



List of Issues Submission by the Lawyers Committee for Civil Rights Under Law to the U.N. Human Rights Committee.

I. Title: Felony Disfranchisement in the United States

II. Submitting Organization

The Lawyers' Committee for Civil Rights Under Law. Founded in 1963 by President John Kennedy, the principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law by marshaling the pro bono resources of the private bar for litigation, public policy advocacy and other forms of service to promote the cause of civil rights. The Lawyers' Committee is a national organization with independent affiliates in Boston, Massachusetts; Chicago, Illinois; Denver, Colorado; the District of Columbia; Jackson, Mississippi; Los Angeles and San Francisco, California; and Philadelphia, Pennsylvania. The Lawyers' Committee's primary focus is to represent the interests of racial and ethnic minorities, and other victims of discrimination in order to secure justice for all through litigation, legislative advocacy and programs that promote economic development of minority communities, and ensure voting rights, fair housing, equal access to education and employment, and environmental justice. Additionally, the Lawyers' Committee works to ensure full compliance by the United States with treaty obligations particularly rights under treaties that foster full civil participation by minorities and women and the elimination of racial discrimination.

III. Issue Summary

Felony disenfranchisement continues to impose a significant obstacle to participation in our democracy. As each state is responsible for its election laws, the felony disenfranchisement laws in the U.S. are a patchwork that causes confusion among voters. As discussed on the website of by the National Conference of State Legislatures, two states allow citizens with felony convictions to vote even when incarcerated, four states permanently disenfranchise citizens with felony convictions unless they are pardoned by the state's governor and "the remaining 44 states have 44 different approaches to the issue."¹

According to a July 2012 report published by the Sentencing Project, 5.85 million people were disenfranchised because of a felony conviction.² The report found that 1 of every 13 African Americans is disenfranchised nationally and in three states, Florida, Kentucky and Virginia, one in five African Americans is disenfranchised. The report also notes that in the eleven states that continue to disenfranchise citizens after their release from prison, 2.6 million (45 percent of those disenfranchised because of a felony conviction) have completed their sentence.³ Further, attempts to address this disenfranchisement under the Voting Rights Act of 1965 have proven unsuccessful. In 2010, the most recent attempt to address the disproportionate impact of disenfranchisement on minorities under the Voting Rights Act of 1965 was rejected by a federal court.

Legal mechanisms in the United States make it very difficult to address the disparate racial impact of disenfranchisement laws. The United States Supreme Court has interpreted Section 2 of the 14th Amendment to the Constitution to allow states the authority to deny the right to vote for participation in

¹ <http://www.ncsl.org/legislatures-elections/elections/felon-voting-rights.aspx>

² Christopher Uggen, Sarah Shannon, & Jeff Manza, State-Level Estimates of Felon Disfranchisement in the United States, July 2012 available at http://www.sentencingproject.org/detail/publication.cfm?publication_id=400&id=131

³ *Id.*

rebellion, or other crime as permitting states to limit voting rights.⁴ However, in *Hunter v. Underwood*, the Supreme Court concluded that Section 2 of the Fourteenth Amendment is “not designed to permit the purposeful racial discrimination attending the enactment and operation of [the felony disenfranchisement statute].”⁵ But this standard of intentional discrimination is generally difficult to prove.

In *Farrakhan v. Gregoire*, the ninth circuit federal court sitting en banc ruled that despite the disproportionate impact of Washington State’s criminal laws on its African American population, the plaintiffs had presented no evidence of intentional discrimination in Washington State’s criminal justice system and therefore did not meet their burden of showing a violation of Section 2 of the Voting Rights Act.⁶ The *Farrakhan* court noted that three other federal circuits had concluded that felon disenfranchisement laws are not subject to challenge under the Voting Rights Act.⁷ This ruling underscores the limits in U.S. law in addressing the disproportionate impact of felon disenfranchisement laws on the nation’s minorities. However, the Democracy Restoration Act, which has been introduced in both the U.S. House of Representatives (H.R. 2212) and the U.S. Senate (S. 2017),⁸ provides an opportunity to address the problem of voting disenfranchisement because of felony convictions.

