

A Restoration of Voting Rights & Humanity

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As a nation that has always touted its democratic principles, the United States of America restricts citizens' right to vote. Voter disenfranchisement laws particularly silence the voices of formerly incarcerated individuals. These laws often restrict or make it harder for formerly incarcerated Americans to vote in federal and state elections. Individuals who have fully completed their sentence continue to face voting obstacles beyond prison that non-incarcerated Americans do not encounter. These laws hamper individuals who have completed their sentences and discriminate against the rights of formerly incarcerated people. This article questions why formerly incarcerated individuals are not eligible to enjoy the same voting rights as their fellow Americans. To combat this unjust treatment, this article proposes an original super-statute: The Voting Rights Restoration Act. This novel proposal ensures that formerly incarcerated individuals will be respected under the law as equal citizens of the United States.

I. A Proposed Statute: *The Voting Rights Restoration Act*

A fundamental right that all Americans are entitled to is the ability to participate in our nation's democratic processes. However, there are numerous state laws that exclude millions of Americans with past criminal convictions from voting in both state and federal elections.²⁵⁵ The Voting Rights Restoration Act seeks to address this anti-democratic injustice.

²⁵⁴ Brandeis University Undergraduate, Class of 2025.

²⁵⁵ Chung, Jean, and Amy Fettig. "Voting Rights in the Era of Mass Incarceration: A Primer." *The Sentencing Project*, 3 Sept. 2021, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.



This proposed statute is a *super-statute* because it addresses a fundamental aspect of national life: the ability for all Americans to participate in democracy.²⁵⁶ Super-statutes, such as the Civil Rights Act of 1964 or the Voting Rights Act of 1965, provide a broad pathway for citizens to exercise their fundamental rights that are enshrined in the Constitution of the United States.²⁵⁷

The fundamental right to participate in our democracy is directly addressed under Section 1 of the 14th Amendment of the Constitution which states, “nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”²⁵⁸ This amendment is particularly significant because it states that the laws of the United States, including voting laws, must be applied equally to all citizens.²⁵⁹ The Voting Rights Restoration Act reinforces the Equal Protection Clause because it promotes the constitutional principle that every American citizen is entitled to vote in elections and that no state shall abridge this right.

Finally, the Voting Rights Restoration Act is a super statute because it would be a “landmark” of our law.²⁶⁰ Not only does this proposed piece of legislation give practical

²⁵⁶ Scholars William N. Eskridge, Jr. and John Ferejohn define a super-statute as, “a law or series of laws that (1) seeks to establish a new normative or institutional framework for state policy and (2) over time does “stick” in the public culture such that (3) the super-statute and its institutional or normative principles have a broad effect on the law—including an effect beyond the four corners of the statute” (1216); Eskridge, William N., and John Ferejohn. Super-Statutes , <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1108&context=dj>

²⁵⁷ Breen, Daniel. 221LGLS: Civil Rights and Civil Liberties: Legislative.

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²⁵⁸ U.S. Const. amend. XIV, § 1.

²⁵⁹ U.S. Const. amend. XIV, § 1.

²⁶⁰ Breen, “Class Lecture.”



effect to the Equal Protection Clause, a core constitutional command, but it also restores the right to vote to every formerly incarcerated American. In summation, the Voting Rights Restoration Act pertains to the three criteria that define a super-statute; the legislation addresses a fundamental aspect of our national life, it gives effect to deeply held beliefs and aspirations, and it is a “landmark” in our law.²⁶¹

The Voting Rights Restoration Act would also allow any individual who has completed a sentence in prison or jail to be eligible to vote upon release. Further, the Act would allow individuals who are on parole or supervised probation to exercise their right to vote in elections. States such as Florida, Alabama, Arizona, and Tennessee have adopted laws that have made restoration of voting rights “conditional on an individual’s payment of all restitution, fines, and fees.”²⁶² Formerly incarcerated individuals who are required to make monetary payments in order to exercise their right to vote encounter hindrances in fulfilling their civic responsibilities that are not encountered by non-incarcerated individuals.

The Sentencing Project is a research and advocacy center that seeks to limit the decriminalization of youths and adults by undertaking an initiative to analyze laws related to voter disenfranchisement. The center estimates that almost 900,000 Floridians are barred from voting, despite a 2018 referendum which guaranteed their restoration of voting rights.²⁶³ The proposed Voting Rights Restoration Act abolishes any law that requires former imprisoned to pay any restitution, fine, or fee to vote. The act of voting or exercising one’s voice in democracy should not be dependent on a monetary contribution. Voting is an intangible mechanism that has no monetary function because it is both a freely guaranteed and not transferable right. Instead, voting ought to be regarded as a

²⁶¹ Eskridge, William N., and John Ferejohn. *Super-Statutes*.

