelson

Rockefeller in New York) successfully promoted more punitive criminal justice policies. By the mid-1970s, a rising chorus of conservative scholars, policy analysts, and politicians were advocating punitive strategies of deterrence and incapacitation, dismissing the rehabilitative model as "an anachronism." These trends continued in the 1980s and 1990s, with the Reagan, Bush, and Clinton administrations aggressively focusing the nation's attention on problems associated with drug use and the incarceration of drug offenders.<sup>28</sup>

Among these increasingly harsh punitive consequences, mandatory minimum sentences, truth-in-sentencing laws, and sentence enhancements such as "three strikes" laws have sent more people to prison for longer periods of time—even as crime rates stabilized.<sup>29</sup> "By the 1990s, the U. S. was opening on average one new prison or jail every week. It took America 160 years to incarcerate its first million people, but just twelve years to incarcerate the second million."<sup>30</sup>

Since 1970, the number of individuals in state and federal prisons has increased almost seven-fold (from less than 200,000 to over 1.5 million) and the number of felony probationers and parolees has quadrupled. When the prison and jail populations are combined, the total number of people behind bars in the United States exceeds 2 million, outpacing any other nation.<sup>32</sup> With millions more on probation or parole, over 7 million people are currently under the supervision of the criminal justice system in this country.<sup>33</sup>

The vast majority of this growth in the criminal justice system is due to individuals convicted of non violent offenses, primarily drug of-

fenses, as a result of the "War on Drugs."<sup>34</sup> Over the past 25 years, drug arrests have more than tripled (to a total of 1.8 million in 2005), and the number of individuals incarcerated for drug offenses has increased 1,100 percent (from an estimated 40,000 to nearly 500,000).<sup>35</sup> People of color are severely overrepresented among this new and growing prison population.

While people of all races use and sell drugs at roughly similar rates, law enforcement has focused much of its drug enforcement resources in low-income communities of color.<sup>36</sup> Because police look for drugs primarily among people of color, a disproportionate number of people of color (particularly African Americans) are arrested, prosecuted, and convicted for drug offenses and sent to prison.

For example, African Americans are incarcerated at almost six times the rate of whites.<sup>37</sup> And although only 13 percent of the population and 14 percent of regular drug users, African Americans are 37 percent of those arrested and 56 percent of those incarcerated for drug offenses.<sup>38</sup> In the past decade, Latinos have become an increasing proportion of the prison population, now comprising 20 percent of state and federal prisoners and incarcerated at nearly double the rate of whites.<sup>39</sup>

These harsher penalties, often for nonviolent crimes such as drug offenses, combined with the rapid expansion of the U. S. criminal justice system, have led to a shocking degree of voter disenfranchisement—with significant consequences that extend be-

yond the individual to entire communities and our democracy.

# Harming People, Communities, and Democracy

Denying voting rights to citizens with criminal convictions, especially those who are living and working in the community, causes feelings of alienation, isolation, and humiliation, rather than welcoming and reintegrating these individuals back into the world of law-abiding citizens. <sup>40</sup> Affected individuals have characterized this phenomenon as akin to "rubbing salt in the wound" and being "outsiders," "non-citizens, people without voices," who have no say in matters that impact the quality of their lives, such as how their taxes are spent or education issues that affect their children. <sup>41</sup>

For Brad W., disenfranchisement goes to the heart of citizenship:

I always wondered how they could take this from me, because I'm still a citizen . . . . I wish they could never take that from you. They should never take that from you. That's like taking your voice from you. That's like double punishment because you're punished once for crime and again when they don't allow you to

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vote . . . . Committing a crime has nothing to do with your citizenship. If they can do this, then who are you? If they take away this right, it's almost like bondage. Physical bondage.<sup>42</sup>

Chalon S. yearned to have a voice in the process:

I wanted and I yearned to be able to vote. It made me feel like they didn't care about how I felt. It made me feel like I didn't matter . . . . I was upset. I said why can't I vote? If I've already done my time and done everything, why can't I vote? . . . They say that every vote counts, but then you ban us from voting. So how does every vote count, really? . . . That's not fair. 43

And given the fact that, more often than not, disenfranchised voters are concentrated in certain neighborhoods, the political power and voice of whole communities can be

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diluted and diminished as a result of large numbers of voting-age adults being barred from the ballot box in one area.<sup>44</sup> "It is a simple equation—communities with high rates of people with felony convictions have fewer votes to cast. Consequently, all residents of these communities, not just those with convictions, become less influential than residents of more affluent communities from which fewer people are sent to prison."<sup>45</sup>

This broad-scale disenfranchisement can also impact the political participation of even those who are legally eligible to vote by depressing their voting activity.46 Because voting tends to be a communal experience, studies have shown that allowing certain individuals in a family or community to vote and not others can lower overall participation in the electoral process.<sup>47</sup> This in turn leads to other negative consequences, such as the inability to get the attention of or responsiveness from political candidates and elected officials,48 or to influence public policy impacting the community.<sup>49</sup> It also has a direct impact on political representation, as demonstrated by a 2002 study showing that felony disenfranchisement likely impacted the outcome of various elections at all levels of government, including a half-dozen U.S. Senate races, at least one presidential election, and an untold number of local and state contests.<sup>50</sup>

And all communities are impacted by felony disenfranchisement from a public safety standpoint. A recent empirical study found a statistical correlation between voting and lower rates of arrest, incarceration, and self-reported criminal behavior.<sup>51</sup> This conclusion is not surprising insofar as voting helps establish community connections and in-

vestment and fosters a sense of community obligation and responsibility,<sup>52</sup> as opposed to distancing and perpetuating a feeling of "us" versus "them."<sup>53</sup> David C. described voting as liberating and integrating:

It's actually freed me up . . . made me plug in. . . . Now I have a stake in what

happens, so that's why I'm politically active. . . I have a vested interest now. . . . The minute I was able to vote, I felt like a member of society and that I actually could engage. . . . Because the reality is that that was empowering. That was the way society told me it was okay to be a part of it.<sup>54</sup>

# DENYING CITIZEN PARTICIPATION AND EXCLUDING VOICES FROM THE POLITICAL PROCESS

[When I found out I could not vote,] I felt stunned, like I was getting punished 10 times for what I've done. I'd already done the jail time, already paid the court fees, and everything. And after all that, I am still getting punished. Can't get a job. Can't vote. . . . I don't know, I just felt like bottom of the barrel. I was more ashamed than anything. . . It makes me feel ashamed that my generation doesn't take it as seriously after people have shed blood, . . . that we do not go vote. Once I had gone off probation, I made a choice that I was going to vote. . . . I did a lot of reading when I was in jail, . . . so I tried to change. . . . I took it seriously.

[I was concerned about] the whole war thing over in Iraq. I feel sorry for those troops over there and no real date to go home and no real reason why they are over there. I know that they can't leave now because there is no government, so we would be worse off. But I guess if we [had] voted other people, you know, it wouldn't have come to that point to where we are actually over there without real proof that they are a threat to us.

[Also,] I have a son now, so [I worry about] better education. . . . [When] you can't vote, . . taxes, child care, you don't have a say in any of that. . . . You know, me and my girlfriend, we both work. But, I guess we make too much to get any kind of [childcare] aid. And we don't make enough to

send him fulltime. So we're caught in the middle. [She] was telling me . . . about some kind of proposition, I guess, for free child care, or something like that. That really made me want to vote.

~ Dante W.106

I felt like I didn't have any rights. So I felt kind of discouraged, or somehow I felt that it wasn't fair. . . . My husband would get his voter registration things in the mail and he wanted me to help him decide. That was fun because that was a time I could voice my opinion. But on the other hand, that anger was still there because instead of one vote, there could have been two. And we didn't always agree on the same things. . . . Although he leaned my way sometimes, it would have been more important to have my own vote.

[When I learned I could vote,] I was excited. I was like, wow, I can't believe it. [After] all of these years, I was very excited. . . . [I want to vote on] schools, in that I'm noticing that a lot of funds are being taken from our schools. Closing schools. I know that our children need that. They need teachers, and instead of them closing schools, they need to get the money somewhere else. Maybe a type of tax. Maybe raise the cigarette tax. Something to make sure they don't take away from our kids' future.

~ Yolanda W.107

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Put simply, those who vote feel they have a stake in the society of which they are a part and they are less likely to re-offend than those who do not vote. For this reason, a number of law enforcement associations have begun to speak out and adopt resolutions urging restoration of voting rights for people with criminal convictions.<sup>55</sup>

## **On the World Stage**

The United States is wildly out of step with the international community in banning whole populations from the ballot box.<sup>56</sup> Today, the United States is one of only a handful of countries in the world that allows its states to prohibit non-incarcerated citizens—people living and working in their home communities—from voting for the rest of their lives.<sup>57</sup> And it is among the few that disenfranchises the incarcerated.<sup>58</sup>

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Few democracies restrict voting rights at all after an individual completes his or her sentence. In places that do, disenfranchisement occurs under narrowly targeted policies that affect hundreds of individuals, as opposed to millions.<sup>59</sup>

Debates about criminal disenfranchisement in other countries are at the margins, nowhere near the scale of the United States. For example:

[t]here are disagreements and debates within European nations over disenfranchisement—but the debate is over *which prisoners* should be barred from voting. In almost all cases, the debate stops at the prison walls.<sup>60</sup>

Most mature democracies allow prisoners to vote. 61 The supreme courts of Canada and South Africa recently struck down voting prohibitions for incarcerated persons, 62 and the European Court of Human Rights ruled the United Kingdom's blanket disenfranchisement of individuals in prison violated the European Convention on Human Rights. 63 Among the many other countries that extend the franchise to incarcerated citizens are Germany, Sweden, Denmark, France, Greece, Italy, Portugal, Israel, and Japan. 64

Given the United States' standing in the international community and its efforts to promote democracy around the world, the widespread disenfranchisement of American citizens on the basis of criminal convictions has come under global criticism. Two United Nations' bodies recently expressed concern about the extent of felony disenfranchisement in the United States, especially among racial and ethnic minorities,

and called on the United States to review and limit these measures.<sup>65</sup> Indeed, the sheer volume and racial disparities of felony

disenfranchisement in the United States may constitute a violation of its international treaty obligations.<sup>66</sup>

## DEBUNKING JUSTIFICATIONS FOR FELONY DISENFRANCHISEMENT

**RHETORIC:** People who have broken the law cannot be trusted; they might commit voter fraud.

**REALITY:** There is no basis or evidence for claiming that individuals with criminal convictions are more likely than anyone else to commit voter fraud, especially if their criminal conviction has nothing to do with tampering with voting. <sup>108</sup> In any event, adequate penalties for electoral fraud already exist in every state, including California, such that broad felony disenfranchisement is unnecessary for this purpose. <sup>109</sup>

**RHETORIC:** Individuals with criminal convictions might vote for bad people or bad laws.

**REALITY:** It is unconstitutional to deny people the right to vote based on how they might vote. <sup>110</sup> And here again, there is no basis or evidence for making this claim. <sup>111</sup> But taking it further, "let us imagine what the process might look like. Suppose, for example, a group of

burglars in a neighborhood want to reduce the criminal penalties for burglary. First, they would have to field a candidate (either one of their own or someone else who is 'pro-burglar') to run for state office. They would then have to run a rather effective campaign in this era of 'get tough' politics in order to secure 51 percent of the vote for their candidate. Once elected, the new office-holder would have to convince a majority of the state legislature and the governor to support legislation to reduce penalties for burglary. This possibility hardly seems to pose a substantial threat to public safety."112 Moreover, like the population at large, individuals with criminal convictions have a wide variety of political views and concerns.113

**RHETORIC:** Felony disenfranchisement is part of punishing people who break the law.

**REALITY:** Stripping people of the right to vote does not further any of the goals of the criminal

justice system; namely, incapacitation, deterrence, retribution, or rehabilitation. <sup>114</sup> To the contrary, there is some evidence that it may actually undermine rehabilitation and reintegration. <sup>115</sup>

**RHETORIC:** They are not going to vote anyway, so why all the bother?

**REALITY:** In states where individuals are legally eligible to vote, many do. Like any other group, some people will vote and some will not. Across the spectrum, criminal conviction or not, the United States has low voter participation. 116 "The difference between convicted felons and other citizens who choose not to vote is that felons have no choice; though many of us do not exercise our right to vote, we view the right itself as fundamental to citizenship."117 The United States would benefit from more people participating in the political process, not less.118

## **California Context**

California is one of 48 states with felony disenfranchisement laws that strip citizens of their right to vote.<sup>67</sup> While the state has incrementally expanded the ability of former offenders to participate in the democratic process, the state continues to deny the right to vote to individuals in state prison or on parole for any felony conviction.

## **Making Progress Toward Reform**

The original 1849 California Constitution included a broad criminal disenfranchisement provision, permanently stripping anyone "convicted of any infamous crime" of the right to vote. 68 Expanded in 1879, the provision was amended to include "embezzlement or misappropriation of public money" in addition to "infamous crime." This remained the law for nearly 100 years. 70

Then, in 1973, the California Supreme Court, in *Ramirez v. Brown*, struck down the state's lifetime disenfranchisement of individuals with criminal convictions as a violation of equal protection.<sup>71</sup> The court found that over the years, election reforms had "radically diminished the possibility of election fraud in California," such that broad, blanket disenfranchisement was not "necessary."<sup>72</sup>

Three days after this decision, the Legislature introduced a bill to narrow the felony disenfranchisement provision to disenfranchise individuals only "while. . .imprisoned or on parole for the conviction of a felony." Passed by the Legislature, the proposed constitutional amendment proceeded to the ballot as Proposition 10 in 1974. The amendment was adopted by voters, eliminating the state's lifetime criminal disenfranchisement provision and replacing it with the current felony disenfranchisement provision:

## TRACING THE TIMELINE OF CRIMINAL DISENFRANCHISEMENT IN CALIFORNIA

**1849** The original California Constitution disenfranchised individuals convicted of an "infamous crime" through Article II, Section 5, which provided: "No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector."

1879 Article II, Section 1 rewrote the disenfranchisement provision to include "embezzlement or misappropriation of public money" in addition to "infamous crime." It provided: "... no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the Constitution in the English language and write his or her name, shall

ever exercise the privileges of an elector in this State."

**1959** In the first California Supreme Court case to interpret the disenfranchisement provision, *Stephens v. Toomey*, the Court states that "conviction" as used in the disenfranchisement provision "must mean a final judgment of conviction."

1966 The California Supreme Court later held, in *Otsuka v. Hite*, that the term "infamous crime" as used in the disenfranchisement provision must be construed to mean crimes that "may reasonably be deemed to constitute a threat to the integrity of the elective process." The court left it to local elections officials to determine which specific crimes would constitute such a threat. This led

to wide variation in implementation from county to county, as local elections officials made individual determinations about the eligibility to vote.

1972 A constitutional amendment, Proposition 7, is passed by California voters. This resulted in Article II, Section 3 being substituted for the earlier Article II, Section 1 disenfranchisement provision. The new provision continued disenfranchisement for an "infamous crime" and "embezzlement or misappropriation of public money," stating: ". . . the legislature shall prohibit improper practices that affect elections and shall provide that no severely mentally deficient person, insane person, person convicted of an infamous crime, nor person convicted of

The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or *imprisoned* or on parole for the conviction of a felony.<sup>74</sup>

The result was, for 30 years, a stable law on the voting rights of individuals with a felony conviction. Then, a 2005 opinion by the California Attorney General upset that balance and threw California disenfranchisement law into disarray.

# Conflicting Interpretations and Court Resolution

From 1974 to 2004, both the Secretary of State and the Legislature interpreted the California Constitution to allow anyone who otherwise met voting qualifications to vote, unless s/he was in prison or on parole for a felony conviction. In other words, individuals who

had a non-felony criminal conviction (i.e. a misdemeanor) could vote, as well as those who were off parole or on probation, including those temporarily confined in local jail facilities as a condition of probation.

However, in 2004, local organizations attempting to register individuals in local jails for the November election were prohibited from doing so at some county detention facilities. Consequently, a San Francisco-based non profit organization, Legal Services for Prisoners with Children, requested clarification from then-Secretary of State Kevin Shelley. The Secretary of State confirmed—in a letter issued a few days after the November 2004 election—that this population was, indeed, eligible to vote.

The following year, with another important statewide, "special" election looming in November the new Secretary of State, Bruce McPherson, requested an opinion from the

embezzlement or misappropriation of public money shall exercise the privileges of an elector in this State."

**1973** The California Supreme Court issues the *Ramirez v. Brown* decision. In this case, the Court reexamines the constitutionality of California's disenfranchisement provision and determines that, in the years since its decision in Otsuka, "the test for judging the constitutionality of a state-imposed limitation on the right to vote has become substantially more strict." <sup>123</sup> Applying the stricter test, the Court finds that election reforms had "radically diminished the possibility of election fraud in California," <sup>124</sup> such that blanket disenfranchisement is not "necessary" and is, therefore, unconstitutional. <sup>125</sup>

**1974** The *Ramirez v. Brown* case is appealed to the United States Supreme Court, which issues the decision in *Richardson v. Ramirez*, reversing the California Supreme Court. The U. S. Supreme Court holds that blanket dis-

enfranchisement does not constitute denial of equal protection under the United States Constitution and sends the case back to the California Supreme Court for consideration of whether the lack of uniformity in local practices might constitute a separate denial of equal protection. 126 The Court also notes that, while blanket disenfranchisement is not unconstitutional, the people of California could choose a different course. 127

1974 Voters enact Proposition 10 at the ballot, which repeals the 1972 version of Article II, Section 3 and replaces it with the language that continues to exist today: "The Legislature . . . shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."

**1976** Article II, Section 3 is renumbered to the current Article II, Section 4. The language of the disenfranchisement provision remains the same.