IV. Previous Concluding Observations (para 35)

In its previous review, the Human Rights Committee expressed concern that the United States’ felony disenfranchisement practices have “significant racial implications.” The Committee also noted that “general deprivation of the right to vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of articles 25 and 26.”⁹

V. U.S. Government Report

In its submission, the United States noted that 48 states have voting restrictions for those who have felony convictions. The report also noted that while some states had made improvements in allowing those with felony convictions to regain their voting rights, some states have regressed. The main examples of these are Iowa, where the successor Governor in 2011 revoked the previous Governor’s executive order eliminating lifetime disenfranchisement and allowing for automatic restoration. Similarly, Florida, after a time of easing the bureaucratic restrictions for those seeking to regain their voting rights in 2011, made it harder.¹⁰ The United States also notes the introduction of the Democracy Restoration Act in both houses of the Congress, which would provide uniform standards for voting in federal elections for those with felony convictions who are no longer incarcerated.¹¹

VI. Legal Framework

⁴ *Richardson v. Ramirez*, 418 U.S. 24 (1974)

⁵ *Hunter v. Underwood*, 471 U.S. 222 (1985)

⁶ *Farrakhan v. Gregoire*, D.C. No. CV-96-00076-RHW (October 10, 2010) available at http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Cases/Farrakhan/Per%20Curiam%20decision.pdf

⁷ *Id.* citing to *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1234 (11th Cir. 2005) (en banc); *Hayden v. Pataki*, 449 F.3d 305, 323 (2d Cir. 2006) (en banc); *Simmons v. Galvin*, 575 F.3d 24, 41 (1st Cir. 2009), petition for cert. filed, 78 U.S.L.W. 3461 (U.S. Feb. 1, 2010) (No. 09-920).

⁸ Democracy Restoration Act, S. 2014 and H.R. 2212, 112th Cong. (2011) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s2017is/pdf/BILLS-112s2017is.pdf> and <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2212ih/pdf/BILLS-112hr2212ih.pdf>

⁹ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3/Rev.1 (2006) 35.

¹⁰ Fourth Periodic Report of the United States to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, December 30, 2011. ¶459. available at <http://www.state.gov/j/drl/rls/179781.htm#art25>

¹¹ *Id.* at ¶ 460.

Article 25(b) of the ICCPR requires that every citizen shall have the right and opportunity “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” Article 26 declares that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”¹²

VII. Other UN Body Recommendations

In its 2008 concluding observations, the Committee reviewing the U.S. under the Convention for the Elimination of All forms of Racial Discrimination expressed its concern regarding “the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences. (Article 5 (c)).”¹³

The 2010 Report of the Working Group of Experts on People of African Descent noted that because of criminal convictions Americans of African descent constitute a disproportionately large percentage of this electorally disenfranchised population.¹⁴

VIII. Recommended Questions

1. Given the confusion surrounding felon disenfranchisement laws in the states, what is the United States doing to work with states to ensure that citizens with felony convictions are aware of their voting rights?
2. Is the United States government working with the criminal justice system so that upon release from prison, those with criminal convictions are aware of their voting rights?

IX. Recommended Suggestions

1. That the United States support and advocate for the passage of the Democracy Restoration Act.
2. That the United States conducts a comprehensive review of the impact of the felony disenfranchisement laws, policies and practices on minority voters.

¹² ICCPR, Dec. 19, 1966, 999 U.N.T.S. 171

¹³ Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, United States of America, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).

¹⁴ Human Rights Council, 15th Sess., Rep. of the Working Group of Experts on People of African Descent: Visit to the United States of America, Jan. 25-29 2010, ¶¶47, 73, U.N. Doc. A/HRC/15/18 (Aug. 6, 2010)