

To: Henry Calvin Johnson Jr., U.S. Representative, GA 4th Congressional District

From: Audrey Wheeler

Re: Recommendations to Decrease Criminal Disenfranchisement

Date: November 15, 2020

Problem Statement

Criminal disenfranchisement is a tragic result of mass incarceration and affects 5.2 million Americans today (Uggen, 2020). One of the most publicized presidential elections with the record-breaking voter turnout occurred in 2020, yet millions of Americans are still ineligible to vote. With voting rights being so prevalent in this time, it is of high importance that these disenfranchisement laws be addressed and reformed. Congressman Johnson, it is crucial that those with felony convictions face equal and protected voting rights, as these citizens are predominantly ones that have been historically oppressed and underrepresented, and it is important that they practice their constitutional right to elect officials into office that can work to end the cyclical trends of our justice system.

Background

Voting rights in America have an extensive and overtly discriminatory history. The reconstruction era following the end of the civil war was a time of monumental change for civil rights in America. The 13th and 14th amendments granted African American men freedom from enslavement and provided them with citizenship. Closely following was the 15th amendment, granting African American men the right to vote. With the addition of this amendment came many obstacles to participate in a democratic country for African Americans.

Despite the constitutional rights given, racist and discriminatory beliefs continued to embed in the structures of America. With the beginning of the Jim Crow era in 1877, many southern states began to adopt discriminatory voting practices, such as poll taxes and literacy tests (Danyelle Solomon, 2019). African Americans were not able to freely practice their right to vote without any arbitrary infringement until 1969 when the Voting Rights Act was passed. This act prohibited any policies that prevent citizens from voting on the basis of race, color, or ethnicity (Danyelle Solomon, 2019).

While the idea of voting rights being largely discriminatory may not seem to obviously tie to voting rights of those with criminal records, it can actually be connected quite simply. Our incarceration and justice system has been incredibly corrupt and unjust for decades, specifically targeting individuals in minority or low socioeconomic status groups. After constitutional amendments became ratified to prevent discriminatory voting practices, other institutions of America began to use their power to discredit and silence minorities. One of the most obvious and pivotal events for the criminal justice system was the War on Drugs.

In 1971, president Richard Nixon declared a war on drugs, proclaiming that drug addiction in America had become a major public health issue and actions must be implemented to address it (Lim, 2018). Nixon enforced strict drug laws, criminalizing hundreds of thousands of Americans that struggle with drug addiction or live in low income areas where drug culture is prominent. One of the policies enacted was the Anti Drug Abuse Act in 1986, which mandated a minimum sentence of 5 years for possession of 5 grams of crack cocaine and 500 grams of powder cocaine (Lim, 2018). Despite both of these falling under the same classification as highly addictive, hard

drugs, it is more likely that rich, white Americans are purchasing powder cocaine (Lim, 2018). On the other hand, 37% of crack cocaine consumers were African American, and were 3.5 times more likely to go to prison for such crimes compared to Caucasian Americans (Lim, 2018).