**2005** California Attorney General issues Opinion No. 05–306, concluding that anyone "who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not eligible to vote." 88 Cal. Op. Att'y Gen. 207 (2005).

2006 In light of Attorney General Opinion No. 05–306, the ACLU of Northern California and Social Justice Law Project file a lawsuit, League of Women Voters v. McPherson, in the First District Court of Appeal to clarify the scope of California's felony disenfranchisement law as it relates to individuals who are incarcerated. We argued in the case that the Attorney General's opinion wrongfully disenfranchised individuals in county jail as a condition of felony probation, who, as "probationers," are clearly entitled to vote under California law. The Court unanimously agreed, holding that only persons who are serving a sentence in state prison or are on parole for a felony conviction are disenfranchised.128



California Attorney General on the question of "whether a person convicted of a felony and incarcerated in a local facility (e.g. jail) rather than a state prison may register to vote or vote."<sup>75</sup>

In response to the question posed by the Secretary of State, the ACLU-NC submitted a letter to the Attorney General offering an interpretation of the constitutional disenfranchisement provision. The analysis concluded that the "language of Article II, Section 4 of the California Constitution, its legislative history, and its implementing statute, Elections Code Section 2101, all evidence a clear intent to disenfranchise only those people convicted of a felony offense who are incarcerated in *state prison* or are on parole from prison—not those incarcerated in local county jails." <sup>76</sup>

Unfortunately, the Attorney General adopted a different interpretation. A few weeks after the November election, he issued an official Opinion, concluding that Article II, Section 4 disenfranchised those confined in county jail as a condition of felony probation.<sup>77</sup> Primarily relying on "common" definitions of the word "imprisoned," he concluded that the felony disenfranchisement provision extended to anyone who was incarcerated, whether in county jail or in state prison.

In response to the Attorney General's Opinion barring this class of probationers from voting, the Secretary of State notified local election officials that individuals confined in jail as a condition of felony probation were not eligible to vote. This resulted in the immediate disenfranchisement of more than 145,000 citizens—mostly young men of color who committed nonviolent offenses, according to

the California Department of Justice.78

As a result of this back-and-forth among two of the state's top constitutional officers, in the space of a two-year period, this population was both granted and denied the right to vote. In each instance, the decision of policymakers came just after a statewide election—too late for those citizens affected either to exercise the franchise extended to them or to challenge its denial.

With the law in a state of flux, the ACLU-NC and the Social Justice Project filed a lawsuit in the First District Court of Appeal, League of Women Voters v. McPherson, to clarify the scope of California's felony disenfranchisement law and to seek judicial resolution in time to register voters for yet another upcoming statewide election in November 2006. Relying on the plain language and legislative history of Article II, Section 4 of the California Constitution, the Legislature's and Secretary of State's consistent interpretations of the constitutional provision, and the practical implication of the Attorney General's Opinion, we argued that felony probationers are clearly entitled to vote under California law.

In December 2006, a unanimous panel of the First District Court of Appeal agreed, holding that only persons who are serving a sentence in *state* prison or are on parole for a felony conviction are disenfranchised, restoring the voting rights of those who had been wrongfully disenfranchised.<sup>79</sup>

While this was a victory in interpreting the *scope* of California's law, scores of citizens are still legally barred from voting in California under the felony disenfranchisement law that remains on the books.

# Barring a Quarter-Million Californians from the Ballot Box

Like felony disenfranchisement laws nationally, California's law has had a widespread impact, barring hundreds of thousands of citizens from the ballot box for extended periods of time. As previously noted, a disproportionate number of these disenfranchised citizens are people of color.

## Lengthy Sentences

California disenfranchises individuals for any felony conviction, including an array of nonviolent crimes, for long periods of time. The state, over the course of time, has enacted hundreds of criminal laws establishing felony offenses. Today, at least 500 felony offenses populate California's Penal Code, including numerous nonviolent offenses, such as van-

## DEFINING—AND DISTINGUISHING—CRIMINAL JUSTICE TERMS

**FELONY** In California, a felony is defined as any "crime which is punishable with death or by imprisonment in the state prison." <sup>129</sup>

**MISDEMEANOR** Other than the felony crimes described above, "[e]very other crime or public offense is a misdemeanor except those offenses that are classified as infractions." 130

**PROBATION** Probation is a period of time during which an individual is under the supervision of the criminal justice system and must meet certain conditions, such as obeying all laws, not using drugs, or meeting with a probation officer. Sometimes individuals on probation for a misdemeanor or a felony are required to spend a portion of

their probation period incarcerated in a county jail.

JAIL Jail refers to local city or county detention facilities. A variety of individuals may be incarcerated in jail, such as those awaiting trial or those held in contempt of court. Individuals convicted of misdemeanor crimes and individuals on misdemeanor or felony probation are sometimes required to spend time in a county jail as part of their sentence or probation conditions. City jails are overseen by local police departments; county jails by the county sheriff.

**PRISON** Prison refers to state detention facilities. Only people who are convicted of felony crimes are sent to state prison.

But not all people convicted of a felony are sent to prison.

PAROLE After a person has served a portion of his or her state prison sentence, s/he may be eligible for parole—a period of supervised release for those coming out of state prison, during which time they must meet certain conditions, such as obeying all laws, not using drugs, or meeting with a parole officer.

"Beyond the quarter-million voters who are legally disenfranchised in California, countless other citizens with criminal convictions are effectively disenfranchised because of the lack of information or misinformation provided to them about their voting rights."

dalism of \$400 or more, marrying under false personation, and counterfeiting.<sup>82</sup>

Beyond these straight felony offenses, another 300 crimes may be treated as felonies or misdemeanors at the judge's discretion.<sup>83</sup> For these "wobbler" offenses, imposition of a sentence of imprisonment in the state prison automatically converts a misdemeanor to a felony.<sup>84</sup> Most of these "wobbler" crimes are property or drug offenses, such as forgery, petty theft with a prior theft, and drug possession.<sup>85</sup>

Once convicted of one of these felony offenses, an individual is barred from voting during the entire time s/he is in state prison and on parole. Given the hundreds of new crime bills enacted between 1984 and 1991 that increased sentences and lengthened the parole period for many crimes, 86 including nonviolent felonies, this period of disenfranchisement can last a very long time.

# Exponential Growth of the Criminal Justice System

With more crimes on the books and tougher, longer sentences, California's prison population has exploded over time. California now has the largest state prison system in the nation—and is second only to the Federal Bureau of Prisons.<sup>87</sup> Since the 1980s, the number of people incarcerated in California increased from 22,000 to an all-time high of 168,350 by 2006, with projections that it will reach 180,000 by 2010.<sup>88</sup> As of 2006, one of every nine individuals incarcerated in state prisons *nationwide* was housed in California.<sup>89</sup> Many of these individuals are incarcerated for

nonviolent offenses.90

And these figures do not include those who are under the supervision of other parts of the criminal justice system, whether incarcerated in jail, on probation or on parole. For example, in 2006, more than 425,000 individuals were under local supervision, whether on probation or in jail.<sup>91</sup> Another 130,000 were released on parole.<sup>92</sup>

A disproportionate number of these individuals are people of color. For example, African Americans represent less than seven percent of the general population in California, but are nearly 30 percent of the state's prison population.<sup>93</sup> At every stage of the criminal justice system in California, people of color fare worse than their white counterparts.<sup>94</sup>

Two criminal justice policies in particular have helped fuel California's prison growth and the resulting disparities: The "War on Drugs" and "Three Strikes You're Out." Their harsh consequences disenfranchise individuals for nonviolent felony offenses, such as drug offenses, for an extended period of time—in some instances, for a lifetime.<sup>95</sup>

From 1980 to 2000, there was a 25-fold increase in the number of individuals sent to California prisons for drug offenses. <sup>96</sup> Although the majority of drug users are white, <sup>97</sup> a disproportionate number of those sent to prison for drug offenses are black. In 2003, for example, the rate of white male prison admissions for drug offenses in California was about 44 per 100,000, while the rate for African-American males was 515 per 100,000. <sup>98</sup>

Similarly, the Three Strikes law in California

enacted in 1994 has dramatically extended sentences for nonviolent crimes, with a particular impact on people of color. Unlike any other state with a Three Strikes law, California imposes 25-years-to-life sentences for a third-strike, nonviolent felony offense. 99 The result: "As of September 2003, . . . there were more third strikers serving 25-years-to-life for drug possession (672) than third strikers in prison for second-degree murder (62), assault with a deadly weapon (379), and rape (119) *combined*. "100 African Americans are incarcerated for third-strike life sentences at a rate of 12 times more than whites. 101

only 19 percent of California's citizen votingage population, they are 36.5 percent (over 100.000) of those disenfranchised. 105

But even these staggering figures do not represent the full extent of felony disenfranchisement in this state. Beyond the quarter-million voters who are *legally* disenfranchised in California, countless other citizens with criminal convictions are effectively disenfranchised because of the lack of information or misinformation provided to them about their voting rights.

## Disproportional Disenfranchisement

The combination of this expansive array of felony offenses, along with the exponential increase in incarceration followed by lengthy parole terms, has led to a shocking degree of voter disenfranchisement in California—especially among African Americans.

Counting only those in prison and on parole for a felony conviction, over 293,000 Californians were prohibited from voting as of January 2006, approximately 28 percent of whom (over 78,000) were African Americans. <sup>102</sup> Yet African Americans are less than seven percent of California's total population and, as of 2000, were only eight percent of the adult citizen population. <sup>103</sup>

African Americans are disenfranchised at almost 10 times the rate of whites in this state. 104 Similarly, while Latinos constitute



"Although an individual with a felony conviction can vote while on probation or once s/he is off parole, many people in this situation are unaware of their eligibility to vote...relevant government agency officials are also unclear

about the law."

# Public Official and Voter Confusion

## Implementation of California's Disenfranchisement Law

The varied patchwork of felony disenfranchisement laws throughout the nation, as well as the recent conflicting interpretations between two of California's top constitutional officers, has created confusion—among both individuals with felony convictions and the governmental actors who interact with this population—about who is and is not eligible to vote in California.<sup>1</sup>

Although an individual with a felony conviction can vote while *on* probation or once s/he is *off* parole, many people in this situation are unaware of their eligibility to vote. Take Dante W., for example:

I thought once you got arrested your rights were pretty much out the door. . . . It was something that all the people that was arrested already knew, like whoever was arrested or in jail or on probation, you just couldn't vote. It was the law. I thought it was the law. . . . I didn't know at the time that I could vote being on probation. No one said anything about it. Never seen no information about it. Just always thought that you were on probation, that was it. I thought it was for life. . . . I thought once you were convicted. . . , that was it."

For many years, David C. was similarly misinformed, as was an older gentleman he encountered who thought he was barred from voting for life:

I didn't start voting until. . .I learned that I had the right to vote in '98. Before that, like many people, I [thought] my vote didn't count. . . .I knew I lost a right [because

of my conviction], but then when I got off parole, I didn't know I had the right back. . . . Well, they told me exactly what I couldn't do. . . . So, you know, I was real clear on what I couldn't do. [But] I wasn't clear on what I could do. . . . Just recently, this guy had to be at least 60 years old, he's like "I don't vote." [I said,] "What do you mean you don't vote?"....He says, "Because I'm a felon, I can't." And I go, "Well, that's not true." He goes, "Well what do you mean?" [I told him,] "Well the reality is, well are you off parole?" He said, "Yeah." [So, I said,] "Believe it or not, you have a right to vote. . . . Here's a registration card."....I figure you can take ten individuals. . .line them up, maybe all of them are on parole or off of parole, only one of them will know if they have the right to vote. So, one out of ten knows.3

Compounding the problem, relevant government agency officials are also unclear about the law. In a review of northern California probation, sheriff, and elections offices, the ACLU-NC found widespread misinformation and virtually no readily available clear and accurate information about the scope of California's disenfranchisement law.

Through local advocacy efforts, the situation has improved. But much work remains to be done.

## **MAKING EVERY VOTE COUNT**

With so much misinformation in California about voting eligibility, the ACLU-NC launched a public education campaign in the months leading up to the November 2006 statewide election to inform people with felony convictions about their voting rights. The campaign—"Every Vote Counts"—featured photographs and quotes from members of All of Us or None who have been involved in the criminal justice system, urging people to exercise their right to vote. 66

Advertisements, in both English and Spanish, ran on billboards and bus shelters in San Francisco and Oakland. Public Service Announcements, also in English and Spanish, were aired on various radio stations in

northern California. Tens of thousands of posters and "palm" cards were distributed to community-based organizations. libraries, service agencies, probation offices, and others throughout northern California. Probation offices were provided with additional educational materials, including a sample FAQ for their websites, a sample notice from the Chief Probation Officer to staff advising them of probationer voting eligibility to avoid dissemination of incorrect information, and a sample employee manual insert so that the notice provided in the short-term to existing employees would become part of the information received by every new staff person going forward.

Since that time and the court's clarification of jail voting rights in *League of Women Voters v. McPherson*, the ACLU-NC also developed a pamphlet to be distributed to county jail inmates, including information on voting eligibility and registering and voting by mail. Over 25,000 pamphlets have been mailed to county jails, elections officials, and community-based organizations in northern California.

More public education is needed and should be sustained over multiple election cycles. Local and state governments must play a role in these efforts to ensure that every vote counts.

## ORGANIZING AND EMPOWERING INDIVIDUALS WITH FELONY CONVICTIONS

Dorsey Nunn, Director of All of Us or None (AOUN), an organizing initiative started by formerly incarcerated individuals, underscores the centrality of voting to participating in civic life and improving the quality of people's lives:

We decided to partner with the ACLU-NC in creating and disseminating these voting rights materials because we believe that voting is an essential tool to organize and empower people who have been incarcerated.

As an organizing initiative started by people who have been in prison, AOUN is working to ensure that formerly incarcerated individuals have a voice in society and can participate in the decisions that impact their lives. We are concerned that many individuals with felony convictions have been misinformed about their eligibility to vote in California, which prevents them from participating in the political process.

AOUN members felt this issue was so important that several

members volunteered to be featured in the advertisements and be the face of the voting rights campaign. They wanted to not only get the word out that people with felony convictions have the right to vote, but that our votes and voices count.

Voting is a powerful tool to improve the quality of people's lives. Each of us can make a difference and a positive contribution to our society.<sup>67</sup>

~ Dorsey Nunn Director, All of Us or None

## **Probation Departments**

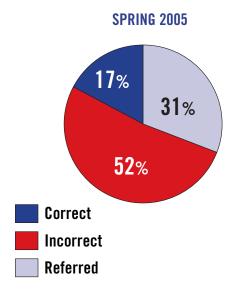
In California, individuals can vote while on felony probation. However, many probation offices neither know the law nor provide affirmative information advising probationers of their voting rights.

### **Calls to Probation Offices**

In 2005 and 2008, the ACLU-NC conducted phone surveys of the 48 northern California county probation offices to gauge the level of awareness about voting rights. The results were mixed, but overall indicated a lack of ready, accurate information about probation voting rights.

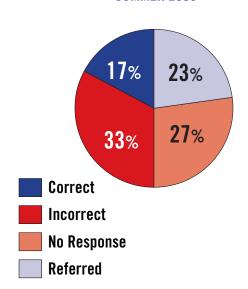
During each round of survey calls, probation offices were asked the same basic question: "Can I vote if I am on probation?"<sup>4</sup>

In the spring of 2005, 17 percent of the offices (8/48) provided accurate responses, 52 percent (25/48) provided incorrect information and 31 percent (15/48) referred the caller elsewhere.



The results were similar in the summer of 2005. However, there was an increase in the number of offices that did not respond directly to the question. Seventeen percent (8/48) provided correct answers, 33 percent were incorrect (16/48), and 50 percent (24/48) made referrals or refused to answer:

## **SUMMER 2005**



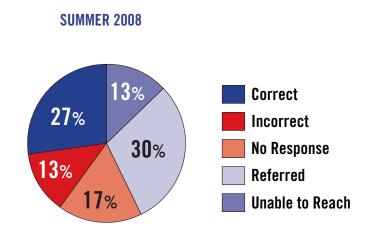
By 2008, the number of correct responses increased by 10 percent, from 17 percent (8/48) in 2005 to 27 percent (13/48) in 2008. Incorrect responses decreased substantially to 13 percent (6/48), down from 52 percent in spring 2005 and 33 percent in summer 2005.

Part of this improvement was clearly due to greater awareness among some probation offices, likely a result of outreach conducted and voting rights materials disseminated by local advocates. Indeed, some of the offices have become very knowledgeable about different dimensions of the felony disenfranchisement law. A few offices consulted available materials in providing accurate re-

sponses—from their own website in one instance, to a flyer in the lobby and ACLU-NC materials in others.

Roughly the same number of offices (47 percent) referred callers or refused to answer in 2008 as in summer 2005 (which had been an increase over spring 2005).

We were unable to reach six of the 48 offices (13 percent); it is unclear how their responses might have affected these results.



## DISPELLING MYTHS ABOUT FELONY DISENFRANCHISEMENT

In the ACLU-NC's 2005 and 2008 phone surveys, it became apparent that probation officers, sheriffs, and local elections officials are misinformed about the scope of felony disenfranchisement in California. Following are examples of inaccurate information provided to callers:

**MYTH:** You can't vote if you have a felony on your record...ever.

**FACT:** You can vote with a felony conviction as long as you are not in state prison or on parole.

MYTH: You can't vote unless you do something about your conviction, such as getting it expunged or reduced to a misdemeanor, or having your "sheet sealed."

FACT: As long as you are eligible to vote, all you have to do is register to vote and vote like any other voter.

No special rules apply.

**MYTH:** Your voting rights will be restored after so many years. Three years. Maybe seven years.

**FACT:** There is no waiting period other than completion of your prison sentence and term of parole. After that, voting rights are automatically restored.

