SB

7

25-LS0100\O
Bullard
3/16/07

CS FOR SENATE BILL NO. 7(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DAVIS

A BILL

FOR AN ACT ENTITLED

"An Act relating to the voting rights of felons."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 15.05.030 is repealed and reenacted to read:

Sec. 15.05.030. Loss and restoration of voting rights. (a) A person convicted of a felony involving moral turpitude and incarcerated for that crime may not vote in a state, federal, or municipal election from the date of the conviction through the date of the unconditional discharge of the person if

(1) the conviction was of an unclassified or class A offense under the law of this state;

(2) the conviction was under the law of another jurisdiction of an offense with elements similar to those of an unclassified or class A offense under the law of this state; or

(3) the person has previously been convicted of a felony involving moral turpitude.

(b) On the unconditional discharge of a person prohibited from voting under

(a) of this section, the commissioner of corrections shall provide the person with written notice of the voter registration requirements and procedures. The person may register to vote on the day after the day the person is discharged.

(c) A person not described in (a) of this section who is convicted of a felony involving moral turpitude and incarcerated for that crime may not vote in a state, federal, or municipal election until released from incarceration. On release of the person from incarceration, the commissioner of corrections shall provide the person with written notice of the voter registration requirements and procedures. The person may register to vote on the day after the day the person is released.

(d) The commissioner of corrections shall notify the director of persons unconditionally discharged or released from incarceration and entitled to register to vote under (b) or (c) of this section.

*** Sec. 2.** AS 15.07.135 is amended to read:

Sec. 15.07.135. Cancellation of registration of incarcerated [CONVICTED] persons. (a) **The commissioner of corrections shall notify the director of** [THE DIRECTOR SHALL MAKE REASONABLE EFFORTS TO OBTAIN] the names of persons convicted of a felony involving moral turpitude **and incarcerated for that crime**. Promptly after receipt of evidence satisfactory to the director that a person has been convicted of a felony involving moral turpitude **and incarcerated for that crime**. the director shall cancel the registration of the person.

(b) Upon presenting proof that a person whose registration was canceled under (a) of this section **is again eligible to vote** [HAS BEEN UNCONDITIONALLY DISCHARGED FROM CUSTODY], the person may register. The director shall make reasonable efforts to verify the unconditional discharge of persons **as described by AS 15.05.030(b) or release from incarceration of persons as described by AS 15.05.030(c)** applying for registration under this subsection.

*** Sec. 3.** AS 33.30.241(a) is amended to read:

(a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a **federal,** state, or municipal election until the person's

(1) unconditional discharge **as described by AS 15.05.030(b); or**

(2) release from incarceration as described by AS 15.05.030(c).

Senator Hollis French

Capitol Room 504
465-3892
465-6595 fax

MEMORANDUM

Date: March 15, 2007

To: Leg Legal

From: Cindy Smith

RE: Senate Bill 7

Please amend the "L" version of LS0100 as follows:

On page 2, line 15 to delete "The director shall make reasonable efforts to obtain" and replace with "The commissioner of corrections shall notify the director of"

BW see
See
CS

Amend page 2, line 15 to delete "The director shall make reasonable efforts to obtain" and replace with "The commissioner of corrections shall notify the director of"

PURPOSE: to make this language consistent with the language immediately above in (D) – this is how the process actually works.

REQUESTED BY: Whitney Brewster, Division of Elections

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Office of Senator Bettye Davis

DATE: January 28, 2008

Senator Hollis French, Chairman, Senate Judiciary Committee

RE: Request for Hearing – CSSB 7 25-LS0100\L as amended – Voting Rights for Felons

Dear Senator French,

Senator Davis requests that CSSB 7, version "L" as amended be heard before the Senate Judiciary Committee. Per the minutes of the last hearing before the Senate Judiciary Committee on March 15, 2007, the "L" version of SB 7 was held to prepare amended language to reflect the request of the Division of Elections to place the onus for obtaining the names of persons convicted of a felony on the Department of Corrections (DOC) rather than on the Director of Elections, because DOC officials already have access to that information. Per the minutes the new provision under amendment #1 would read: "the Commissioner of Corrections shall notify the director of. . . ." The committee agreed to incorporate this provision in the bill and present it to the Committee in writing before making a final determination. The purpose of this hearing is to approve that amendment and hopefully move the bill out of committee.