²⁶² Chung et al., “Voting Rights.”

²⁶³ Uggen et al., “Locked out 2020.”



fundamental right that any citizen can freely exercise, regardless of income level or previous incarceration.

The Voting Rights Restoration Act seeks to restore the right to vote for formerly incarcerated individuals while also enforcing the rule of law in a rational manner. When an individual violates the laws of the United States, they are subject to incarceration. A convicted individual forfeits many freedoms, including the right to vote, while they are incarcerated. Therefore, The Voting Rights Restoration Act pertains to individuals who are no longer incarcerated as well as individuals who are in a period of parole.²⁶⁴ The application of this proposed statute depends on if the individual is imprisoned or has been released from incarceration. The proposed statute does not apply to individuals who are currently serving a prison sentence. While individuals relinquish their right to vote during their period of confinement and/or probation, this restriction should end upon the termination of a person's sentence. After an individual completes their sentence, they have served their time and ought to be reintegrated back into a society where voting is a regular practice. Lastly, the Voting Rights Restoration Act would be a federal law enacted by Congress, meaning it is applicable to all 50 states and territories of the United States.

II. Why The Voting Rights Restoration Act Is Needed

The Voting Rights Restoration Act is needed today because it reflects the current call to combat the oppression of minority groups disproportionately affected by the criminal justice system.²⁶⁵ As it stands, disenfranchisement of voting

²⁶⁴ A great debate exists regarding if currently incarcerated individuals should enjoy the right to vote. While this issue is worthy of discussion, its breadth is beyond the scope of The Voting Rights Restoration Act and this article.

²⁶⁵ Brennan Center For Justice, "Criminal Disenfranchisement Laws."



rights for formerly incarcerated individuals is widespread across the nation. The Brennan Center for Justice, a nonprofit law and policy institute which seeks to hold American political institutions to account, states that “twenty-seven states bar community members from voting, simply on the basis of convictions in their past.”²⁶⁶ Essentially, it does not matter the reason individuals have been incarcerated, the duration of their incarceration, or how they behaved while incarcerated; all that matters is that they were, for some time, and for some reason, incarcerated.²⁶⁷

The impact of these laws disenfranchising formerly incarcerated people has only intensified as “the number of people disenfranchised because of a felony conviction increased dramatically, rising from 1.17 million in 1976 to 6.1 million by 2016, just as mass incarceration and criminalization took hold in the U.S.”²⁶⁸ Moreover, incarcerated individuals' disenfranchisement laws have a disproportionate impact on communities of color. As of 2020, The Sentencing Project found that “in seven states—Alabama; Florida; Kentucky; Mississippi; Tennessee; Virginia; Wyoming—more than one in seven Black adults are disenfranchised. In total, 1.8 million Black citizens are banned from voting.”²⁶⁹ The significance of this statistic illustrates that voter disenfranchisement laws are specifically targeting Black individuals from pursuing their Constitutional right to participate in democracy. This is a pattern of social injustice that has plagued America since its founding. It is time to address voter disenfranchisement laws to ensure equality under the law for all American citizens.

²⁶⁶ Brennan Center For Justice, “Criminal Disenfranchisement Laws.”

²⁶⁷ Brennan Center For Justice, “Criminal Disenfranchisement Laws.”

²⁶⁸ Chung et al., “Voting Rights.”

²⁶⁹ Uggen et al., “Locked out 2020.”



III. A Lineage of Super Statutes

In general, the proposed super statute reflects a long history of fundamental American principles, which include democratic participation and equality under the law. At the core of American democracy is civic participation through regularly held elections.²⁷⁰ While the ability to vote is more accessible today than it was a century ago, there are clearly still limitations to voting rights for Americans with past criminal convictions. There is a long history of Americans fighting for more equal voting rights with the enactment of meaningful legislation.²⁷¹ The passage of the Voting Rights Act of 1965 represents the battle to make voting a more accessible and inclusive process.²⁷² At the time of enactment, this 1965 statute abolished poll taxes and literacy tests. Since its enactment, it has aimed to prevent any jurisdiction from abridging the right to vote on account of race and has required a preclearance requirement which bars specific jurisdictions from changing voting laws without approval from the United States Attorney General or District Court judgment.²⁷³

The Voting Rights Act of 1965 prevented discriminatory voter suppression tactics, thereby giving more Americans the chance to exercise their right to vote. Similarly, the proposed Voting Rights Restoration Act seeks to make voting more accessible for previously incarcerated individuals by eliminating the obstacles that are prevalent in our current laws. Congress tried to address racial discrimination in voting through the Voting Rights Act of 1965, but criminal disenfranchisement remains an apparatus of oppression in a criminal justice system that disproportionately affects people of

²⁷⁰ Breen, “Class Lecture.”