**MYTH:** Probation and parole; it's the same thing.

FACT: They are different.

And, when it comes to felony disenfranchisement, the distinction makes a significant diferrence—between being allowed to vote and not.

**MYTH:** You can't vote in jail because you are "incarcerated" or "imprisoned."

FACT: Yes, you can. This was the issue resolved by League of Women Voters v. McPherson in 2006. You can vote in jail, whether you are serving a misdemeanor sentence, awaiting or on trial, or confined as a condition of felony probation. Only those sentenced to state prison or on parole for a felony conviction cannot vote.

"Another widely available information source, the Internet, contains little information about probationer voting rights."

While there has been an improvement in the number of offices that provide accurate information about probationer voting rights, a substantial majority of offices do not provide information directly, referring callers instead to other agencies or refusing to answer. Some provided incorrect information.

## **Requests for Policies**

In 2005, the ACLU-NC issued Public Records Act requests to each of the 48 northern California county probation offices for copies of policies or procedures regarding voting rights of individuals with a criminal conviction or on probation and any notices or materials posted or provided advising probationers of their voting rights.<sup>5</sup> These requests were repeated in 2006 to determine any changes in policies or practices since the 2005 requests.<sup>6</sup>

All 48 probation offices provided a response to one or both Public Records Act requests. However, only one office, San Francisco County Probation, had a policy regarding voting rights.<sup>7</sup> The policy set forth the administrative and legal authority for voter eligibility and stated: "It is the policy of the Adult Probation Department to advise clients who are on probation, and not simultaneously on parole, that they are eligible to vote."

While establishing official policy is certainly a good first step, it is important to ensure that the written policy is translated into practice. During the 2008 survey calls, the individual who answered the phone at the San Francisco County Probation Department responded to the question of whether someone on probation could vote, "I have no idea because this is adult probation. Is he on proba-

tion or parole? You could try contacting the parole office."

Although they did not have actual policies in place, two probation offices (Marin and Sonoma) took it upon themselves to distribute information to their staff on at least one occasion. Marin County did so in response to an inquiry from a probationer. After clarifying the law with the local elections official, a deputy probation officer sent an email to all adult probation staff with accurate information about probationer voting rights and where to register to vote. Notably, he concluded his email saying, "I hope this helps anyone who like myself didn't think that you could vote. My belief is that some defendants are being advised incorrectly by the court that they can not vote."9

And one other probation office, Yuba County, was motivated to distribute information as a result of receiving the ACLU-NC's Public Records Act request, stating:

Notwithstanding [the fact that the office does not have any policies, notices, etc.], your inquiry did serve as a catalyst for the department to begin developing notification procedures advising offenders released on probation of their voting rights. As you know, we are not required to do so, but believe in implementing best practices whenever possible. Certainly an informed individual, regardless of past experiences can be a contributing member of the electorate.<sup>10</sup>

None of the offices reported posting notices or otherwise affirmatively providing probationers with information about their voting rights while on probation. Several offices said that they refer any inquiries to the local elections office; a couple said that their staff knew the law and advised probationers accordingly when asked.

#### **Review of Websites**

Another widely available information source, the Internet, contains little information about probationer voting rights. Only a fraction of

## PARTNERING WITH PROBATION

Probation departments can be valuable partners in informing probationers about their voting rights. Consider the leadership demonstrated by the Chief Probation Officer of Inyo County, California, Jim Moffett.

Following the ACLU of Northern California's 2005 and 2006 Public Records Act requests to county probation offices, Mr. Moffett contacted the ACLU-NC about collaborating in our public education efforts. He made a proposal to his colleagues at a statewide Chief Probation Officers' Association meeting and followed up with them after the meeting about the ACLU-NC's offer to provide public education materials to county offices at no cost.

While more work remains to be done with county probation offices, Mr. Moffett's interest and enthusiasm were refreshing and his core commitment was clear:

We feel voting is key to citizenship. We hope to create a greater sense of citizenship for our clients and voting is a key component of that. And what we have found is not only are defendants uninformed about their voting rights, but often many of our probation officers were uninformed. And so we found that by doing this outreach, we were able to help make it possible for our clients to know that they have the right to vote and be encouraged to do so.

... There were some counties that were already doing outreach. But what we tried to do is expand that work to all counties and provide information that counties could use. Some counties added materials to their website.

some added information about voting to their training sessions. . . . The problem is that the faces in the meetings change, the average time anyone has this position is about three years. So it is time to revisit the topic, redistribute materials, and see if counties need anything else. We just have to keep voting rights on the table.

...What sustains it is the core element, that encouraging citizenship helps our clients. I mean, many of our clients don't vote and we found a great deal of enthusiasm among some of our clients, and then others frankly were not that interested. I think that reflects general trends across the country not just the populations we deal with. . . .[For some of our clients,] part of this is their feeling that many of these opportunities are not available [to them]. So letting them know they have this right is very important because they feel like they have lost all their rights. Some of them are very excited to discover that this is a right they still have

. . . We want to believe people are capable of changing their way of life in drastic ways and it is clear that voting is a key element of that. Even though I can sympathize with the notion that someone has been "voted off the island," so to speak, the exercise of that freedom and right is key to rehabilitation, which is what we need to be focusing on.

~ Jim Moffett, Inyo County Chief Probation Officer the four dozen northern California probation offices (4/48, or 8 percent) have information on their websites about the voting rights of probationers.<sup>11</sup>

All four offices—Contra Costa, Humboldt, San Joaquin, and Solano—apparently took advantage of the short, straightforward Frequently Asked Question (FAQ) sample text provided by the ACLU-NC:

**Q:** Can I vote while I am on probation?

A: Yes. In California, you have the right to vote while you are on probation. You must be a United States citizen, a resident of California, and at least 18 years old. To vote in the next election, you must register to vote at least 15 days before the election. For more information, contact. . .[insert name of County Registrar/Elections Office, address, and phone number, with hyplerlink to website, e.g. San Francisco Department of Elections, 1 Dr. Carlton B. Goodlett Place, Room 48, San Francisco, CA, 415.554.4375

### **Visits to County Probation Offices**

Given the level of misinformation regarding probationer voting rights and ACLU-NC's efforts to work collaboratively with probation offices to educate both probation officers and probationers about their voting rights, we conducted a "spot check" of a handful of probation offices in July 2008 to see what information was visibly available. We also had the opportunity to speak with a couple of probationers in these offices about their voting rights.

The results were disappointing. Four of the six probation offices visited—Alameda, San Mateo, Santa Clara, and Santa Cruz—had no voting rights information displayed at all. Two offices—Contra Costa and San Francisco—had materials available.

Contra Costa County Probation featured materials in two of its offices, including an ACLU-NC poster and palm cards, as well as a simple flyer it created on its own about voting rights while on felony probation:

Register to Vote

You are eligible to vote if you are on felony probation.

You are only NOT eligible if

You are currently on Felony State Parole.

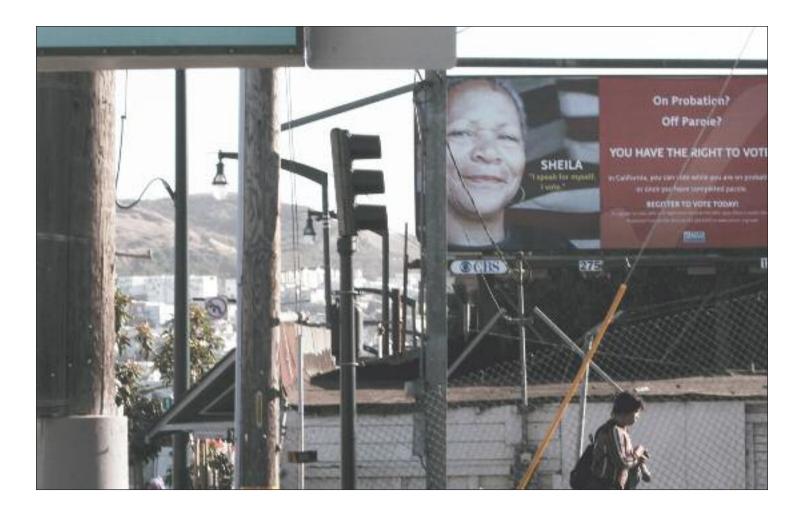
You are currently incarcerated in a State Prison.

Contact Information: (510) 272-6973

In San Francisco, the probation office had ACLU-NC voting rights posters in both English and Spanish posted on bulletin boards, along with a flyer prepared by the San Francisco Public Defender's office that also had information in both English and Spanish. On another bulletin board, a news article about the successful jail voting case restoring voting rights to felony probationers was posted with the word "probation" underlined. ACLU-NC's jail voting pamphlets were also available in this waiting room.

Surrounded by accurate voting information, the eligible voter sitting in the waiting room of San Francisco County Probation knew his voting rights: "Yes. I'm registered to vote," he said. "I'm on probation and know that people on probation can vote."

Contrast this with Santa Clara and Alameda County Probation, where no voting rights information was posted. In Alameda, a woman said with surprise: "Is that right? I thought you could not vote. They should tell you that." The gentleman in Santa Clara said: "I'm not registered. I thought you could not register if you had a felony. [Interviewer answer: As long as you are no longer in prison or on parole, you can register.] Is that right? So I could register right now?"



"ACLU-NC
discovered
troubling instances
where
information... was
incorrectly
interpreted by
Spanish
translators."

## **Sheriffs' Departments**

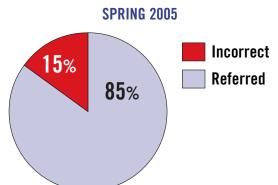
In California, individuals confined in county jails as a condition of felony probation retain their voting rights, along with others in jail such as misdemeanants and those awaiting or on trial. However, there has been widespread confusion about the voting rights of this population in recent years that continues today, including among sheriffs' departments that, in most counties, are charged with overseeing the jails.<sup>13</sup>

### Calls to Sheriffs' Offices

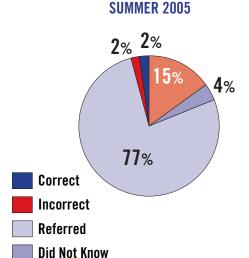
In 2005 and 2008, the ACLU-NC conducted phone surveys of the 48 northern California county sheriffs' departments to gauge the level of awareness about voting rights. The results indicated an absence of accessible, accurate information about voting rights for individuals in jail as a condition of felony probation.

During each round of survey calls, sheriffs' offices were asked a series of questions about the voting rights of individuals with a criminal conviction, including the question, "Could I have voted when I was in jail? Does it matter why I was in jail?"<sup>14</sup>

Most offices (41/48, or 85 percent) did not answer this question in the spring of 2005 survey, instead referring the call elsewhere. Those that did (7/48, or 15 percent) gave incorrect responses.



The results were consistent in the second-round survey administered in the summer of 2005, though fewer offices answered the question about voting rights in jail. This time, two offices answered the question, one providing the correct answer and one the wrong answer. The vast majority of offices (46/48, or 96 percent) referred the caller elsewhere, stated they did not have information about the issue, or refused to respond:



No Response

In the 2008 survey, callers rarely got to the jail voting question because sheriffs' offices either incorrectly answered the basic threshold questions about whether individuals with a criminal or, more specifically, a felony conviction could vote, or immediately referred the call elsewhere.

Four percent (2/48) of sheriffs' offices answered the basic voting rights questions correctly, while 21 percent answered incorrectly (10/48). Seventy-three percent (35/48) referred the call elsewhere or refused to answer. We were unable to reach one office.

# 4% 2% 4% 69% Correct Incorrect No Response Referred Unable to Reach

## **Requests for Policies**

In 2005, the ACLU-NC issued Public Records Act requests to each of the 48 northern California county sheriffs' offices for copies of policies or procedures regarding voting rights of individuals with a criminal conviction and any notices or materials posted or provided advising these individuals of their voting rights. These requests were repeated in 2006 to determine any changes in policies or practices since the 2005 requests. All but one office provided a response to the 2005 request; over three-quarters responded in 2006.

It should be noted that the California Code of Regulations requires that jail personnel develop written policies and procedures for al-

## MISINTERPRETING VOTING RIGHTS INFORMATION

In a round of survey calls conducted in Spanish in 2005, the ACLU-NC discovered troubling instances where information (whether substantively correct or incorrect in English) was incorrectly interpreted by Spanish translators. For example:

JAIL PERSONNEL: If he is on *parole* or in *prison*, he can't vote.

INTERPRETER: If he is on *probation* and in *jail*, he cannot vote.

\* \* \*

SHERIFF'S OFFICE:: He cannot vote if convicted of a *felony*.

INTERPRETER: He cannot vote if convicted of a *crime*.

\* \* \*

**SHERIFF'S OFFICE:**: If he is on probation for conviction of a felony, he cannot vote.

**INTERPRETER:** He cannot vote.

These misinterpretations were apparently due to words used interchangeably in Spanish and/or the lack of clarity provided to translators about the significance of making distinctions between different statuses (probation vs. parole) or places of confinement (jail vs. prison). In the second example above, the information given by the sheriff's office in English was inaccurate to begin with.



lowing voting from jail by eligible voters.<sup>17</sup> However, with no minimum criteria or guidelines for the content of such policies, there is wide variation from county to county—from bare-bones statements that jail inmates can vote to step-by-step procedures to guide inmates through the process.

Several counties had very basic policies in 2005, simply stating that an inmate can vote but not providing much information about how s/he would go about doing that. For example, Contra Costa's policy identified a community-based organization from which the inmate can request a registration form, but did not provide any contact information for doing so: "Inmates are recognized to have the following rights: . . . .Voting in accordance with local, state and federal election codes. Inmates may request an absentee ballot registration form via inmate request form to Friends Outside." 18

Some policies contained additional explanation, including contact information for obtaining registration and voting materials and relevant deadlines for doing so. But several did not provide any timelines and either suggested allowing "sufficient time" or flatly stated that it is the individual's responsibility to ensure that s/he submits his or her materials in a timely manner.

Not all policies included voter eligibility requirements. Some simply stated that qualified voters can vote. Of those that did provide such information, it ranged from the generic statement (you can vote if not in prison or on parole) to some that appropriately articulated a distinction between jail and state prison, such as El Dorado (ineligible if "on parole or

imprisoned in State Prison")<sup>19</sup> and Mendocino (cannot be in a "C.D.C. facility or on parole").<sup>20</sup> Of particular concern were ill-defined eligibility statements that could lead to confusion and disenfranchisement, such as San Benito's policy which broadly stated that "any inmate who has not been convicted of a felony" can vote; a statement that should be modified to clarify "convicted of a felony *and sentenced to state prison.*"<sup>21</sup>

Only a handful of policies allowed for voter registration and ballot materials to be treated as confidential, "privileged" or "legal" mail, such as Plumas, Sonoma, and Tulare. Most did not.

Among the more proactive of policies was San Francisco, where Prisoner Legal Services (PLS) in the county jail coordinates with the San Francisco Department of Elections to facilitate voting in jail.<sup>22</sup> PLS maintains an adequate supply of voting materials for inmates who want to vote, assists inmates in completing registration and voting forms correctly, and hand delivers completed election materials directly to elections officials. The jail policy spells out relevant deadlines, provides necessary contact information, and includes a schedule and step-by-step instructions for inmates.

Between the 2005 and 2006 Public Records Act requests, little changed. Seeking to ensure that county officials take some proactive steps to address jail voting in the wake of League of Women Voters v. McPherson, the ACLU-NC wrote to local elections officials alerting them to the resolution of the lawsuit, clarifying the law, and setting forth a bareminimum two-step, on-site jail voting proce-

dure that could be instituted immediately to make proactive efforts to reach eligible jail voters.<sup>23</sup> The letter was followed by ACLU-NC staff visits to virtually all of these counties in late 2007 and early 2008.<sup>24</sup> Sheriffs or other jail personnel participated in many of these meetings with local elections officials.

We learned that some counties had developed modified policies since our 2005 and 2006 Public Records Act requests and some agreed to make changes subsequent to our visit, such as adding registration and voting deadlines, clarifying language, and improving county collaboration (though we have not yet received updated policies for all of these counties). In some counties, nothing had changed and it was not clear that it would.

#### **Review of Websites**

Of the 48 sheriffs' offices in northern California, six have voting rights information on their websites for individuals with criminal convictions: Amador, Mariposa, Placer, San Francisco, Santa Cruz, and Yuba counties. The information provided varies:

#### Amador

Voting. To be eligible to vote an inmate must be a US citizen, a resident of California, and at least 18 years of age on the date of the next election. . . . An inmate cannot be currently imprisoned or on parole for conviction of a felony.

An inmate must register to vote. Voter registration cards should reflect the inmate's current address. Current address is defined as the address that the inmate regards as permanent, and when away from that address, such as in jail, the ad-

dress to which the inmate intends to return. If the inmate has no permanent address, he cannot vote. Inmates shall request absentee ballots prior to the time of the election if they wish to vote while incarcerated at the time of the election. Voter registration cards and absentee ballots shall be mailed in accordance with current inmate correspondence procedures.<sup>25</sup>

#### Mariposa

Programs/Services. . . . Inmates wishing to vote should contact the County Registrar of Voters in their county of residence to request a Voter Affidavit. Those inmates already registered to vote should contact the County Registrar of Voters to request an absentee ballot. It is the responsibility of the inmate to ensure that these documents are mailed in a timely manner.<sup>26</sup>

#### **Placer**

[The Placer County Sheriff's Department has a link to its "Inmate Rule Book" on its website, which contains information about the procedures for registering to vote and voting from jail.]<sup>27</sup>

#### San Francisco

Programs. . . . The Sheriff's Department encourages inmates to vote in local, state, and national elections. <sup>28</sup>

#### Santa Cruz

Inmate Assistance. . . . Voting. 29

#### Yuha

Voting: Inmates confined in the Yuba County Jail will be allowed to correspond with the County Clerk in their county of residence to register to vote and make application for an absentee ballot.<sup>30</sup>

"Nearly one in five local elections officials...gave inaccurate information about eligibility to vote."