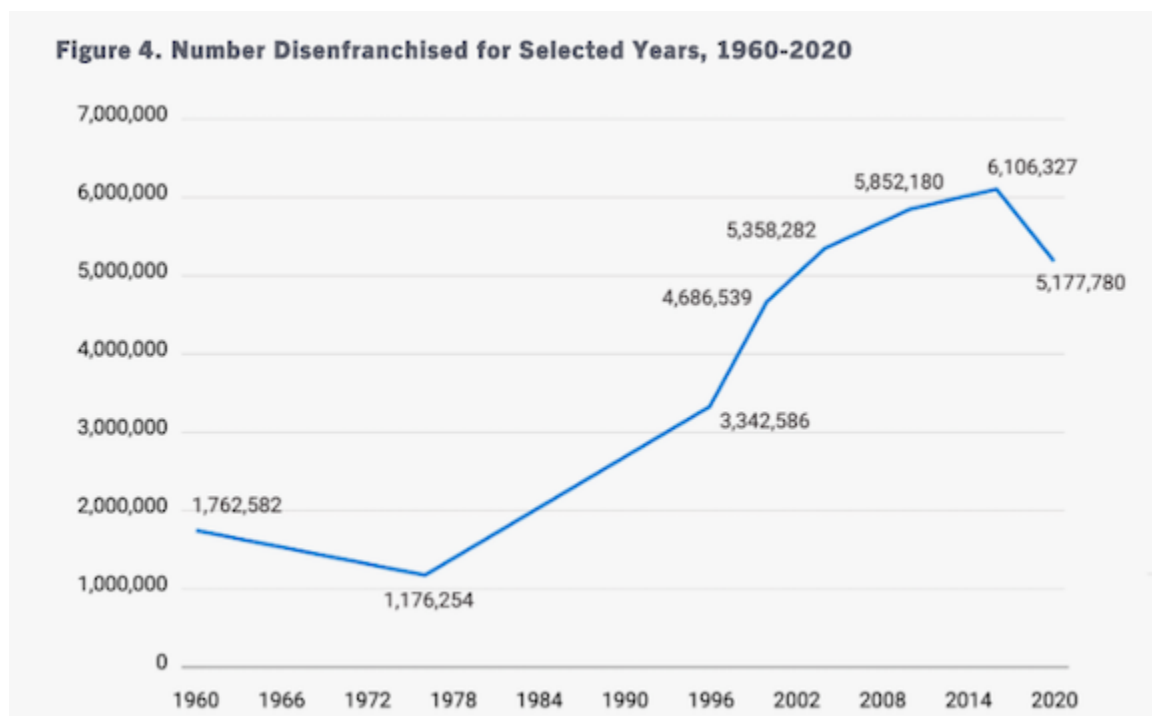
The statistics following the War on Drugs resulted in catastrophic increases of African American incarceration rates and drug offense rates. Between 1980 and 2000, the incarceration rate for drug offenses went from 15 inmates per 100,000 adults to 148 inmates per 100,000 adults and is responsible for 45% of the total incarceration growth rate (Blumstein & Beck, 1999). Similarly, the number of African American inmates rose by 261% and Hispanic inmates rose by 554%, compared to a measly 185% increase in white inmates (Blumstein & Beck, 1999). These numbers are wide indicators of how the war on drugs and austere drug charges disproportionately affect minorities and people of color and have continued to do so.

As of 2020, 2.3 million Americans are confined in federal, state, and local jails (Sawyer & Wagner, 2020), compared to the incarceration rate in the mid-1970s which was around 300,000 (Pfaff, 2015). Because of colossal incarceration rates, millions of Americans are ineligible to vote due to felony disenfranchisement laws and restrictions.

Felony disenfranchisement laws vary by state, with 11 states fully restricting voting rights for felons and ex-felons, depending on the crime, and 21 states that permit a restored vote after prison, parole, and probation (Potyondy, 2020). As of 2020, there are over 3.6 million Americans that are still on probation with many of them residing in states that deem them ineligible to vote (Uggen, 2020). Probation and parole are served outside of confinement, so returning citizens are living and being affected by their

communities but cannot politically participate in them. By losing their right to vote, they are losing the ability to practice civic engagement and participate in society.

Federal and state disenfranchisement laws are instilling discriminatory and marginalizing standards in our political and criminal institutions. African Americans and minorities are disproportionately affected by incarceration rates and are facing restrictions on their voting rights as a result. Below is a figure representing the rate at which disenfranchisement has grown between the years of 1960 and 2020.



(Uggen, 2020)

These increasing rates of disenfranchisement are disproportionately affecting communities of color. If this pattern continues, millions of Americans every year will continue to lose their right to vote and the cyclical trend of mass incarceration and institutionalized racism will continue to go unchanged. As seen in the recent 2020

presidential election, votes matter, and giving citizens the power to change partisan and inequitable political systems are what implement widespread change in this country.

Landscape

The key stakeholders that will be interested in and/or affected by changing this issue of disenfranchisement are politicians, formerly or currently disenfranchised citizens, and state courts.

Formerly and currently incarcerated citizens are individuals that will be most affected by state disenfranchisement laws. Despite any changes that may be made in the future in regards to disenfranchisement laws, citizens that have already lost the right to vote at any point in their life have already missed out on opportunities to implement change or participate in our political system. These individuals are ones that have experienced the issues of our justice system and political systems first-hand and will always carry the weight of its burden. Their main interest will be how federal and state governments will protect their voting rights and change legislation that keeps many incarcerated. Because of lack of education, lack of resources, and lack of contact to the political world, formerly incarcerated individuals may need proper education on their voting rights. It is important to educate and empower these individuals, as they have the right to engage in the political system and learn how they can influence change of the mistreatment they have experienced through voting.