Included in the bill package are:

1. Sponsor Statement
2. The most recent version of the bill, CCSB 7 - 25-LS0100\L - to be amended per 3/15/07 Senate Judiciary hearing.
3. Minutes from March 15, 2007 hearing with decision to amend 25-LS0100\L.
4. Minutes from the March 5 and February 22, 2007 hearings which provide background and professional testimony concerning this bill.

The ACLU has indicated an interest in testifying, if you have time or you think it would be useful for an update nation-wide. Passing SB 7 would give a refreshing message in an election year that the Alaska Department of Corrections welcomes changes in law to help rehabilitate prisoners, while it would cost nothing with a zero fiscal note. Please e-mail or post the amended "L" version when available and contact our office concerning a hearing date well in advance.

Sincerely,

Thomas S. Obermeyer
Legislative Administrative Assistant

25-LS0100\L
Bullard
3/14/07

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(1) the conviction was of an unclassified or class A offense under the law of this state;

(2) the conviction was under the law of another jurisdiction of an offense with elements similar to those of an unclassified or class A offense under the law of this state; or

(3) the person has previously been convicted of a felony involving moral turpitude.

(b) On the unconditional discharge of a person prohibited from voting under

(a) of this section, the commissioner of corrections shall provide the person with written notice of the voter registration requirements and procedures. The person may register to vote on the day after the day the person is discharged.

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* **Sec. 2.** AS 15.07.135 is amended to read:

Sec. 15.07.135. Cancellation of registration of <u>incarcerated</u> [CONVICTED] persons. (a) The director shall make reasonable efforts to obtain the names of persons convicted of a felony involving moral turpitude **<u>and incarcerated for that crime</u>**. Promptly after receipt of evidence satisfactory to the director that a person has been convicted of a felony involving moral turpitude **<u>and incarcerated for that crime</u>**, the director shall cancel the registration of the person.

(b) Upon presenting proof that a person whose registration was canceled under (a) of this section **<u>is again eligible to vote</u>** [HAS BEEN UNCONDITIONALLY DISCHARGED FROM CUSTODY], the person may register. The director shall make reasonable efforts to verify the unconditional discharge of persons **<u>as described by AS 15.05.030(b) or release from incarceration of persons as described by AS 15.05.030(c)</u>** applying for registration under this subsection.

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(a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a **<u>federal,</u>** state, or municipal election until the person's

<u>(1)</u> unconditional discharge **<u>as described by AS 15.05.030(b); or</u>**

<u>(2) release from incarceration as described by AS 15.05.030(c)</u>.

Committee Minutes

Mar 15, 2007

SB 7-FELONS' RIGHT TO VOTE

1:42:25 PM

CHAIR FRENCH announced the consideration of SB 7 and solicited a motion to adopt Version \L committee substitute (CS).

SENATOR HUGGINS motioned to adopt Version \L CS for SB 7, labeled. 25-LS0100\L as the working document.

CHAIR FRENCH explained that the CS distinguishes among felons according to the category of crime for which they were incarcerated. The categories are broken out on page 1, lines 8-11. The idea is to continue under the existing system, which is to not restore the rights of released felons if they have been convicted of an unclassified felony or a class A felony. Also, voting rights would not be restored to repeat felons who are released from prison.

In summary the policy call is that someone is able to vote upon release from incarceration after having served time for a lower level felony. Someone who has been convicted of rape, robbery, or murder would have to complete the requirements for unconditional discharge before regaining the right to vote. The other sections are conforming amendments to make the changes work for the Division of Elections. Under the current draft there would be two classes of felons: one group that is restricted and another that is able to vote upon release.

CHAIR FRENCH drew attention to page 2, line 15 and said the director of the Division of Elections has asked the committee to consider amending subsection (a) so that the onus for obtaining the names of persons convicted of a felony is placed on the Department of Corrections (DOC) rather than on the director of elections. The argument is that DOC officials already have access to that information.

CHAIR FRENCH motioned to adopt Amendment 1. On page 2, line 15, delete "The director shall make reasonable efforts to obtain" and insert "The commissioner of corrections shall notify the director of".

1:51:19 PM

SENATOR WIELECHOWSKI objected to ask if the intention is to say that "the commissioner of corrections shall notify the director and the director shall make reasonable efforts to obtain the names".

CHAIR FRENCH said the Division of Elections suggested the language.

1:54:08 PM

CINDY SMITH, Aide to Senator French, explained that both aren't needed; the Department of Corrections already electronically transmits names and other identifiers to the Division of Elections. The change is consistent with subsection (d) above.