## **Local Elections Officials**

Local elections officials (e.g., Registrars of Voters, County Clerks, Elections Offices) are charged with administering voting at the county level, including registering voters and instituting procedures for voting. Overall, these officials are the most knowledgeable about voting rights for individuals with criminal convictions. However, local elections officials continue to disseminate unclear and inaccurate information.

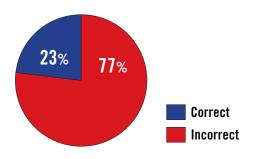
## **Calls to Local Elections Officials**

In 2005 and 2008, the ACLU-NC conducted phone surveys of the 48 northern California county elections offices to gauge the level of awareness about voting rights. The results have improved over time, but problems still remain.

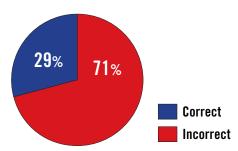
During each round of survey calls, elections officials were asked a series of questions about the voting rights of individuals with a criminal conviction, including a generic threshold question about voting with a criminal conviction and whether it mattered if the conviction was a felony or a misdemeanor. They were also asked more specific questions such as whether individuals can vote while on probation or in jail.

In the two rounds of surveys conducted in 2005—one in the spring and the other in the summer—the vast majority of elections offices could not answer all of the questions accurately. Less than one-third provided correct responses in full:

# SPRING 2005 Round One: 11/48 were correct



SUMMER 2005 Round TWO: 14/48 were correct



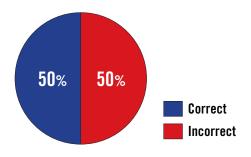
Many offices did not distinguish between a felony and a misdemeanor. Several answered the probation voting question incorrectly or did not know the difference between probation and parole. And the majority of offices were incorrect about eligibility to vote in jail. Taking only the Round Two responses to these specific questions (since elections officials fared better in Round Two than Round One):

- Felony vs. Misdemeanor: Sixty-seven percent (32/48) did not distinguish between a felony and a misdemeanor when asked whether an individual could vote with a conviction.
- Probation: Twenty-one percent (10/48) were either incorrect about voting rights while on probation or did not know.

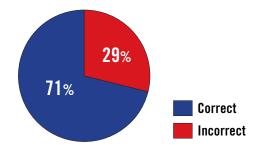
■ Jail: Fifty-eight percent (28/48) were either incorrect about jail voting rights or did not know.

During this period, conflicting interpretations by the Secretary of State and the Attorney General created confusion about probationers' eligibility to vote while confined in county jails. The court resolved the issue in *League of Women Voters v. McPherson* in late 2006. Where the law on voting rights is ambiguous, California says the presumption should be in favor of extending the franchise, not limiting it.<sup>32</sup> Nonetheless, to give local elections officials the benefit of the doubt on this issue in light of the confusion about the law, we also analyzed the 2005 survey responses excluding their responses to the jail voting question. The overall results improved:





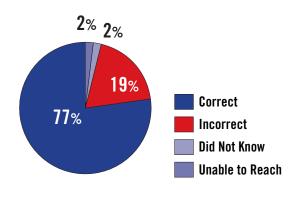
Round Two: 34/48 were correct



The 2008 survey demonstrated improvement, with an increase in the number of correct responses (37/48, or 77 percent). Where there was improvement, in some cases it was significant. A few offices, in particular, had become very knowledgeable, clearly understood the distinctions between jail and prison or probation and parole, and provided straightforward, accurate information.

However, nearly 20 percent of local elections officials (9/48, or 19 percent) are still giving incorrect information. In other words, nearly one in five local elections officials—the public officials most directly entrusted with protecting voting rights—gave inaccurate information about eligibility to vote. And this is despite the fact that they are the primary source of information about voting rights (indeed, most probation and sheriffs' offices refer voting rights questions to local elections officials) and that there have been a statewide lawsuit, personal visits from the ACLU-NC, and dissemination of information from the Secretary of State and others.

#### **SUMMER 2008**



"While the improvements among local elections officials are encouraging and to be commended, it is disconcerting that inaccurate information continues to be disseminated, especially given the fact that other government agencies...routinely refer callers to elections officials for responses to their voting questions."

Consider the following interchange:

"If he is off probation, then he can vote. If he is on probation or parole, then he cannot vote. [Does the type of conviction matter?] No, the rules apply to both felonies and misdemeanors. [Can you vote on probation?] Probationers cannot vote. [In jail?] No, you cannot vote while incarcerated in either jail or prison.

To put the 2008 results into context:

- In November 2007, the ACLU-NC sent letters to all 48 counties, advising them of the law after the successful *League of Women Voters v. McPherson* case that clarified the voting rights of individuals on felony probation. In addition, we personally visited many of these counties between November 2007 and June 2008 before the phone surveys were conducted and provided them with information necessary to respond to inquiries from the general public.
- A few offices first gave incorrect information, but as we pursued clarification or additional questions over the course of the survey, they double-checked and came back with correct information. In one instance, the respondent gave incorrect answers and a colleague sitting next to her would correct her in real time; we counted this survey as "correct," though it begs the question of what the result would have been had she been working alone that day. And, of course, most people would likely ask only the initial question about whether s/he can vote and not necessarily seek clarifications and continue asking questions until the person sought assistance in answering questions.
- Only one round of surveys was conducted in 2008. It is unclear how the results would

- change, for better or worse, with a second round of surveys, different staff persons answering the calls, or other factors.
- Many respondents simply read the declaration from the Voter Registration Card. This is a substantively accurate response. However, most respondents did not have a working knowledge of the distinctions between jail and prison or probation and parole. Therefore, if more specific questions were asked (e.g. Can I vote while on probation? Can I vote while in jail?), the respondent simply repeated the phrase on the card; namely, you can't vote while in prison or on parole. Some respondents broadly interpreted "prison" to mean "incarcerated."
- Similarly, some offices attempted to make distinctions that left questions about how they should be interpreted. For example, respondents distinguished voting in jail with a misdemeanor conviction or while awaiting trial from voting in jail with a felony conviction. What does that mean for individuals serving time in the county jail as a condition of probation who are legally eligible to vote?

While the improvements among local elections officials are encouraging and to be commended, it is disconcerting that inaccurate information continues to be disseminated, especially given the fact that other government agencies such as probation and sheriffs' offices routinely refer callers to elections officials for responses to their voting questions.

#### **Requests for Policies**

In 2005, the ACLU-NC issued Public Records Act requests to each of the 48 northern California county elections officials for copies of policies or procedures regarding voting rights of individuals with a criminal conviction, whether currently or formerly incarcerated, and any notices or materials posted or provided advising these individuals of their rights.<sup>33</sup> These requests were repeated in 2006 to determine any changes in policies or practices since the 2005 requests.<sup>34</sup> Every county responded in 2005 and the vast majority provided responses in 2006.

None of the county offices had any specific written policies or procedures in place in 2005, except for stating that they follow the relevant California Elections Code provisions such as sections 2201 (canceling voter registration upon proof an individual is "imprisoned or on parole for conviction of a felony"), 2212 (cancellation of affidavits of registration of persons "imprisoned or on parole for conviction of a felony"), and 2150 (affidavits of

registration should show and affiant should certify that "not imprisoned or on parole for the conviction of a felony").

In their cover letter, a couple of agencies enclosed the county sheriff's jail inmate voting policy or mentioned that they work with the sheriff or provide information and materials to facilitate jail voting. However, there were no written policies or procedures related to the elections officials' roles or responsibilities in this regard.

Written notices and materials were similarly lacking. In 2005, none of the county elections officials had targeted materials specifically advising individuals with criminal convictions of their voting rights. A handful of counties referenced posting the Voter Bill of Rights and distributing the Voter Registration Form with the generic voter eligibility statements on them.<sup>35</sup>

# FOSTERING COLLABORATION BETWEEN LOCAL ELECTIONS OFFICIALS AND SHERIFFS

Given the fact that local elections officials bear primary responsibility for administering voting, yet eligible jail voters are confined in secure facilities out of their reach, collaboration with sheriffs and other jail personnel is critical to effectively facilitating voting from jail. However, the existence and nature of such collaborations vary from county to county. Santa Cruz appears to have fostered a consistent working relationship.

Both Santa Cruz County Clerk/Elections and the Sheriff's Office have policies regarding jail voting that spell out their individual roles and responsibilities and how they work together. For example, at the sheriff's suggestion, the Elections Department produced an informational DVD that the sheriff has agreed to play regularly at all county facilities in the weeks preceding an election.<sup>69</sup> The Elections Department also provides the jail with posters to put up in each housing unit,<sup>70</sup> as well as all other necessary registration and voting materials for jail personnel to facilitate voter outreach.<sup>71</sup> And to support the jail in staying on track and on time, the County Clerk is proactive in confirming that flyers are still posted, replenishing and picking up voting materials, and calling the jail to remind it of upcoming important deadlines—all according to a predetermined scheduled based on the number of days until Election Day.<sup>72</sup>



Little improved between the ACLU-NC's 2005 and 2006 Public Records Act requests. The vast majority of counties had no change in their policies and procedures or in the provision of materials—other than the fact that a few agencies noted that they were now following the Attorney General's 2005 opinion that disenfranchised felony probationers.<sup>36</sup>

The exceptions were San Francisco and Santa Cruz, both of which had taken meaningful steps to enhance their efforts during the previous year. San Francisco Department of Elections developed a voter outreach and education plan, including distribution of a new informational brochure, "Your Right to Vote: A Voting Guide for Ex-Offenders," produced in English, Spanish, and Chinese.<sup>37</sup> The Santa Cruz County Clerk developed an outreach policy targeted to individuals who are currently or formerly incarcerated that included working with other local agencies, such as the sheriff's, probation, and parole offices, and producing know-your-rights informational materials such as a poster and a DVD to be shown at local jail facilities.38

Concerned that local elections officials make some concerted effort to revise and improve their policies after *League of Women Voters v. McPherson*, the ACLU-NC wrote to each of the 48 northern California counties in 2007 alerting them to the resolution of the lawsuit, clarifying the law, and setting forth a bareminimum two-step, on-site jail voting procedure that could be instituted immediately to make proactive efforts to reach eligible jail voters.<sup>39</sup> The letter was followed by ACLU-NC staff visits to virtually all of these counties in late 2007 and early 2008.<sup>40</sup>

We learned that some counties had developed modified policies since our 2005 and 2006 Public Records Act requests and some agreed to make changes subsequent to our visit. But, for some counties, nothing had changed and there was no indication that it was going to.

#### **Review of Websites**

Most of northern California elections officials' websites (28/48, or 58 percent) have information about voting rights of individuals with felony convictions.<sup>41</sup> Twenty elections websites (over 40 percent) have no information.

Of those websites with some information, with one exception, it merely consists of the standard one-line voter eligibility statement: You may register to vote if you are "not in prison or on parole for conviction of a felony." However, interactions during the phone surveys above demonstrated that this simple statement may not provide enough guidance to alleviate voter confusion around the scope of voting rights for individuals with a criminal conviction.

Only one elections office attempted to go beyond this statement and included a Frequently Asked Question (FAQ) on its website:

- **Q:** Can an ex-felon register to vote and be eligible to vote?
- **A:** Yes. An ex-felon can register to vote and is eligible to vote in elections if he/she is not currently in prison or on parole for a felony conviction.<sup>43</sup>

An FAQ is a useful tool for providing information in this regard. However, this example

### **ENLISTING ELECTIONS OFFICIALS**

As the front-line for protecting voting rights, proactive efforts by local elections officials are a necessary element of success. It starts with an abiding commitment to ensuring that every vote counts, including those of voters whom it may take extra effort to reach. Having recently instituted an outreach program in the county jails in collaboration with the local sheriff, Monterey County Registrar of Voters, Linda Tulett, explains:

When I first came here [to Monterey County], I came from San Francisco and in San Francisco, we had a program in the county jails. And we also worked with the public defenders so that when people came out of jail, we could reach out to them and remind them that all they had to do if they wanted to participate was re-register, if they had lost their right to vote. You know, lots of states have different rules and so there was a lot of confusion. And so part of our job is to get the message out there that, "Hey, if you are in jail, guess what? You can vote." That is the message we have in the posters and materials we have created.

We work with the sheriff's department and try to make it easy for the people who work in the jails and make it easy for the inmates. When I first came here, I asked about all the outreach programs. You know, do you go to hospitals? Do you work with the jail? And the staff indicated that they did not have a program, but they were interested in creating one for the jails. So we put together some materials and called the sheriff and he was like, "Sure, come on over." It was really easy. And when the staff saw how easy it was, it made them more excited about the work.

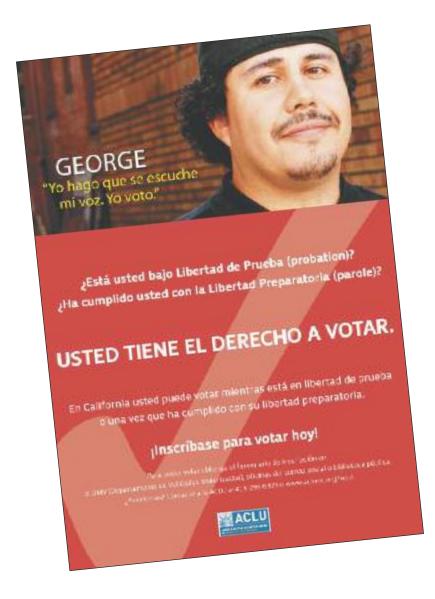
... We drive over to the jail] with the materials and deadlines. So when I brought over the [most recent election] materials, I also gave them the schedule for the [next] election so they know what the deadlines are. Having a face to face meeting [with jail personnel] is also very important. You know, if you just send an email or make a phone call, you don't have the same impact. But to have a meeting where you can explain everything to the jail, then they get excited, too.

. . . Everything happens through the mail, which makes it easy. The inmates don't have to worry about handing over their materials and all of the information is out there. So we are encouraging them to learn about it and encouraging them to participate. . . . And even though we do everything by mail, we will also go there. The jail puts [out] an announcement which encourages them to mail everything, but the announcement also says if you have missed a deadline for mailing or are worried about missing a deadline, talk to your officers. And then we call them and if they have stuff for us, we go over there. . . . We pick up completed ballots. We call the jail before the registration deadlines and ask if they have any forms, and then we go to the jail about 7:30 on Election Day to pick up ballots.

We [also] produce a lot of posters. We provide 50–70 bilingual posters to the jail and they place them in multiple rooms so all the inmates have access. And then the librarian has all the application materials. . . .[It is important to make] it easy for the jail. Coming up with the program, creating a schedule. Basically doing most of the work because they have other things to think about. This is not their responsibility—it's ours.

~ Linda Tulett, Monterey County Registrar of Voters<sup>74</sup> might benefit from some clarification. For example, usage of the word "ex-felon" may cause confusion since some people define it as a person who has a felony conviction who is no longer involved in the criminal justice system, including having completed any period of supervised release such as probation or parole. Instead, it might read: "Can an individual with a felony conviction register to vote and be eligible to vote?"

Moreover, revising the answer could provide further affirmative guidance. For example, "Yes. An individual with a felony conviction can register to vote and vote in elections if s/he is not currently in state prison or on parole for a felony conviction. In other words, s/he is allowed to vote once completing his or her state prison sentence and parole period. In addition, the law allows him or her to vote while on probation or confined in county jail as a condition of felony probation."



# County Courts and Elections Officials

An untold number of people locked out of the voting booth pursuant to felony disenfranchisement laws may not be convicted of a felony at all.

It is now well-known that Florida officials, acting under that state's felony disenfranchisement laws, purged the 2000 presidential election voter lists of thousands of citizens who were falsely attributed felony criminal records. Some lists included people who simply shared a surname with someone who had been convicted of a felony offense; others included individuals who had been convicted only of misdemeanors as opposed to felonies. The errors were eventually uncovered, but not until months after the election was over and the purged voters were unable to participate in the closest presidential race in American history.

Less known is the fact that it happened in Florida again in the very next presidential election cycle. Community advocates secured a court order forcing pre-election disclosure of Florida's 2004 purge list and discovered that, once again, the list was riddled with inaccuracies. When the errors were publicized, the state withdrew its purge list.

Voter purges are occurring in states across the country with inadequate standards, oversight, or accountability. In a survey of purge processes in 15 states, including California, a recent report found that none of the states had specific or minimum criteria for matching felony conviction lists with voter lists to ensure that the right person is being purged from the voter rolls, and two-thirds of the states did not

require that voters be notified that they were being purged.<sup>44</sup> As a result, voters are denied the opportunity to contest erroneous purges and may not even find out that they have been purged until it is too late to do anything about it.

#### **Inadequate Safeguards for Voter Purging**

In 2006, the ACLU-NC issued Public Records Act requests to local elections officials (e.g., Registrars of Voters, County Clerks, Elections Offices) and county superior courts in northern California to obtain additional information about how voter purges are being conducted in California. From elections officials, we requested policies and procedures regarding voter purging, criteria for verifying names, and notice to and reinstatement of voters. From the courts, we requested policies and procedures regarding compilation of felony conviction lists, detection of errors in lists, and copies of such lists. The results were disconcerting.

#### Lack of Written Policies or Standard Procedures

Voter registration in California is permanent, unless a voter's affidavit of registration is canceled by the local elections official for an appropriate reason under law. Among these reasons, elections officials are required to cancel a voter's registration "[u]pon proof that the person is presently imprisoned or on parole for conviction of a felony. The law is silent as to what constitutes adequate proof of such status. Presumably, it is the court-compiled list sent to local elections officials.