Politicians will also be largely affected by changing disenfranchisement laws. Whether they be state representatives, congressmen, or presidential candidates, those that are running for any kind of office in government will experience higher voter turnouts, especially from constituents that have similar beliefs as them. In a survey of

500 different prisons and jails across the United States, the majority of inmates reported political views similar to that of Democratic politicians (Reutter, 2020). Many of these inmates had political priorities that determined who they would vote for, and many of them also reported that they would not vote in the future (Reutter, 2020). This is another reason why inmates and returning citizens need to be provided with the resources to educate themselves on current politics and public affairs. With millions of people disenfranchised in America today, regaining their right to vote may have radical changes on local, state, and federal elections.

State courts will also be impacted by disenfranchisement laws. As all states currently have different laws on disenfranchisement, reform will require legislation change. State courts also receive funds through case fees and other fines related to probation and parole. If voting restoration does not require completing fines and fees due to the court prior to voting, these payments may take longer to complete.

There are a few contributing factors if disenfranchisement laws were to change, consisting of political, social, and economic. One political factor is the incentive for politicians to gain more votes during elections. Our current political system is extremely bi-partisan which influences how politicians campaign and how citizens vote. African Americans and minorities are often constituents for democratic representatives, so if more returning citizens were to regain their right to vote then democratic candidates may receive more votes. Another political factor may be how far these radical changes will make it in the political system and how likely they will be passed. Republican ideology is more so on the more conservative side compared to democratic ideology, so if congress were to have a republican majority they may rule against making such

federal regulations on disenfranchisement laws because of their support of state sovereignty and limited federal involvement. Similarly, state courts, especially in red states, may rule in similar ways.

Social factors of disenfranchisement regulation and reducing drug crime sentences will be the social stigma of convicts, opposing views on prison reform, and division of voting rights opinions across the country. There are many opposing opinions in relation to law enforcement and the criminal justice system. A change in disenfranchisement laws may spark conflict in the conversation of the morality of people convicted of crimes and whether or not they should be able to engage in society by regaining their rights.

In terms of economic factors, there are a variety of effects a change in disenfranchisement laws would produce. There is a list of fines and fees individuals have to pay in order to restore their right to vote, and many states require all parole and probation fees, as well as any other fees related to their case, to be paid before an individual may restore their right to vote. If criminal disenfranchisement laws were to allow citizens to vote without completing these payments, the process of voting registration will be much quicker and less stressful.

Another factor that may influence change in disenfranchisement laws is the legality of making these changes. As stated with the political factors discussed above, under the 10th amendment states have the ability to make their own laws, so long as it is not prohibited by the federal government. Disenfranchisement laws are determined on a state-by-state basis, so it calls into question how likely legislation would change on both the federal and state level.

Options Analysis

It is important that we advocate for people that cannot politically advocate for themselves and push towards change in our political and justice systems that have excluded and discriminated against millions of Americans for centuries. There are a handful of options to implement change and allow citizens to participate in our democratic institutions. These options are to abolish mandatory minimum sentences, repeal disenfranchisement laws at the federal level, and change disenfranchisement laws at the state-level.

Option 1: Abolishment of mandatory minimums

This option refers to the abolishment of all mandatory minimum sentences. Because both federal and state legislatures have mandatory minimum sentencing guidelines, this option would require the federal government to repeal mandatory minimum sentences, prohibiting both state and federal court systems from applying them. This option would decrease federal spending on inmates serving long sentences, as it currently costs between \$34,000 to \$40,000 a year to incarcerate an individual (Federal Registrar, 2019). This option would also address the disproportionality of minority individuals with these convictions, with African Americans accounting for 28.9% and Hispanics accounting for 41.5% of mandatory minimum convictions in 2015 (USSC, 2015). Longer sentences also result in more difficulty during reentry. The prevalence of homelessness, unemployment, and poverty are high among the formerly incarcerated (Wagner, n.d.), most likely because of lost social and financial connections while incarcerated. Shorter sentences will result in quicker reentry, as well as completion of state requirements for voting registration. The significant disadvantage to this option is

that it does not first-handedly address the issue of disenfranchisement and it does not impact state legislation on disenfranchisement. The advantages of this option are that this legislation change would address significant discrimination against minorities in the justice system and aid in quicker reentry and restoration of voting rights.