²⁷¹ Breen, “Class Lecture.”

²⁷² Breen, “Class Lecture.”

²⁷³ Breen, “Class Lecture.”



color.²⁷⁴ For this proposed Act to have a broad application to all previously incarcerated Americans, it should be a federal law enacted by the United States Congress. The hypothetical passage of the Voting Rights Restoration Act would illuminate America's precious norms of democratic participation and equality under the law.

Since there is no existing federal legislation and individual states are adopting radically different voting laws, there is a great disparity in the voting rights that formerly incarcerated Americans receive.²⁷⁵ Part of this inconsistent application of criminal disenfranchisement laws stems from the Supreme Court of the United States' decision in *Richardson v Ramirez* (1974). In this case, three men who had served time for felony convictions in California sued the state for the right to vote by alleging that the state's policies denied them the right to equal protection guaranteed under the U.S. Constitution's 14th amendment.²⁷⁶ The Court ruled in favor of California, stating that the Equal Protection Clause does not prohibit disenfranchisement policies and that Section 2 of the 14th Amendment allows for states to deny voting rights "for participation in rebellion, or other crime."²⁷⁷

However, the Court's interpretation of the Equal Protection Clause in *Richardson* is inconsistent with the court's previous decision in *Harper v. Virginia Board of Elections* (1966) where the Court found that "the Equal Protection Clause is not shackled to the political theory of a particular era."²⁷⁸ Rather, it "draws much of its substance from changing social norms and evolving conceptions of equality."²⁷⁹ The

²⁷⁴ Chung et al., "Voting Rights."

²⁷⁵ Chung et al., "Voting Rights."

²⁷⁶ *Richardson v. Ramirez*, 418 U.S. 24 (1974).

²⁷⁷ *Richardson v. Ramirez*, 418 U.S. 42 (1974).

²⁷⁸ *Harper v. Virginia Bd. of Elections*, 383 U.S. 669 (1966).

²⁷⁹ Tribe, Laurence H. *American Constitutional Law* . (2nd ed.) ed., Foundation Press, 1988.



Court's inconsistent reasoning on criminal disenfranchisement laws places more authority in the hands of state legislatures who continue to limit the rights of formerly incarcerated Americans.²⁸⁰ This should be an incentive for a law that is nationally applicable by Congress' enactment as well as enforced by the Department of Justice. The proposed Voting Rights Restoration Act ought to be enacted federally so that every formerly incarcerated American can participate in the electoral process, regardless of the state in which they live.

IV. A Message to Lawmakers

While the hypothetical Voting Rights Restoration Act is a law for fundamental rights and equality, opponents of this legislation might label the statute as too "soft" on crime. Lawmakers could argue that felons ought to be restricted from voting as a means of punishment for the crime(s) they committed.²⁸¹ However, this article argues that it is redundant, cruel, and unjust to deprive formerly incarcerated persons of an essential right that all Americans are entitled to after they have already been punished. Additionally, if lawmakers want to prevent more crimes from occurring, they should endorse the Voting Rights Restoration Act. The proposed law reintegrates formerly incarcerated individuals back into their communities, preventing them from repeating their past mistakes.

A Sentencing Project study concluded that "among individuals who had been arrested previously, 27 percent of non-voters were rearrested, compared with 12 percent of voters."²⁸² Lawmakers should also support the proposed statute

²⁸⁰ Chung et al., "Voting Rights."

²⁸¹ Clegg, Roger. "There Are Good Reasons for Felons to Lose the Right to Vote." The Heritage Foundation. Accessed May 26, 2023. <https://www.heritage.org/election-integrity/commentary/there-are-good-reasons-felons-lose-the-right-vote>.

²⁸² Uggen et al., "Locked out 2020."



because “a clear majority of U.S. residents support voting rights for citizens who have completed their sentence.”²⁸³

Ultimately, the constituents of politicians are supportive of formerly incarcerated individuals exercising their democratic right to vote in elections, which should be an incentive for lawmakers to support this proposed super-statute.

A 2018 Pew Research Center survey titled “Re-enfranchisement for Those Convicted of Felonies” found that a majority of both Democrats and Republicans support re-enfranchisement.²⁸⁴ The survey demonstrates that there is a strong bipartisan sentiment regarding this issue, which is another reason why lawmakers ought to endorse the aforementioned act. Before voting against the suggested Voting Rights Restoration Act, opposing lawmakers should reconsider their decision based on the law’s fairness, the positive impacts of prisoner reintegration, and the bipartisan support amongst Americans for re-enfranchisement.