Courts are required twice a year to provide local elections officials with "a statement

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showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report," and the elections official is then supposed to "cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a felony."50

It is unclear what sources are used to compile the court lists or how it is determined that an individual is not just convicted of a felony, but actually in state prison or on parole for that felony. For example, are the individuals on the list convicted of a felony and sentenced to state prison, or simply convicted of a felony and it is left to local elections officials to determine whether they received a sentence of state prison? The one court that provided a substantive response to the ACLU-NC's Public Records Act request stated that it has no written policies or procedures for compiling its list and provided an explanation of what is done in practice.

The vast majority of local elections officials responded that they have no written policies or procedures for conducting voter purges separate from the Elections Code provisions set forth above, which do not articulate any particular standards or procedures to be followed in carrying out voter purges.

#### Minimal Matching Criteria

In compiling voter disqualification lists, county courts are required to provide elections officials with only the name, address, and date of birth for those to be purged. It is not clear that even this minimal information is provided in all cases. The one court that provided a substantive response to the Public Records

Act request enclosed copies of its recent lists, which included names and birth dates, not addresses. One of the local elections official responses (from a different county than the foregoing court) noted that it does not receive addresses from its county court either.<sup>51</sup>

In canceling voters' registration, most local elections officials use the same limited criteria to match the individuals on the court lists to their voter rolls; namely, name and date of birth. Several counties identified additional categories of information they attempt to match if available—place of birth, driver's license number or state identification number, signature—though it is unclear where they get this information or how it is used to more precisely identify voters.<sup>52</sup>

Most elections officials did not indicate how many pieces of information had to match for them to have confidence that they are canceling the correct voter. For example, would it be sufficient to disqualify a voter if only the name matched? Three counties said that they require a minimum of two categories to match—the name and date of birth—to purge a voter from the list.

#### No Voter Notification

With one exception, all of the county election officials indicated that they do not notify voters of cancellation of registration, a couple of which noted that it is not required under state law. Only one county, Santa Clara, reported having instituted such a procedure. When Santa Clara County receives the purge list from the court, it "send[s] a letter requesting confirmation from the voter before canceling the voter's registration since [it has] found

that in some instances the charges have been reduced to a misdemeanor."53

In response to a different set of Public Records Act requests issued by the ACLU-NC to local elections officials around the same time, the Alameda County Registrar of Voters enclosed a form that appeared to be a similar type of pre-purge notice. The form advises

the voter that court records have identified him or her as someone who is in prison or on parole for a felony conviction and, therefore, his or her voter registration will be canceled in 30 days unless the form is signed, indicating otherwise, and returned. A postage-paid envelope is included with the form.



### **Secretary of State's Office**

The Secretary of State is the Chief Elections Officer and is responsible for overseeing all state and national elections in California, including developing and disseminating voter education and registration materials. However, this office has provided little information about the voting rights of individuals with felony convictions.

### Minimal, Easily Accessible Information on Website

Other than the standard one-line voter eligibility statement (You may register to vote if you are "not in prison or on parole for conviction of a felony"), the Secretary of State's website includes only one further, readily available description of voting rights for individuals with a criminal conviction.\* The following Q&A appears in the Frequently Asked Questions section of the website:

- **Q:** Can an ex-felon register to vote and vote?
- **A:** An ex-felon can register to vote and vote if he/she is not in prison or on parole for a felony conviction.54

While an FAQ is a useful tool for providing information in this regard, the Q&A above provides little in the way of additional clarification and, at worst, it may cause further confusion as written.

Some people define the word "ex-felon" as a person who has a felony conviction but who is no longer involved in the criminal justice system, including having completed any period of supervised release such as probation or

parole. This could be interpreted as suggesting that probationers cannot vote, meaning you have to be an "ex-felon." Instead, the question might read: "Can an *individual with a felony conviction* register to vote and vote?"

In addition, the answer is simply a restatement of the standard one-liner. Revising the answer to include some affirmative, explanatory information could provide further guidance. For example, "Yes. An individual with a felony conviction can register to vote and vote if s/he is not currently in state prison or on parole for a felony conviction. In other words, s/he is allowed to vote once completing his or her state prison sentence and parole period. In addition, the law allows him or her to vote while on probation or confined in county jail as a condition of felony probation."

The Secretary of State should play a leadership role in protecting and restoring voting rights for Californians with felony convictions, and take some simple proactive steps to inform people of their eligibility to register and vote.

#### **Insufficient Information in Voter Materials**

Some of the more obvious places on the website where one might look for additional information contain no supplementary explanation. For example, neither the Voters Bill of Rights<sup>55</sup> nor the Know Your Voting Rights<sup>56</sup> webpage further illuminates this issue.

If one digs deeper into the website by utilizing the search function, another Q&A appears in a voter fraud protection handbook:

<sup>\*</sup> We note that, as we went to print, the Secretary of State's Office posted new information on its website about jail voting rights.

- **Q:** My best friend's brother is in state prison on a felony conviction and applied to vote a vote-by-mail ballot from there. Can he do that?
- **A:** No. A person who is in prison or on parole for the conviction of a felony cannot register to vote or vote. In fact to ensure that felons are not on the voter rolls and voting, the Secretary of State's office regularly receives criminal record updates from the State Department of Corrections to verify a felon's status against the county's current voter registration files. (EC § 321, 2000, 2101, and Cal. Const. Article II § 2). However, if the person is in a county jail on a non-felony conviction, [he] can register and vote. 57

The handbook answer provides more information than the general website text. However, the inference that individuals in jail with a felony conviction cannot vote is misleading insofar as it wrongly suggests that individuals in jail as a condition of felony probation cannot vote, when in fact they can.

And on the Register to Vote webpage, under "Voter Registration Drives," a link to a voter registration guide points to the following explanation:

### In Prison or On Parole for the Conviction of a Felony

An individual who is convicted of a felony loses the right to register and vote during the term of the prison sentence and the parole period. Once the parole period is completed, the person's eligibility to register and vote is restored.<sup>58</sup>

As the top elections official in the state, the Secretary of State should do more to ensure clear, quality, easily accessible explanatory information about voting rights for individuals with felony convictions. This is particularly important in light of the recent back-and-forth between the Secretary of State and the Attorney General about the voting rights of this population that compounded the pre-existing confusion among voters and other officials.

"The Secretary of State should play a leadership role in protecting and restoring voting rights for Californians with felony convictions."



## Department of Corrections and Rehabilitation

In California, individuals are barred from voting while incarcerated in state prison or on parole. However, voting rights are automatically restored once the prison and any parole term have ended. Unfortunately, many individuals are unaware that they regain their voting rights immediately upon completing parole. Moreover, it appears that little to no information is proactively provided to this population by the California Department of Corrections and Rehabilitation (CDCR), formerly the California Department of Corrections, the agency responsible for management and oversight of state prisons and the parole system.

#### Review of Website and Parole Information Handbook

CDCR's website does not appear to have any information about restoration of voting rights after completion of parole in the Parole section of the website or elsewhere.<sup>59</sup>

The CDCR publishes a Parole Information Handbook that is distributed to individuals on parole and is available on its website. 60 While the handbook addresses a number of issues ranging from things individuals must do when they get out of prison and conditions of parole to eligibility for benefits, it does not contain any information about disenfranchisement while on parole or restoration of voting rights after completion of parole.

#### **Requests for Policies**

In March 2005, the ACLU-NC sent Public Records Act requests to 16 state prison facilities to determine what, if any, information is given to staff or to individuals under the supervision of the Department of Corrections—whether in prison, leaving prison, or coming off parole—about voting rights of individuals with felony convictions.<sup>61</sup>

Among the six responses received was a letter from the Legal Affairs Division sent on behalf of the "headquarters of the California Department of Corrections," 62 noting that the "CDC is tasked with the incarceration and parole of individuals who have been convicted of a felony, and who thus cannot vote in this state until they are discharged from incarceration or parole." 63 It stated, therefore, that the "only departmental policy or material that the CDC maintains about voting is in Section 51080.3.2 of our Department Operations Manual (DOM)." This section advises staff:

#### 51080.3.2 Right to Vote

The California Constitution, Article II, Section 4 prohibits imprisoned or paroled individuals, convicted of a felony, from voting. The inmate or parolee must have completed his or her term of imprisonment or parole and be discharged from prison and parole before the right to vote is restored.<sup>64</sup>

#### **Visits to Regional Parole Offices**

Given the large number of individuals on parole in California who will eventually regain their voting rights, we conducted a "spot check" of a handful of parole offices in July 2008 to see what information was visibly available. We also had the opportunity to speak with individuals in these offices about voting rights with a felony conviction.

The results of these visits provide a glimpse of the problem of inadequate information and misinformation on this issue.

Not one of the six parole offices visited had any information posted about voting rights. It was not surprising, therefore, to learn that individuals in three out of four of these offices had incorrect information about voting rights for people with felony convictions, believing those rights were lost for a lifetime.

At a parole office in San Francisco, two out of the three people surveyed did not know their voting rights. One stated, "I thought once you lost the right [to vote] you could never vote again." The other was also uninformed but pleased to learn he could eventually regain his voting rights:

I thought you couldn't vote once you lost the right. No. No one tells you that. I

never knew that. So, once I'm off parole I can vote? [Interviewer answer: Yes, you just need to register.] So, how do I register? [Interviewer answer: DMV, Registrar, Library . . .] I'm going to do that. They should tell you that when you get your certificate of discharge.

Similarly, in Contra Costa County, where information also was not posted, a woman in the waiting room was not clear on the status of voting rights:

But I thought people on parole couldn't vote? That's what my husband told me. [Interviewer answer: You regain the right to vote once you've completed your parole.] I didn't know that. They should have that type of information here.

Two persons were in Santa Clara, neither of whom thought they could vote:

No, we're not registered, we are both felons. [Interviewer answer: Did you know that you can vote once you are off parole even with a felony?] No, I thought you can't vote with a felony.

Only one person knew the law, a parolee in Santa Cruz County, who said, "I know that if you are on probation or off parole, you can vote."

"Many individuals are unaware that they regain their voting rights immediately upon completing parole."

### The Road Ahead

### Recommendations for Reform

As more and more citizens across the nation are denied democratic participation as a result of felony disenfranchisement laws, advocates, the public, lawmakers, and the courts have begun to reexamine the disturbing historical legacy and questionable purposes underlying such disenfranchisement and to reconsider their sweeping use today.

Momentum has recently grown for bipartisan reform as several states have scaled back their felony disenfranchisement restrictions and instituted better procedures for ensuring voter education and access to the ballot for individuals with criminal convictions.<sup>1</sup> California should reform its felony disenfranchisement policies and practices to:

- Ensure existing voting rights are accessible and enforced; and
- Expand voting rights.

# **Ensuring Existing Voting Rights Are Accessible and Enforced**

Misinformation and confusion abound in California about voting rights for individuals with felony convictions. Procedures should be established at all levels of government to ensure that individuals with felony convictions who are legally eligible to vote are accurately advised in a timely fashion of their voting rights and are able to freely exercise those rights. Local, state, and federal governments must play a role to protect and ensure participation in democracy.

#### **State Legislature**

Voting is a fundamental right, yet California law does not provide adequate safeguards to ensure access to voting for all eligible voters. The state should mandate more effective procedures through new legislation, such as:

 Notifying persons who lose and regain their voting rights.

Courts should be required to provide advance notice of the loss of voting rights to individuals when entering a plea or at the time of sentencing for a felony conviction that will lead to a state prison and parole term.<sup>2</sup> The notification should also advise individuals that their voting rights are automatically restored upon release from state prison and completion of parole.<sup>3</sup>

The California Department of Corrections and Rehabilitation (CDCR) should be required to provide individuals under its supervision with written notice of the automatic restoration of their voting rights upon release from state prison and completion of parole, and that they need only re-register to begin or resume voting.

The Secretary of State should be required to develop and disseminate specific, targeted information about voting rights for individuals with felony convictions to local elections officials, county sheriffs, public defenders, probation officers, and judges to ensure that accurate information is conveyed by these government officials.<sup>4</sup>

Local elections officials, county probation offices, and county jail facilities should be required to post in waiting areas information about voting rights for people with felony convictions.

 Notifying voters when they are purged from voter rolls.

Local elections officials should be required to provide voters with advance notice when they are to be purged from voter rolls to afford them an opportunity to contest their removal and to ensure greater accuracy and accountability for voter lists.<sup>5</sup> The notice should also state that voting rights are automatically restored upon completion of any state prison and parole term.

Developing adequate criteria for cancellation of voter registration.

Courts and local elections officials should be required to follow consistent, precise guidelines for canceling voters' registration to protect against erroneous purging of eligible voters. This would include but not be limited to requiring more matching criteria than simply name, address, and date of birth when comparing court felony conviction lists to local elections officials' voter lists, such as additionally requiring Social Security number, gender, age, and place of birth.<sup>6</sup>

Separate and apart from legislatively-mandated procedures, relevant government agencies should proactively adopt better safeguards to protect the voting rights of individuals with felony convictions.

#### **Secretary of State**

As the top elections officer in the state, the Secretary of State should play a leadership role in protecting voting rights for Californians with felony convictions and take some simple proactive steps—beyond the generic voter eligibility statement in existing materi-

# SAMPLE LEGISLATION PROVIDING NOTIFICATION OF LOSS AND RESTORATION OF VOTING RIGHTS

Before accepting a plea of guilty or *nolo contendere* to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in the loss of the right to vote only if and for as long as the person is in state prison or on parole and that voting rights are automatically restored thereafter.

As part of the release process leading to the discharge of a person who has been disenfranchised because of imprisonment in state prison or parole for a felony conviction, the California Department of Corrections and Rehabilitation shall notify that person in writing that his or her voting rights will be automatically restored.<sup>19</sup>

als—to inform people of their eligibility to register and vote. This would include but not be limited to:

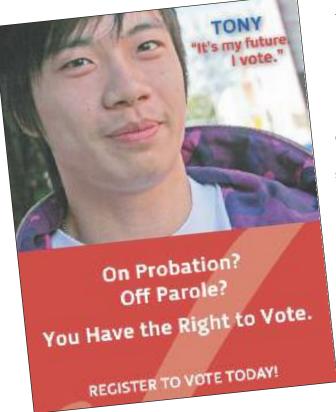
- Developing specific, targeted voting rights information that clearly explains the voting rights of individuals with felony convictions. This would include clarifying important distinctions between different statuses (probation vs. parole) and places of confinement (jail vs. state prison), and avoiding use of broad terms that cause confusion, such as "incarcerated."
- Updating existing materials to reflect this new guidance.
- Translating this information in all seven languages for which ballot materials are available in California. This would include ensuring that important distinctions (probation vs. parole, jail vs. state prison) are adequately captured in

translations to guard against misinterpretation.

- Disseminating these materials throughout the state to local elections officials, and probation, parole and sheriffs' offices.
- Posting this information on the Secretary of State's website.
- Training staff in the Secretary of State's office who interact directly with the public and who respond to inquiries about voting rights and procedures to ensure that they provide accurate information about voting rights with a felony conviction.
- Instituting uniform criteria and procedures for timely, secure jail voting including but not limited to:

Requiring local elections officials to affirmatively provide to county jails an adequate supply of registration and voting materials; notification of registration and voting deadlines; and a process for timely returning completed registration and voting materials; and

Requiring jail facilities to affirmatively provide to inmates notice of their voting rights and the procedures for exercising those rights; timely access to registration and voting materials; and secure voting procedures, such as allowing voting materials to be treated as confidential mail.



#### **Local Elections Officials**

Local elections officials are the front line for voter inquiries. While various categories of individuals with criminal convictions are legally eligible to vote, it appears that little to no specific, targeted information is provided to this

#### **Sample Probation E-mail/Written Notice**

TO: All Staff

FROM: Chief Probation Officer

RE: Voting Rights of Adult Probationers

It has come to our attention that there is confusion about the voting rights of <u>adult</u> <u>probationers</u>. This e-mail [notice, bulletin, etc.] is to clarify that adult probationers under our supervision have the right to vote in all federal, state, and local elections.

In California, voting rights are taken away only while someone is in state prison or on parole for a felony conviction.

The voting eligibility requirements for probationers are the same as for people who are not on probation: You must be a U. S. citizen, a resident of California, and at least 18 years old; and you must not have been judged by a court to be mentally incompetent to register and vote.

Informing probationers about their voting rights and encouraging them to exercise those rights further an important goal of our department: promoting the successful reintegration of probationers into the community. It has been shown that those who vote are less likely to re-offend than those who do not.

If you receive an inquiry about probationers' voting rights, please inform the probationer that s/he is eligible to vote in all federal, state, and local elections. If s/he has additional questions about voting eligibility or registering to vote, please refer him or her to [insert name of County Registrar/Elections Office, address, and phone number; e.g., San Francisco Department of Elections, 1 Dr. Carlton B. Goodlett Place, Room 48, San Francisco, CA, 415.554.4375].

#### Sample Probation Employee Manual Insert

#### Voting Rights of Adult Probationers

Adult probationers under our supervision have the right to vote in all federal, state, and local elections. In California, voting rights are taken away only while someone is in state prison or on parole for a felony conviction. The voting eligibility requirements for probationers are the same as for people who are not on probation: You must be a U. S. citizen, a resident of California, and at least 18 years old; and you must not have been judged by a court to be mentally incompetent to register and vote.

Informing probationers about their voting rights and encouraging them to exercise those rights further an important goal of our department: promoting the successful reintegration of probationers into the community. It has been shown that those who vote are less likely to re-offend than those who do not.