Option 2: Federal repeal of disenfranchisement laws

This option refers to federal regulation of disenfranchisement laws to establish universal voting rights for all citizens. Criminal disenfranchisement is the highest form of voter suppression in our democracy and disproportionately affects minority populations. By giving states the power to establish their own laws concerning felon voting rights it further marginalizes and creates disparities between race and socioeconomic status. This option would not be an easy process, but there are a few ways the federal government could tackle this. Through litigation, the Supreme Court may argue that disenfranchisement laws are in violation of section 2 of the Voting Rights Act of 1965, which “prohibits voting practices or procedures that discriminate on the basis of race, color, or membership [of a minority group]” (U.S. Department of Justice, 2020), however, African Americans are incarcerated at more than five times the rate of whites (NAACP, n.d.), so there is an argument that disenfranchisement laws do in fact have discriminatory voting practices. There can also be arguments made in violation of the 14th amendment Equal Protections Clause, which states that punishments must not be arbitrary and serve some purpose towards criminal law (Hansen, 2005) and voting restriction does not have any direct relation to punishment of crime. However, this would require the overruling of *Richardson vs. Ramirez*, which the Supreme Court stated that denying felons or ex-felons the right to vote is not in violation of equal protection

(Hansen, 2005). This option, however, may not be out-of-reach considering this case occurred in 1974 while the war on drugs was occurring, so prejudice towards the criminalization of certain races and minority groups may have played a role in the decision.

Option 3: State-level change of disenfranchisement legislation

The third option is to work towards changing disenfranchisement at the state level. This option would consist of state-level politicians, such as congressmen and state representatives bringing forth the idea of altering or banning disenfranchisement laws within their state. Currently, the District of Columbia, Maine, and Vermont allow felons to vote both inside and outside of confinement (Potyondy, 2020). In 16 states, felons lose their right to vote only during incarceration; in 21 states, felons cannot vote until they are released and complete parole and/or probation; in 11 states, felons lose their right to vote indefinitely, dependent on the crime (Potyondy, 2020). In 2001, the governor of Connecticut signed into law a bill that restored voting rights to felons on probation (Uggen, 2016). This law alone restored voting rights to 36,000 people. States would benefit from restoring voting rights because it would create higher voter turnouts, increase civic engagement, and allow their constituents to participate in democratic institutions. The disadvantage of this option is that many states still uphold full prohibition of felon disenfranchisement, so full restoration of voting rights will most likely require multiple changes in legislation over time. The advantage of this option is getting the attention of state officials is less of a hurdle compared to federal officials. State legislation change may also get the attention of other states, resulting in change across the nation.

	Option 1	Option 2	Option 3
Political Feasibility	Low	Low	High
Equity	Medium	High	Medium
Effectiveness	Low	High	High

Recommendation: Option 3

Option 3 is the recommended option to restore voting rights to the disenfranchised. This option is the most administratively feasible and does not require change in federal legislation. It is also the option that increases equity in voting rights, however more so at the local level rather than national. This option would also have a high level of effectiveness at changing disenfranchisement laws because it is more likely that state legislation changes rather than federal legislation. This option would create the most change for the disenfranchised at a local level which would reflect the political environment of communities and ignite reform from the ground up.

Option 1 was not chosen because it does not directly connect to the restoration of voting rights, therefore it has low effectiveness. This option is also less politically feasible compared to option 3, as mandatory minimum sentences are applied at both the state and federal level. While this option would save an immense amount of money for both federal and state governments, there is not much evidence that the abolishment of mandatory minimums would aid in decreasing the population of disenfranchised individuals, making it less equitable for the issue at hand. Option 2 was not chosen because it also has low political feasibility. This option would have great effectiveness at restoring voting rights, however previous state and federal court cases have brought

forth evidence and reasoning against disenfranchisement laws but to no avail. This option would also have high equity, however the political feasibility is low as it has been previously proven that it is highly unlikely this option would make it past litigation processes.

In order for option 1 to be a successful plan, state officials must be aware of the issues related to criminal disenfranchisement. States including Florida, Iowa, and Kentucky must begin advocating for restoration of voting rights as these states prohibit some felons from ever restoring their right to vote. This process will require congressmen to bring forward the issue and propose legislation that restores some of these rights. For this to be effective, data of incarceration rates and the disenfranchised population must be provided as evidence that this issue is disproportionately affecting groups within the population. This process will not be easy as every state is on a different page regarding criminal disenfranchisement, but making constant and small legislative changes will increase the chances of moving towards reform.

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