In closing, the Voting Rights Restoration Act illuminates the fundamental American principle that every citizen should be able to vote. The proposed super-statute would not only seek to stop the disenfranchisement of formerly incarcerated individuals, but would also specifically aid communities of color who are disproportionately affected by the criminal justice system.

The fight for expanding voting rights and criminal justice reform is not a new endeavor for lawmakers. In fact, the passages of the Voting Rights Act of 1965, the First Step Act, and many other laws have enforced the ideas of civic

²⁸³ Uggen et al., “Locked out 2020.”

²⁸⁴ Bialik, Kristen. “How Americans View Some of the Voting Policies Approved at the Ballot Box.” *Pew Research Center*, Pew Research Center, 2 Oct. 2020, <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.



participation and voting equality under the law. The Voting Rights Restoration Act seeks to promote these precious norms by nationally permitting formerly incarcerated people to vote once they have completed their sentence, are on parole, or are serving probation. This proposed legislation reflects civic republicanism and positive liberty in its efforts to make the democratic system a more inclusive, consistent, and accessible space for previously incarcerated people. Now is the time for lawmakers to be brave and support a bill that will reinforce the United States' commitment to a more equal and ethical criminal justice system.²⁸⁵

²⁸⁵ This op-ed was authored in the Spring of 2022. As of 05/18/2023, Senator Benjamin L. Cardin (D-MD) introduced the [Democracy Restoration Act of 2023](#). Senator Cardin's Act would restore voting rights to [5.8 million](#) formerly-incarcerated Americans;

"S.1677 - 118th Congress (2023-2024): Democracy Restoration Act of 2023." Congress.gov, Library of Congress, 18 May 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1677>;

"Democracy Restoration Act." Ben Cardin U.S. Senator for Maryland: Press Release, 10 April 2014, <http://www.cardin.senate.gov/press-releases/democracy-restoration-act/#:~:text=The%20Democracy%20Restoration%20Act%20would,back%20living%20in%20their%20communities>.



Bibliography

- Bialik, Kristen. “How Americans View Some of the Voting Policies Approved at the Ballot Box.” *Pew Research Center*, Pew Research Center, 2 Oct. 2020, <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.
- Breen, Daniel. 221LGLS: Civil Rights and Civil Liberties: Legislative. 24 January. 2022, Brandeis University, Waltham. Class Lecture.
- Cardin, Ben. “Democracy Restoration Act.” Ben Cardin U.S. Senator for Maryland: Press Release, 10 April 2014, <http://www.cardin.senate.gov/press-releases/democracy-restoration-act/#:~:text=The%20Democracy%20Restoration%20Act%20would.back%20living%20in%20their%20communities.>
- Chung, Jean, and Amy Fetting. “Voting Rights in the Era of Mass Incarceration: A Primer.” *The Sentencing Project*, 3 Sept. 2021, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.
- Clegg, Roger. “There Are Good Reasons for Felons to Lose the Right to Vote.” The Heritage Foundation. <https://www.heritage.org/election-integrity/commentary/there-are-good-reasons-felons-lose-the-right-vote>.
- “Criminal Disenfranchisement Laws across the United States.” *Brennan Center for Justice*, <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states>.
- Eskridge, William N., and John Ferejohn. Super-Statutes , <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1108&context=dlj>
- Potyondy, Patrick. “Felon Voting Rights.” *Felon Voting Rights*,



<https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

Smith, Ed. "Marijuana Deep Dive: State Policy Updates."

Marijuana Deep Dive | State Policy Updates,

<https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>.

Tribe, Laurence H. *American Constitutional Law*. (2nd ed.) ed., Foundation Press, 1988.

Uggen, Chris, and Amy Fettig. "Locked out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction." *The Sentencing Project*, 13 Aug. 2021, <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

Legal Documents and Cases Cited

Constitution of the United States.

<https://constitution.congress.gov/constitution/>.

Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966)

"*Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966)."

Justia Law,

supreme.justia.com/cases/federal/us/383/663/.

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

"*Richardson v. Ramirez*, 418 U.S. 24 (1974)." *Justia Law*,

supreme.justia.com/cases/federal/us/418/24/.

"S.1677 - 118th Congress (2023-2024): Democracy

Restoration Act of 2023." *Congress.gov*, Library of Congress, 18 May 2023,

<https://www.congress.gov/bill/118th-congress/senate-bill/1677>.