If you receive an inquiry about probationers' voting rights, please inform the probationer that s/he is eligible to vote in all federal, state, and local elections. If s/he has additional questions about voting eligibility or registering to vote, please refer him or her to [insert name of County Registrar/Elections Office, address, and phone number; e.g., San Francisco Department of Elections, 1 Dr. Carlton B. Goodlett Place, Room 48, San Francisco, CA, 415.554.4375].

#### Sample Probation FAQ for Website

**Q:** Can I vote while I am on probation?

**A:** Yes. In California, you have the right to vote while you are on probation. You must be a United States citizen, a resident of California, and at least 18 years old. To vote in the next election, you must register to vote at least 15 days before the election. For more information, contact [insert name of County Registrar/Elections Office, address, and phone number, with hyperlink to website; e.g., San Francisco Department of Elections, 1 Dr. Carlton B. Goodlett Place, Room 48, San Francisco, CA, 415.554.4375

population about their voting rights or to elections staff who respond to their inquiries. Policies and procedures should be developed to address this gap, including but not limited to:

- Developing specific targeted voting rights information that clearly explains the voting rights of individuals with felony convictions. This would include clarifying important distinctions between different statuses (probation vs. parole) and places of confinement (jail vs. state prison), and avoiding use of broad terms that cause confusion, such as "incarcerated."
- Posting this information in elections office waiting areas and on websites.
- Training elections staff who interact directly with the public and who respond to inquiries about voting rights and procedures to ensure that they provide accurate information about voting rights with a felony conviction.
- Establishing written procedures for collaborating with jails to ensure that eligible individuals in county jails are afforded their constitutional right to vote. The recent confusion about the rights of this population, triggering a lawsuit to clarify the law by a court decision, attests to the need for clear policies.<sup>7</sup> These procedures should include but not be limited to:

Assigning an elections representative to oversee jail voting and act as a liaison with county sheriffs, jail service providers, and community-based organizations;

Delivering a sufficient supply of voter registration, Vote By Mail ballot application, and voter education materials to county jail facilities;

Ensuring distribution of these materials at least 60 days prior to any national, statewide, or local election and again approximately two to three weeks prior to the election in advance of the 15-day voter registration deadline;

Assisting eligible voters in correctly completing forms; and

Collecting completed voter registration materials and ballots from county jail.

#### **County Probation Officials**

In California, probationers are legally eligible to vote, but they receive little to no information about their voting rights. Consistent with their mission of rehabilitating those who have been involved in the criminal justice system, probation offices should inform probationers of their voting rights to facilitate successful reintegration into the community. This would include but not be limited to:

- Posting specific, targeted voting rights information (provided by the Secretary of State, local elections officials, or organizations) in probation waiting areas and on websites.
- Training probation staff about probationer voting rights to ensure that they provide accurate information when they receive inquiries.

#### **County Sheriffs**

In California, individuals serving time in county jail as a condition of felony probation are legally eligible to vote, along with misdemeanants and those awaiting trial or conviction. Jail personnel should proactively inform jail inmates about their voting rights. This

would include but not be limited to:

- Posting specific, targeted information inside jail facilities to alert individuals to their voting rights and the jail procedures for exercising those rights, and incorporating such information into handbooks or other standard materials provided to jail inmates.
- Displaying this information in jail waiting areas and on websites so that family members and friends visiting individuals in jail can alert inmates of their voting rights.
- Working with local elections officials to establish effective election-year jail voting procedures. These procedures should include but not be limited to:

Assigning a jail representative to oversee jail voting and act as a liaison with local elections officials, jail service providers, and community-based organizations;

Ensuring a sufficient supply of voter registration, Vote By Mail ballot application, and voter education materials in jail facilities:

Distributing these materials at least 60 days prior to any national, statewide, or local election and again approximately two to three weeks prior to the election in advance of the 15-day voter registration deadline;

Providing for timely return of completed voter registration materials and ballots from county jail; and

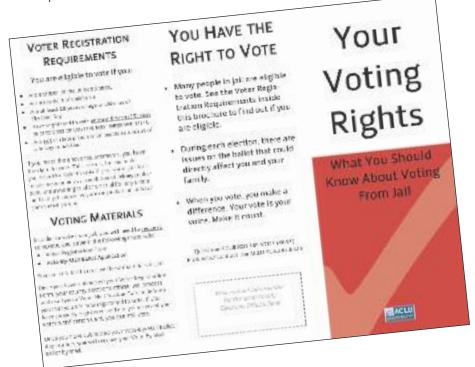
Allowing voting forms and ballots to be treated as confidential mail.

 Training jail personnel about jail inmates' voting rights to ensure that they provide accurate information when they receive inquiries.

### California Department of Corrections and Rehabilitation

Although voting rights are automatically restored in California once the period of parole is complete, it appears that parolees currently receive no specific, targeted information about the restoration of their voting rights. The CDCR should proactively inform parolees that they automatically regain their voting rights. This would include but not be limited to:

- Posting specific, targeted information about the automatic restoration of voting rights upon the completion of parole, including in the Parolee Information Handbook, on the CDCR website, and in parole office waiting areas.
- Training parole officers about parolee voting rights to ensure that they provide accurate information when they receive inquiries.





#### **Congress and Its California Delegation**

U.S. Senators and Representatives from California should support federal legislation protecting voting rights. Several bills introduced in the U.S. Congress have addressed concerns about felony disenfranchisement. Among them: bills to restore voting rights to anyone who is not incarcerated.8 and various notice bills, such as requiring states to provide notification to individuals about their voting rights when they become re-eligible to vote<sup>9</sup> or notification at an even earlier stage in the criminal justice process, such as when entering a plea or upon conviction.<sup>10</sup> Other bills would require notice to voters before purging them from voting lists<sup>11</sup> or create incentives for states to proactively provide targeted voter education.<sup>12</sup> None of these bills has yet to become law.

### **Expanding Voting Rights**

Ensuring that those with felony convictions who are legally eligible to vote know that and are able to freely exercise their right to vote is only a first step. Voting rights should be expanded to all Californians and, at the very least, to those on parole. Similar to previous efforts that have expanded the franchise in California, a constitutional amendment is required to achieve this goal.

#### Restore Voting Rights to Individuals in State Prison and on Parole

Two states—Maine and Vermont—and the U.S. territory of Puerto Rico already allow people in prison to vote, without incident.<sup>13</sup> In the international community, most mature democracies allow prisoners to vote. California should, too.

### At a Minimum, Restore Voting Rights to Individuals on Parole

Thirteen states and the District of Columbia allow people with felony convictions who are in the community under the supervision of the criminal justice system—whether on probation and parole—to vote.14 Probationers are already entitled to vote in California; the franchise should be extended to parolees as well. These individuals are living, working, and raising their families in the community and would benefit in their reintegration by participating in the life of their community through voting instead of wearing the badge of second-class citizenship. Enfranchisement immediately upon release from state prison would also eliminate voter and government agency confusion regarding who in the community is legally eligible to vote. 15

Law enforcement associations, such as the American Probation and Parole Association and the Association of Paroling Authorities International, have endorsed this approach. It has broad public support and may be required to comply with international treaties signed and ratified by the United States. Is

### Conclusion

Millions of individuals in the United States, disproportionately people of color, are barred from voting for at least some period of time as a result of felony disenfranchisement laws. The varied patchwork of these laws throughout the nation has created confusion in California and elsewhere about who is and is not eligible to vote.

Although an individual with a felony conviction in California can vote while on probation or once s/he is *off* parole, and retains voting rights while confined in county jail as a condition of felony probation, many people in this situation are unaware of their eligibility to vote. Compounding the problem, relevant government agency officials—such as local elections officials, probation officers, sheriff's personnel, the Secretary of State's Office, and the California Department of Corrections and Rehabilitation—are also unclear about the law or fail to affirmatively provide adequate information about voting rights with a felony conviction. As a result, beyond the more than

quarter-million voters who are legally disenfranchised in California while in state prison and on parole, countless other citizens are effectively disenfranchised because of the lack of information or misinformation provided to them about their voting rights.

Government agencies entrusted with protecting voting rights, and those that have the most interaction with individuals who have been involved in the criminal justice system, should develop policies, practices, and materials to ensure that individuals are provided with accurate information about their voting rights and can freely exercise those rights. And the state should ultimately extend voting rights to all Californians, regardless of their criminal conviction.

Felony disenfranchisement laws are unnecessary and unfair. It is time we reevaluate these policies of exclusion and fully realize our commitment to democratic inclusion.

### **EndNotes**

#### FELONY DISENFRANCHISEMENT: CENTURIES OF RESTRICTING THE RIGHT TO VOTE

- <sup>1</sup> Alec Ewald, Punishing at the Polls: The Case Against Disenfranchising Citizens with Felony Convictions (New York: D mos, 2003), 17 [hereinafter Ewald, Punishing at the Polls]; Jamie Fellner and Marc Mauer, Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States (New York and Washington: Human Rights Watch and The Sentencing Project, 1998), 2 [hereinafter Fellner & Mauer, Losing the Vote]; and Marc Mauer, "Felon Voting Disenfranchisement: A Growing Collateral Consequence of Mass Incarceration," 12 Fed. Sent. R. (2000): 248 [hereinafter Mauer, "Felon Voting Disenfranchisement"]
- <sup>2</sup> Fellner & Mauer, Losing the Vote, 2; Mauer, "Felon Voting Disenfranchisement," 248.
- <sup>3</sup> Fellner & Mauer, Losing the Vote, 1, 3.
- <sup>4</sup> Andrew L. Shapiro, "Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy," 103 Yale L.J. (1993): 537, 540 [hereinafter Shapiro, "Challenging Criminal Disenfranchisement"].
- Daniel S. Goldman, "The Modern-Day Literacy Test?: Felon Disenfranchisement and Race Discrimination," 57 Stan. L. Rev. (2004): 611, 625 [hereinafter Goldman, "The Modern-Day Literacy Test?"]. See also Erika Wood, Restoring the Right to Vote (New York: Brennan Center for Justice, 2008), 7 ("Between 1865 and 1900, 18 states adopted laws restricting the voting rights of criminal offenders. By 1900, 38 states had some type of felon voting restriction.") [hereinafter Wood, Restoring the Right to Vote].
- <sup>6</sup> Mauer, "Felon Voting Disenfranchisement"; Fellner and Mauer, Losing the Vote, 3; Ewald, Punishing at the Polls, 19. See e.g., Goldman, "The Modern-Day Literacy Test?," 611, 626–627 (Mississippi disenfranchising convention of 1890 narrowed scope of law from encompassing "any crime" to one affecting only offenses more likely committed by blacks; other Southern states targeted "furtive offenses," such as petty larceny, wifebeating, and "similar offenses peculiar to the Negro's low economic and social status"); Shapiro, "Challenging Criminal Disenfranchisement," 537, 540 n.20 (Mississippi Supreme Court states blacks more likely to be "convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy").
- <sup>7</sup> Goldman, "The Modern-Day Literacy Test?," 611, 616 n.11.
- Shapiro, "Challenging Criminal Disenfranchisement," 537, 538; Goldman, "The Modern-Day Literacy Test?," 611, 616. See also Shapiro, "Challenging Criminal Disenfranchisement," 537, notes 5–6 ("understanding clauses" required voters to demonstrate knowledge of state constitution; "grandfather clauses" extended franchise to men who had voted, or whose fathers or grandfathers had voted, before Civil War, with goal of guarding against disenfranchisement of poor or uneducated whites).
- <sup>9</sup> Shapiro, "Challenging Criminal Disenfranchisement," 537, 538.
- <sup>10</sup> See Goldman, "The Modern-Day Literacy Test?," 611, 614, 627.
- 11 Ibid., 611, 633.
- <sup>12</sup> Sentencing Project, "Felony Disenfranchisement Laws in the United States" (March 2008): 1 [hereinafter Sentencing Project, "Felony Disenfranchisement Laws"]. Felony disenfranchisement is governed by state law; there is no corresponding federal law. See D mos, "Restoring Voting Rights to Citizens with Felony Convictions" (Summer/Fall 2006): 1. Individuals convicted of a federal felony offense are generally subject to the policies of the relevant state disenfranchisement law. Mauer, Felon Voting Disenfranchisement, 2.

- <sup>13</sup> Sentencing Project, "Felony Disenfranchisement Rates for Women" (March 2008): 1 [hereinafter Sentencing Project, "Felony Disenfranchisement Rates"].
- <sup>14</sup> Fellner and Mauer, Losing the Vote, 5.
- <sup>15</sup> Sentencing Project, "Felony Disenfranchisement Laws," 1.
- <sup>16</sup> Sentencing Project, "Felony Disenfranchisement Rates," 1 (while majority of persons under correctional supervision are male—93% of persons in prison, 77% of persons on probation, and 88% of persons on parole—an estimated 792,200 women ineligible to vote as of 2004).
- Wood, Restoring the Right to Vote, 2 (stating as many as 4 million individuals living in community unable to vote because of past conviction); Christopher Uggen and Jeff Manza, "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States," American Sociological Review 67 (December 2002): 777, 794 (estimating disenfranchised population at approximately 35 percent exfelons, 28 percent probationers, 9 percent parolees, 27 incarcerated) [hereinafter Uggen & Manza, "Democratic Contraction?"].
- <sup>18</sup> Ryan S. King, The Sentencing Project, "A Decade of Reform: Felony Disenfranchisement Policy in the United States" (2006): 18 (number of persons disenfranchised increased from 4.7 million Americans in 2000 to 5.3 million by 2004) (hereinafter King, "A Decade of Reform"]; Uggen & Manza, "Democratic Contraction?," 777, 782, 794 (noting rise in disenfranchised from less than 1 percent of the electorate in 1976 to 2.3 percent of the electorate in 2000, and projecting an increase in percent of disenfranchised "felons and ex-felons" from current figure of 2.28 percent to 3 percent within 10 years).
- <sup>19</sup> Sentencing Project, "Felony Disenfranchisement Laws" (March 2008): 1.
- <sup>20</sup> Laleh Ispahani, American Civil Liberties Union, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the U. S. and Other Democracies* (May 2006) 3 [hereinafter Ispahani, *Out of Step with the World*].
- <sup>21</sup> Sentencing Project, "Felony Disenfranchisement Laws."
- <sup>22</sup> King, "A Decade of Reform," 18.
- <sup>23</sup> Sentencing Project, "Felony Disenfranchisement Laws."
- <sup>24</sup> Ibid. (Emphasis in original.)
- <sup>25</sup> See, e.g., Sentencing Project, "Felony Disenfranchisement Rates" 1 n.2 (inadequate data on corrections populations nationally prevents estimates on disenfranchisement rates for Latinas or other racial/ethnic groups); Sentencing Project, "Felony Disenfranchisement Laws" (federal reports on state felony sentences do not provide separate conviction data for Hispanics); Marisa J. Demeo and Steven A. Ochoa, Mexican American Legal Defense & Education Fund, "Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States" (December 2003): 2 (finding inadequate, inaccurate data on Latinos and lack of standardized data collection in various states) [hereinafter Demeo & Ochoa, "Diminished Voting Power"].
- <sup>26</sup> Demeo and Ochoa, "Diminished Voting Power."
- <sup>27</sup> Ispahani, *Out of Step with the World*; Mauer, "Felon Voting Disenfranchisement."
- <sup>28</sup> Uggen & Manza, "Democratic Contraction?," 777, 781.
- <sup>29</sup> Fellner & Mauer, Losing the Vote; Goldman, "The Modern-Day Literacy Test?," 611, 628.
- <sup>30</sup> Eric Lotke, Deborah Stromberg, and Vincent Schiraldi, "Swing States: Crime, Prisons and the Future of the Nation" (August 2004): 3 [hereinafter Lotke, "Swing States"].

- <sup>31</sup> Sentencing Project, "Facts about Prison and Prisoners" (July 2008) [hereinafter Sentencing Project, "Facts about Prison"]; Uggen & Manza, "Democratic Contraction?," 777, 781.
- <sup>32</sup> Sentencing Project, "Facts about Prison" (stating United States' incarceration rate is "highest reported rate in the world"); Adam Liptak, "Inmate Court in U. S. Dwarfs Other Nations'," New York Times (April 23, 2008) (reporting "China, which is four times more populous than the United States, is a distant second, with 1.6 million people in prison" and noting that the U.S. is also at the top of the list in terms of incarceration rates, finding it "has 751 people in prison or jail for every 100,000 in population" and the "only other major industrialized nation that even comes close is Russia, with 627 prisoners for every 100,000 people. . . . England's rate is 151; Germany's is 88; and Japan's is 63.").
- <sup>33</sup> U. S. Department of Justice, Bureau of Justice Statistics, "Corrections Statistics"; Sentencing Project, "Facts about Prison."
- <sup>34</sup> Marc Mauer and Ryan S. King, Sentencing Project, "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society" (September 2007): 1 ("war on drugs" a "primary contributor" to growth of U.S. prisons over past quarter-century); Fellner & Mauer, Losing the Vote (eighty-four percent of increase in state prison admissions from 1980 to 1992 were nonviolent offenders); Sentencing Project, "Facts about Prison" ("82% of those sentenced to state prisons in 2004 were convicted of non-violent crimes, including 34% for drug offenses, and 29% for property offenses").
- 35 Mauer & King, "A 25-Year Quagmire," 2.
- <sup>36</sup> Ibid., 19 (law enforcement concentrated in inner city areas and, while "African Americans use drugs at a modestly higher rate than other groups [9.7% for current users compared to 8.1% for whites and 7.6% for Hispanics], ...analysis of drug use patterns in the United States does not suggest any disproportionalities along racial and ethnic lines that would support commensurate racial disparities in the criminal justice system").
- Marc Mauer and Ryan S. King, Sentencing Project, "Uneven Justice: State Rates of Incarceration By Race and Ethnicity" (July 2007): 3 [hereinafter Mauer & King, "Uneven Justice"].
- $^{\rm 38}$  Mauer & King, "A 25-Year Quagmire," 19, 20.
- <sup>39</sup> Mauer & King, "Uneven Justice," 2, 3.
- <sup>40</sup>Christopher Uggen and Jeff Manza, "Lost Voices: The Civic and Political Views of Disenfranchised Felons (July 9, 2002): 2; Fellner & Mauer, Losing the Vote.
- <sup>41</sup> Uggen & Manza, "Lost Voices," 17, 18; Christopher Uggen and Jeff Manza, "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," *Colum. Hum. Rts. L. Rev.* 36 (Fall 2004): 193, 212 [hereinafter Uggen & Manza, "Voting and Subsequent Crime"].
- <sup>42</sup> Interview with Brad W. (October 18, 2005).
- <sup>43</sup> Interview with Chalon S. (November 3, 2005).
- <sup>44</sup> See, e.g., Ryan S. King and Marc Mauer, "The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia" (September

- 2004): 1, 15 (stating that "in areas of high disenfranchisement, the dilution of a community's political voice is of particular concern when a large proportion of voting-age adults is prohibited from voting," and giving the example of "residents of Atlanta zip code 30327 (.37% disenfranchised and 2% African American) [who] have a greater political voice than residents of zip code 30310 (6.2% disenfranchised and 92% African American) simply by virtue of there being more eligible voters in their district") [hereinafter King & Mauer, "The Vanishing Black Electorate"]; Uggen & Manza, "Lost Voices," 32 ("Felons are drawn disproportionately from lowincome urban areas; removing them from the electorate reduces the weight of the votes from those areas, quelling not only felon voices but also those of other people. Moreover, because the U.S. Census counts prisoners as living wherever their prison is located, the placement of prisons in more conservative rural areas further diminishes urban representation.").
- <sup>45</sup> Wood, Restoring the Right to Vote, 13-14.
- 46 King, "A Decade of Reform," 19 ("Suppressed overall registration rates have been observed in communities with high rates of disenfranchisement, suggesting that *eligible* voters are also failing to register. This amplifies the impact of disenfranchisement and results in even more significant racial inequalities.") (emphasis in original)
- <sup>47</sup> Wood, Restoring the Right to Vote, 13. See also King & Mauer, "The Vanishing Black Electorate," 1 (stating that "voting is a social and cultural activity, fostered through political awareness, discussion, and participation in a community. For persons living in communities of concentrated disenfranchisement, there is a reduced probability that such a political culture will emerge; rather, the risk of alienation from electoral politics due to ambiguity about registration and voting eligibility is increasingly likely.").
- 48 King & Mauer, "The Vanishing Black Electorate," 15-16 ("Disenfranchisement contributes to the disincentives for candidates for political office to devote time and attention to low-income communities of color while campaigning. Along with the fact that politicians do not receive significant campaign donations from these neighborhoods, disenfranchisement results in fewer potential supporters. In the calculated economics of electoral campaigning, candidates spend time in areas perceived to have the highest concentration of potential voters. ... Once in office, lawmakers will not be any more likely to be responsive. ... ...the seriousness with which policymakers listen to demands from communities of color is likely to continue to diminish.").
- <sup>49</sup> King & Mauer, "The Vanishing Black Electorate," 1 ("This disenfranchisement effect contributes to a vicious cycle within public policy development that further disadvantages low-income communities of color. The first means by which this occurs is through decisions on resource allocation. In citywide decisionmaking regarding spending for schools or social services, residents of certain neighborhoods will have considerably more political influence than others, solely because 'one person, one vote' is

- distorted through the loss of voting rights. At a state level, beleaguered communities are affected through a diminished impact on public policy.").
- <sup>50</sup> Uggen & Manza, "Democratic Contraction?," 777, 794, 796.
- 51 Uggen & Manza, "Voting and Subsequent Crime," 193
- <sup>52</sup> Uggen & Manza, "Voting and Subsequent Crime," 193, 195 (voting "one of the defining elements of citizenship" and "affirms membership in the larger community"); King, "A Decade of Reform," 18–19 (voting demonstrates commitment to democratic ideals and one's membership in society; denying vote "incongruous with the principles of reentry and sends a counterintuitive message to people who have been released from prison"); King & Mauer, "The Vanishing Black Electorate," 16–17 (voting an acknowledgment of accepted membership in society; prohibition on voting produces opposite result by shunning individual and marking as partial citizen); Mauer, "Felon Voting Disenfranchisement," 5 (voting contributes to rehabilitation and public safety and foster sense of obligation and responsibility).
- 53 Goldman, "The Modern-Day Literacy Test?" 611, 642–643.
- 54 Interview with David C. (October 3, 2005).
- <sup>55</sup> See, e.g., American Probation and Parole Association, "Resolution Supporting Restoration of Voting Rights Released" (October 17, 2007) (resolution calls for restoration of voting rights upon completion of prison sentence and advocates no loss of voting rights while under community supervision; states disenfranchisement "not based on a need to protect the integrity of the electoral process and the justice system" and "works against the successful reentry of offenders"); American Correctional Association, "Public Correctional Policy on Restoration of Voting Rights for Felony Offenders" (January 12, 2005) (finding ban on voting after discharged from correctional supervision "contradictory to the goals of a democracy, the rehabilitation of felons and their successful reentry to the community;" advocates restoration of voting rights after completion of incarceration or parole).
- <sup>56</sup> See generally Ispahani, Out of Step with the World, 33.
- <sup>57</sup> Uggen & Manza, "Democratic Contraction?," 777, 778 ("Among postindustrial democracies, the United States is virtually the only nation to permanently disenfranchise ex-felons as a class in many jurisdictions. ... The United States stands alone in the democratic world in imposing restrictions on the voting rights of a very large group of nonincarcerated felons.").
- <sup>58</sup> Ispahani, *Out of Step with the World*, 4.
- <sup>59</sup> Ibid., at 6. See also Mauer, "Felon Voting Disenfranchisement" (in most democracies, disenfranchisement is for shorter periods of time, must be imposed by judge, or related to particular offenses).
- <sup>60</sup> Ispahani, *Out of Step with the World*, 4 (emphasis in original).
- $^{\rm 61}$  lbid., at 4 ("Almost half of European countries allow  $\it all$

- incarcerated people to vote while others disqualify only a small number of prisoners from the polls," and "almost all of the countries that disqualify all inmates are in Eastern Europe.").
- <sup>62</sup> Sauvé v. Canada, [2002] 3 S.C.R. 519, ; Minister of Home Affairs v. Nat'l Inst. for Crime Prevention & the Reintegration of Offenders, 2005 (3) SA 280 (CC).
- 63 Hirst v. United Kingdom (No. 2), 681 Eur. Ct. H.R. (2005).
- <sup>64</sup> Ispahani, Out of Step with the World, 6; D mos, "Restoring Voting Rights."
- <sup>65</sup> United Nations Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination" No. 27 (February 2008): 9 (expressing concern about impact on a "large number of persons belonging to racial, ethnic and national minorities, in particular African American persons," noting "with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences," and recommending "denial of voting rights...only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence"); United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee" No. 35, (September 2006): 11 (expressing concern that "five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications" and urging adopting of "measures that ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole").
- <sup>66</sup> Ispahani, Out of Step with the World, 26 (U.S. has ratified and is bound by International Covenant on Civil and Political Rights (ICCPR) and International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); disenfranchisement policies may violate provisions in both treaties).
- <sup>67</sup> Sentencing Project, "Felony Disenfranchisement Laws" 1, 3.
- <sup>68</sup> Cal. Const. art. II, § 5 (1849) ("No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.").
- <sup>69</sup> Cal. Const. art. II, § 1 (1879) ("no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this State").
- <sup>70</sup> The voter disenfranchisement provision in the California Constitution was amended again in 1972. However, the amendments did not affect the scope of the criminal disenfranchisement provision, which remained the same. See Cal. Const. art. II, § 3 (1972) ("the legislature shall prohibit improper practices that affect elections and shall provide that no severely mentally deficient person, insane person, person convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of public money shall exercise the privileges of an elector in this State").
- <sup>71</sup> Ramirez v. Brown, 9 Cal. 3d 199 (1973), rev'd sub nom. Richardson v. Ramirez, 418 U.S. 24 (1974).
- 72 Ibid,. at 214, 216-217.
- 73 Assembly Constitutional Amendment No. 38 (1973).
- <sup>74</sup> Cal. Const. art. II, § 4 (emphasis added). Proposition 10 amended Article II, Section 3 of the California Constitution. This provision was renumbered in 1976, without any substantive change, to the current Article II, Section 4.
- <sup>75</sup> Letter from Pam Giarrizzo, Chief Counsel, California Secretary of State's Office, to California Attorney General, Bill Lockyer (May 25, 2005).

- <sup>76</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to Deputy Attorney General Gregory Gonot, July 22, 2005, at 7 (emphasis in original).
- <sup>77</sup> 88 Cal. Op. Att'y Gen. 207 (2005) (concluding anyone "who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not eligible to vote").
- <sup>78</sup> League of Women Voters v. McPherson, 145 Cal.App.4<sup>th</sup> 1469 (2006), Petitioners' Memorandum of Points & Authorities, 2 n.2 and Exhs. 3–7 (August 22, 2006), (accessed August 26, 2008) [hereinafter League of Women Voters vs. McPherson].
- 79 League of Women Voters v. McPherson, 145 Cal.App.4<sup>th</sup> at 1482– 84.
- <sup>80</sup> The California Penal Code defines a felony offense as any "crime which is punishable with death or by imprisonment in the state prison." Cal. Penal Code § 17 (2008).
- <sup>81</sup> Autumn D. McCullogh, "Three Strikes and You're in (for Life): An Analysis of the California Three Strikes Law as Applied to Convictions for Misdemeanor Conduct," *T. Jefferson L. Rev.* 24 (2002): 277, 282.
- 82 Cal. Penal Code § 594(b)(1), 528, 478.
- 83 Cal. Penal Code § 17.
- 84 Cal. Penal Code § 17(b).
- 85 Cal. Legislative Analyst's Office, Judicial & Criminal Justice (2008– 09), at D-112-13.
- <sup>86</sup> Joan Petersilia, California Policy Research Center, *Understanding California Corrections* (2006): 5 [hereinafter Petersilia, *Understanding California Corrections*].
- 87 Petersilia, Understanding California Corrections, at 1.
- 88 Ibid., at 6.
- $^{\rm 89}$  Ibid., at 1.
- <sup>90</sup> Walter L. Gordon, "California's Three Strikes Law: Tyranny of the Majority," Whittier L. Rev. 20 (1999): 577, 619 (finding nearly sixty percent of California's prison inmates committed for nonviolent crimes).
- <sup>91</sup> California Department of Justice, *Crime in California* (2006): 81 (428,117 adults under local supervision in 2006, including 81,622 average daily population jail serving a sentence or awaiting their trial or sentencing, and 346,495 on probation).
- <sup>92</sup> California Department of Corrections and Rehabilitation, *Historical Trends* 1986–2006, (2006): 8a.
- <sup>93</sup> U.S. Census Bureau, California QuickFacts (2008) (African Americans are 6.7 percent of California population); California Department of Corrections and Rehabilitation, Second Quarter 2008 Facts and Figures (2008) (African Americans are 29.1 percent of state prison population).
- 94 See, e.g., Mike Males and Dan Macallair, The Color of Justice: An Analysis of Tuvenile Adult Court Transfers in California (January 2000) (in Los Angeles County, California, youth of color are 2.5 times more likely than white youth to be transferred to adult court); National Council on Crime and Delinquency, And Justice for Some: Differential Treatment of Youth of Color in the Justice System (January 2007) (African-American youth in California incarcerated at rate six times greater than white youth); Justice Policy Institute, The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties (December 2007) (reporting racial disparities in prison sentences for drug offenses in four California counties); Human Rights Watch, When I Die, They'll Send Me Home: Youth Sentenced to Life Without Parole in California (January 2008) (African-American youth sentenced to life without parole at rate 18 times higher than white youth); Scott Ehlers, Vincent Schiraldi, and Jason Ziedenberg, Justice Policy Institute," "Still Striking Out: Ten Years of California's Three Strikes" (September

- 2004):18; (California Three Strikes law disproportionately impacts African Americans and Latinos) [hereinafter Ehlers et al., "Still Striking Out"]. See generally Leadership Conference on Civil Rights, Justice on Trial: Racial Disparities in the American Criminal Justice System (2000).
- 95 Individuals who are sentenced to a 25-years-to-life prison sentence for a third-strike, nonviolent felony may be disenfranchised for life.
- Michael Males et al., Center on Juvenile & Criminal Justice, Drug Use and Justice 2002: An Examination of California Drug Policy Enforcement (December 2002): 5. See also ibid., at 6 (only 379 Californians were sent to prison in 1980, compared to 12,749 in 1999, a population-adjusted rate increase of 2,244 percent.); Vincent Schiraldi et al., "Young African Americans and the Criminal Justice System in California: Five Years Later" (1996) (California drug offender prison population as of 1996 greater than entire number of prisoners incarcerated in 1982).
- 97 Schiraldi, "Young African Americans."
- 98 Human Rights Watch, "Targeting Blacks: Drug Law Enforcement and Race in the United States" (2008): 19
- <sup>99</sup> Ehlers et al., Justice Policy Institute, "Still Striking Out," 18. In fact, the majority of those serving a doubled or 25-years-to-life sentence under California's Three Strikes law are there for nonviolent offenses. See "Still Striking Out," at 3, 9; Cal. Legislative Analyst's Office, A Primer: Three Strikes—The Impact After More Than a Decade (2005) at 16.
- Ehlers, "Still Striking Out," 9 (emphasis in original). Petty theft, third-strike 25-years-to-life sentences skyrocketed from two in 1994 to 354 in September 2003. Ibid.
- 101 Ibid., at 11.
- <sup>102</sup> California Department of Corrections and Rehabilitation, *California Prisoners and Parolees*, 2006 (2007) [hereinafter Cal. Dept. of Corr. & Rehab., *California Prisoners*].
- <sup>103</sup> U. S. Census Bureau, U. S. Department of Commerce, 2006 American Community Survey (2006), [hereinafter U. S. Census Bureau, 2006 American Community Survey]; Fredric Gey et al.,

- University of California Latino Policy Institute, California Latino Demographic Databook, 3<sup>rd</sup> Edition: 2004 (November 2004) at 7–4, .
- <sup>104</sup> Cal. Dept. of Corr. and Rehab., *California Prisoners*; U. S. Census Bureau, *2006 American Community Survey*.
- 105 Demeo & Ochoa, "Diminished Voting Power," 7.
- <sup>106</sup> Interview with Dante W. (October 3, 2005).
- 107 Interview with Yolanda W. (October 19, 2005).
- Ewald, Punishing at the Polls; Fellner & Mauer, Losing the Vote, at 15. See also Mauer, "Felon Voting Disenfranchisement," at 4 ("Since more than 99 percent of felons have not been convicted of electoral offenses, this seems to be a rather overbroad concern. Also, when electoral fraud occurs, it rarely manifests itself in the presence of a voter in the voting booth, but rather through improper counting of ballots or outright bribery. One does not need to be a registered voter to commit these offenses.").
- <sup>109</sup> Richardson v. Ramirez, 418 U.S. 24, 80 (1974) (Marshall dissent observing that "California court's catalogue of that State's penal sanctions for election fraud surely demonstrates that there are adequate alternatives to disenfranchisement").
- <sup>110</sup> Shapiro, "Challenging Criminal Disenfranchisement," 537, 561 (unconstitutional to fence out class of voters because of how may vote, citing *Carrington v. Rash*, 380 U.S. 89, 94 (1965)).
- Ewald, Punishing at the Polls, at 10 (no evidence exists individuals would vote in "subversive" way; moreover, barring vote because individuals may vote to change laws violates essential American principles).
- 112 Mauer, "Felon Voting Disenfranchisement," 248.
- <sup>113</sup> Uggen & Manza, "Lost Voices," 28–29 ("In contrast to images of offenders as an ill-informed, apathetic group with low citizenship norms, sophisticated underlying political views and concerns emerged in our in-depth interviews. ... [C]onvicted felons do not speak with one voice. Even within the same institution, we were struck by the diversity of political views and concerns expressed by offenders.").
- 114 Ewald, Punishing at the Polls, 9, 29–31; Wood,

- Restoring the Right to Vote, 11-12.
- <sup>115</sup> See, e.g., Uggen & Manza, "Voting and Subsequent Crime," 193 (empirical study finding statistical correlation between voting and lower rates of arrest, incarceration, and self-reported criminal behavior).
- <sup>116</sup> See, e.g., U. S. Census Bureau News Release, "U. S. Voter Turnout Up in 2004, Census Bureau Reports" (only 64 percent of eligible voters voted in 2004 election); U. S. Election Assistance Commission, Voter Registration and Turnout–2002 (only 37 percent of Total Voting Age Population voted in 2002 election); International Institute for Democracy and Electoral Assistance, Voter Turnout Since 1945: A Global Report, 84 (2002) (ranking United States 138 out of 169 countries in terms of voting age population turnout).
- <sup>117</sup> Christopher Uggen and Jeff Manza, Lost Voices: The Civic and Political Views of Disenfranchised Felons 32 (July 9, 2002) (emphasis in original).
- <sup>118</sup> Marc Mauer, "Felon Voting Disenfranchisement: A Growing Collateral Consequence of Mass Incarceration," 12 Fed.Sent. R. 248 (2000) ("In a country with the lowest rate of electoral participation among industrialized nations we should be actively seeking ways to encourage greater participation in the voting process, not ways to exclude potential voters.").
- 119 Stephens v. Toomey, 51 Cal. 2d 864, 869 (1959).
- 120 Otsuka v. Hite, 64 Cal. 2d 596, 611 (1966).
- <sup>121</sup> See Flood v. Riggs, 80 Cal. App. 3d 138, 146–147 (1978).
- 122 Ibid., at 146.
- 123 9 Cal. 3d 199, 207 (1973).
- 124 Ibid., at 214.
- <sup>125</sup> Ibid., at 216–217.
- <sup>126</sup> 418 U. S. 24, 56 (1974).
- <sup>127</sup> Ibid., at 55.
- League of Women Voters v. McPherson, 145 Cal.App.4th at 1482–84.
- 129 Cal. Penal Code § 17(a) (2008).
- 130 Ibid.

# PUBLIC OFFICIAL AND VOTER CONFUSION: IMPLEMENTATION OF CALIFORNIA'S DISENFRANCHISEMENT LAW

- <sup>1</sup> This problem is not unique to California. See, e.g., American Civil Liberties Union of New Jersey, "ACLU-NJ Announces Results of County Elections Survey" (May 9, 2005); Brennan Center for Justice and Dēmos, Boards of Elections Continue Illegally To Disenfranchise Voters with Felony Convictions (March 2006); David A. Singleton and Breean Walas, Prison Reform Advocacy Center, The Disenfranchisement of the Re-Enfranchised: How Confusion Over Felon Voter Eligibility in Ohio Keeps Qualified Ex-Offender Voters From the Polls (August 2004).
- <sup>2</sup> Interview with Dante W. (October 3, 2005).
- <sup>3</sup> Interview with David C. (October 3, 2005).
- <sup>4</sup> Some variations on the question included "Can my husband/son/brother vote while he is on probation?" This question was one in a series of questions about voting rights of individuals with a criminal conviction.
- <sup>5</sup> Letter from Maya Harris, Racial Justice Project Director, ACLU of Northern California, to County Probation Offices (March 9, 2005).
- <sup>6</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to County Probation Offices (January 13, 2006).
- <sup>7</sup> Letter from Arturo L. Faro, Acting Chief Adult Probation Officer, County of San Francisco Adult Probation Department, to Maya Harris, ACLU of Northern California (January 20, 2006). Merced County's 2005 response stated that it has "a single line in [its] instructions to individuals referred to [its] offices which advises individuals facing sentences for criminal conduct of state law on voting limitations on felons sentenced to state prison." However, based on the rest of its response, it does not appear that it provides affirmative, specific information about probationer voting rights.
- <sup>8</sup> San Francisco Adult Probation Department, Statement of Policy and/or Procedure, No. 100.37, dated 04/09/02.
- <sup>9</sup> Letter from Mike Robak, Chief Probation Officer, Marin County Probation Department, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (April 6, 2005).
- Letter from Stephen L. Roper, County of Yuba Probation Department, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (March 14, 2005).
- <sup>11</sup> A few probation departments do not have websites.
- <sup>12</sup> The visits were conducted July 22–24, 2008 in Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, and Santa Cruz counties
- <sup>13</sup> Of the 48 northern California counties, only Madera, Napa, and Santa Clara jails are not operated by the sheriff's department. In these three counties, the jails are operated by a separate county Department of Corrections.
- <sup>14</sup> Some variations on the question included "Can my husband/son/brother vote while he is on probation?"
- <sup>15</sup> Letter from Maya Harris, Racial Justice Project Director, ACLU of Northern California, to County Sheriffs (March 9, 2005).
- <sup>16</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to County Sheriffs (January 13, 2006).
- <sup>17</sup> Title 15, Cal. Code Regs., § 1071 ("Voting. The facility administrator of a Type I (holding sentenced inmate workers), II, III, or IV facility shall develop written policies and procedures whereby the county registrar of voters allows qualified voters to vote in local, state, and federal elections, pursuant to election codes.").

- <sup>18</sup> Letter from Warren E. Rupf, Sheriff, Contra Costa County, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (March 21, 2005), enclosing Policy No. 16.01 regarding "Inmate Rights and Privileges."
- <sup>19</sup> El Dorado County Sheriff's Office, Policy and Procedures, Section 6.06 (revised October 15, 2004).
- <sup>20</sup> Letter from Lt. Tim Pearce, Jail Commander, Mendocino County Sheriff, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (April 7, 2005).
- <sup>21</sup> Letter from Darren Bogié, Deputy County Counsel, Office of the San Benito County Counsel, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (March 30, 2005).
- <sup>22</sup> Letter from John Arntz, Director, San Francisco Department of Elections, to Maya Harris, Racial Justice Project Director, ACLU of Northern California (March 17, 2005), enclosing Prisoner Legal Services jail voting policy.
- <sup>23</sup> Letter from Maya Harris, Executive Director, ACLU of Northern California, to County Elections Officials (November 21, 2007).
- $^{\rm 24}$  We completed visits to 41 of the 48 northern California counties between December 2007 and August 2008.
- <sup>25</sup> Amador County Sheriff's Office website, Jail Division webpage, (accessed August 19, 2008).
- <sup>26</sup> Mariposa County Sheriff's Department website, Adult Detention Facility section, Public Information webpage.
- <sup>27</sup> Placer County Sheriff's Department website, Placer County Jail section, Inmate Rules and Information webpage.
- <sup>28</sup> San Francisco Sheriff's Department website, Jails section, Jail Information (Rules & Regulations) webpage.
- <sup>29</sup> Santa Cruz County Sheriff's Office website, Corrections section, Inmate Programs webpage.
- 30 Yuba County Sheriff's Department website, In Custody section, Inmate Programs webpage.
- <sup>32</sup> See, e.g., Otsuka v. Hite, 64 Cal. 2d 596, 603–604 (1966) ("every reasonable presumption and interpretation is to be indulged in favor of the right of the people to exercise the elective process...no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning") (internal quotations omitted).
- 33 Letter from Maya Harris, Racial Justice Project Director, to Local Elections Officials (March 9, 2005).
- <sup>34</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to Local Elections Officials (January 13, 2006).
- 35 The "Voter Bill of Rights," produced by the Secretary of State's Office, provides: "You have the right to cast a ballot if you are a valid registered voter. A valid registered voter means a United States citizen who is... not in prison or on parole for conviction of a felony." The standard "Voter Registration Form" contains a "Voter Declaration" that requires certification that an individual is "... not in prison or on parole for a felony conviction."
- <sup>36</sup> Once again, a few county offices referenced their work with sheriffs or others to facilitate jail voting or enclosed a copy of the sheriff's policy, and one noted that it was working with the probation office to create a booklet.
- <sup>37</sup> Letter from John Arntz, Director, San Francisco Department of Elections, to Maya Harris, Associate Director, ACLU of Northern California (January 23, 2006), enclosing materials.
- <sup>38</sup> Letter from Jaime Young, Program Coordinator, Voter Registration and Outreach, Santa Cruz County Clerk/Elections, to Maya Harris, Associate Director, ACLU of Northern California (January 19, 2006).
- 39 Letter from Maya Harris, Executive Director, ACLU of Northern Cal-

- ifornia, to County Elections Officials (November 21, 2007).
- <sup>40</sup> We completed visits to 41 of the 48 northern California counties between December 2007 and August 2008.
- 41 Two county elections offices—Modoc and Plumas—do not have websites.
- <sup>42</sup> Cal. Elec. Code § 2106 ("Any program adopted by a county pursuant to Section 2103 or 2105, that is designed to encourage the registration of electors, shall, with respect to any printed literature or media announcements made in connection with these programs, contain this statement: 'A person entitled to register to vote must be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election."").
- <sup>43</sup> Stanislaus County Elections Office, Frequently Asked Questions section, Questions About Voter Registration. (Emphasis in original.)
- <sup>44</sup> Laleh Ispahani and Nick Williams, Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote (New York: American Civil Liberties Union, 2004).
- <sup>45</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to Local Elections Officials (March 1, 2006).
- <sup>46</sup> Letter from Maya Harris, Associate Director, ACLU of Northern California, to County Superior Courts (March 3, 2006).
- <sup>47</sup> Of the 48 northern California elections officials, 32 responded. Twenty-six courts responded with the identical letter, stating that they did not have any documents responsive to our request or that were clearly subject to disclosure under the law. Only one court provided a substantive response.
- <sup>48</sup> Cal. Elec. Code § 2200.
- <sup>49</sup> Cal. Elec. Code § 2201(c).

- 50 Cal. Elec. Code § 2212.
- <sup>51</sup> Letter from Rebecca Martinez, County Clerk-Recorder, Madera County, to Maya Harris, Associate Director, ACLU of Northern California (March 13, 2006).
- <sup>52</sup> One county, San Mateo, also looks at the last four digits of the individual's Social Security number. Letter from David Tom, Elections Manager, San Mateo County Elections, to Maya Harris, Associate Director, ACLU of Northern California (March 24, 2006).
- <sup>53</sup> Letter from Jesse Durazo, Registrar of Voters, County of Santa Clara to Maya Harris, Associate Director, ACLU of Northern California (January 24, 2006).
- <sup>54</sup> Secretary of State website, Register to Vote section, Frequently Asked Questions webpage. (Emphasis in original.)
- 55 Secretary of State website, Voter Information section, Voter Education and Outreach webpage, Voter Bill of Rights
- 56 Secretary of State website, Voter Information section, Know Your Voting Rights webpage.
- <sup>57</sup> Secretary of State, Voter Fraud Protection Handbook: A Voter's Guide to Safeguard California's Election Process, "Voting By Mail" (August 1, 2008): 6. (Emphasis in original.)
- <sup>58</sup> Secretary of State, *Guide to Voter Registration in Cali- fornia*, (2006): 5.
- <sup>59</sup> See, e.g., California Department of Corrections and Rehabilitation website. Parole section.
- <sup>60</sup> California Department of Corrections and Rehabilitation, *Parolee Information Handbook*.
- <sup>61</sup> Letter from Maya Harris, Racial Justice Project Director, ACLU of Northern California, to California State Prisons (March 14, 2005).
- <sup>62</sup> Letter from Bryan Snyder, Staff Counsel, Legal Affairs Division to Maya Harris, Racial Justice Project Director, ACLU of Northern California (April 6, 2005).
- 63 Ihid
- <sup>64</sup> California Department of Corrections, *Operations Man-*

- ual, Article 8—Civil Rights, § 51080.3.2 (updated through May 1, 2000 version).
- <sup>65</sup> The visits were conducted July 22–24, 2008, in Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, and Santa Cruz counties.
- <sup>66</sup> All of Us or None is a project of Legal Services for Prisoners with Children, a San Francisco-based non-profit organization that "advocates for the human rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration." All of Us or None "is an organizing initiative started by people who have been in prison, to fight against the discrimination that prisoners, former prisoners, felons, and family members of prisoners face every day." http://prisonerswithchildren.org.
- <sup>67</sup> Statement from Dorsey Nunn, Director of All of Us or None at launch of ACLU-NC's "Every Vote Counts" public education campaign (October 11, 2006).
- <sup>68</sup> Interview with Jim Moffett, Chief Probation Officer, Inyo County (October 16, 2007).
- <sup>69</sup> Letter from Len Lofano, Chief Deputy Detention Bureau, Santa Cruz County Sheriff's Office, to Maya Harris, Associate Director, ACLU of Northern California (January 19, 2006).
- <sup>70</sup> Memo from M'Liss Keesling, Inmate Programs Coordinator, Santa Cruz County Sheriff's Office, to All Facilities Corrections Staff (December 21, 2007).
- <sup>71</sup> Santa Cruz County Clerk/Elections, Outreach Policy and Procedures for Inmates and Former Inmates (October 25, 2005); Santa Cruz County Sheriff's Office, Procedure 5–10 (revised December 8, 2006).
- <sup>72</sup> Santa Cruz County Clerk/Elections, Outreach Policy and Procedures.
- <sup>73</sup> Monterey County Elections Department, Proposed Inmate Voting Policy and Procedures in Partnership with the Monterey County Sheriff's Office (January 2008).
- 74 Interview with Linda Tulett, Monterey County Registrar of Voters (August 7, 2008).

### THE ROAD AHEAD: RECOMMENDATIONS FOR REFORM

- <sup>1</sup> Ryan S. King, The Sentencing Project, "A Decade of Reform: Felony Disenfranchisement Policy in the United States" (2006): 1, 2 (since 1997, 16 states have reformed their laws to reduce their restrictiveness resulting in restoration of voting rights to more than 600,000 residents in seven of those states); Ryan S. King and Marc Mauer, The Sentencing Project, "The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia" (September 2004): 18 [hereinafter King and Mauer, "The Vanishing Black Electorate"] (noting bi-partisan nature of reforms, with bills signed into law by both Republican and Democratic governors).
- <sup>2</sup> American Civil Liberties Union, *Breaking Barriers to the Ballot Box: Felon Enfranchisement Toolkit* (2008): 12, 19 [hereinafter American Civil Liberties Union, *Breaking Barriers*].
- <sup>3</sup> Rhode Island voters passed a referendum in November 2006 extending voting rights to probationers and parolees that required notice at the plea and sentencing stages and also when an individual is released from prison. See American Civil Liberties Union, Breaking Barriers 48 (Section 17-9.2-3(b) and (c) of the Rhode Island law provide: "Before accepting a plea of guilty or nolo contendere to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in loss of the right to vote only if and for as long as the person is incarcerated and that voting rights are restored upon discharge" and that "as part of the release process leading to a person's discharge from a correctional facility, the department of corrections shall notify that person in writing that voting rights will be restored, provide that person with a voter registration form and a declination form, and offer that person assistance in filling out the appropriate form"). A North Carolina law adopted August 19, 2007 requires the "State Board of Elections, the Department of Correction, and the Administrative Office of the Courts [to] jointly develop and implement educational program and procedures for persons to apply to register to vote at the time they are restored to citizenship." Ibid., at 50. And Louisiana recently enacted a law requiring its Department of Public Safety and Corrections to notify people leaving its supervision about how to regain their voting rights and to provide these individuals with voter registration applications. ACLU of Louisiana, "ACLU of Louisiana Applauds Pro-Democracy Move in Louisiana; State Legislature Passes Bill Mandating That Individuals Who Complete Felony Sentences Be Informed Of Voting Rights" (July 16, 2008).
- <sup>4</sup> American Civil Liberties Union, *Breaking Barriers* 17.
- <sup>5</sup> Georgia, Louisiana, New York, and Virginia have laws requiring notification prior to removal from voting lists. Laleh Ispahani and Nick Williams, Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote (New York: American Civil Liberties Union, 2004) [hereinafter Ispahani, Purged!]: 9–10.
- <sup>6</sup> Ibid., at 8 (reporting that, although not codified, South Dakota in practice checks the first name, middle name, last name, social security number, date of birth, gender, place of birth, date of conviction, age, and address from the felony conviction report against the statewide registration database).
- <sup>7</sup> League of Women Voters v. McPherson, 145 Cal.App.4<sup>th</sup> at 1482– 84
- 8 H.R. 4202 Re-Entry Enhancement Act of 2005 (Section 201); H.R. 1300 Civic Participation and Rehabilitation Act of 2005 (Section 3).
- <sup>10</sup> H.R. 2830 Voting Restoration Act of 2001 (Section 5(b)).
- <sup>11</sup> S. 804/H.R. 1381 Count Every Vote Act of 2007 (Section 341).
- <sup>12</sup> H.R. 2830 Voting Restoration Act of 2001 (Section 4).

- <sup>13</sup> Ispahani, *Out of Step* 33 (security of elections and prison safety have not been threatened in any country that allows prisoner voting).
- <sup>14</sup> The thirteen states are Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. American Civil Liberties Union, *Breaking Barriers* 12. Through a state referendum passed by voters, Rhode Island was the most recent of these states to restore voting rights immediately upon release from incarceration, i.e., while still on probation or parole. *See* Sentencing Project, *Felony Disenfranchisement Laws in the United States* 2 (March 2008). For the full text of the Rhode Island referendum, see American Civil Liberties Union, *Breaking Barriers* 48–49.
- <sup>15</sup> Ispahani, *Out of Step* 4; King and Mauer, "The Vanishing Black Electorate" 20; Erika Wood, Brennan Center for Justice, *Restoring the Right to Vote* (2008): 14–16.
- <sup>16</sup> American Probation and Parole Association, "Resolution Supporting Restoration of Voting Rights Released" (October 17, 2007) (resolution calls for restoration of voting rights upon completion of prison sentence and advocates no loss of voting rights while under community supervision; states disenfranchisement not based on a need to protect the integrity of the electoral process and justice system and goes against successful reentry); Association of Paroling Authorities International, "Resolution on Restoring Voting Rights" (April 30, 2008) (recognizing that disenfranchisement after conviction or release from prison goes against criminal justice policy, democracy, and equality, instead of fostering community stakeholders and facilitating pro social behavior; supporting voting rights restoration upon reentry to community and encouraging paroling authorities to participate in efforts to reform laws). See also American Bar Association. ABA Standards for Criminal Justice Third Edition: Collateral Sanctions and Discretionary Disqualification of Convicted Persons 35 (2004) ("Standard 19-2.6 Prohibited collateral sanctions...Jurisdictions should not impose...deprivation of the right to vote, except during actual confinement.").
- <sup>17</sup> Jeff Manza, Clem Brooks, and Christopher Uggen, "Public Attitudes Toward Felon Disenfranchisement in the United States," *Public Opinion Quarterly*, No. 2 (2002): 1 (reporting on public opinion survey finding nearly 2/3 support for allowing parolees to vote).
- <sup>18</sup> United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee" No. 35 (September 2006): 11 (expressing concern that "five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications;" urging adoption of "measures that ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole").
- <sup>19</sup> See, e.g., American Civil Liberties Union, *Breaking Barriers* 19.

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ACLU of Northern California 39 Drumm Street San Francisco, California 94111 Phone: 415.621.2493 Fax: 415.255.1478 www.aclunc.org



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