DWAYNE PEEPLES, Deputy Commissioner, Department of Corrections stated that the department has the ability to provide the Division of Elections with names and identifiers of persons who were convicted and released. DOC provides similar information to the Permanent Fund Dividend Corporation for the purpose of seizing dividend checks from felons.

SENATOR WIELECHOWSKI referenced page 3, line 17, and asked if everything else in subsection (a) remains the same.

MR. SMITH replied nothing else is changed.

SENATOR WIELECHOWSKI asked to see the provision incorporated in the bill before making a final determination.

CHAIR FRENCH found that to be fair and asked if he maintained his objection.

SENATOR WIELECHOWSKI removed his objection.

CHAIR FRENCH announced that Amendment 1 is adopted.

1:56:31 PM
MICHAEL MACLEOD-BALL, Executive Director, ACLU of Alaska, identified himself.

CHAIR FRENCH asked if he foresees any constitutional problems associated with stratifying and changing the rights of felons according to the seriousness of the offense for which they were convicted.

MR MACLEOD-BALL said he did not. There isn't a lot of guiding case law, but generally the legislature and the courts have some authority to define terminology that is used in interpreting constitutional provisions. The intent in SB 7 is essentially no different than what is already in statute. To the extent that the current statute is constitutionally permissible, this should be as well.

CHAIR FRENCH asked if he has any other observations about the bill.

MR. MACLEOD-BALL articulated the view that the original version of the bill was preferable from a policy perspective because it would have allowed more felons onto the voting rolls. Nonetheless, this is a step in the right direction, he stated.

SENATOR HUGGINS asked where Alaska would stand in terms of voting rights relative to other states.

MR. MACLEOD-BALL summarized the statistical information that was given during the previous hearing and said this would place Alaska in the middle.

SENATOR HUGGINS asked if Alaska is currently in a group with 21 other states.

MR. MACLEOD-BALL said, "I believe that large number in the middle brings felons back onto the voting rolls at some time and there are a variety of distinctions in the states as to when they're brought back on the rolls or for what crimes they lose the voting rights in the first place. And so I viewed the change that's being proposed here as being just a variation within that group."

1:00:55 PM
CHAIR FRENCH announced he would hold SB 7 to prepare the amended language and for consideration by the full committee.

Committee Minutes

Mar 05, 2007

SB 7-FELONS' RIGHT TO VOTE

CHAIR FRENCH announced the consideration of SB 7.

1:14:24 PM

THOMAS OBERMEYER, aide to Senator Davis, read the sponsor statement into the record as follows:

> It is essential to a democracy that every citizen who wishes to be a productive member of society be afforded the right to vote. Art. 1, Sec. 11 of the Alaska Constitution provides that criminal administration is based on the "principle of reformation" in addition to protecting the public, community condemnation of the offender, and the rights of victims. Political participation helps with rehabilitation and reintegration into the community.
>
> SB 7 grants felons the right and opportunity to vote if they wish to exercise that right immediately after having served their time. In Alaska 5,000 Alaskans have lost their right to vote because of felony convictions. Current Alaska law bars the vote to persons convicted of felonies of moral turpitude until the expiration of a post-incarceration period of parole or probation, which is often years after they have reentered society as productive citizens and tax payers. While Vermont and Maine do not disenfranchise felons at all, other states are reforming their laws to allow felons to vote either after release (13 states), after release and completion of probation or parole (21 states including Alaska), or permanent disenfranchisement to certain felons (14 states).
>
> Harsh sentencing laws over the past 30 years have allowed the prison population to burgeon, while reducing the rehabilitative model to an anachronism. Over 4.7 million Americans or 1 in 43 adults cannot vote due to felony convictions, with 1/3 or more of them due to alcohol and drug offenses. Of those incarcerated in Alaska 47 percent are white; 37 percent Alaska Native; 11 percent African American; 3 percent Hispanic; and 3 percent Asian/Pacific Islanders. Minority felons are disproportionately disenfranchised under current law and the harm of continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society.
>
> SB 7 will help rehabilitate released felons by welcoming them back into the voting community immediately after release and encouraging them to become good citizens. Studies show that felons who vote have a lower rate of recidivism. SB 7 will streamline the process by which the state restores voting rights to felons and thus will save money.

1:19:17 PM

SENATOR WIELECHOWSKI recapped that if someone is released from prison and is still on probation, that person is not eligible to vote. Under SB 7 that person would be entitled to vote upon release.

MR. OBERMEYER said correct and a primary reason for the bill is that enfranchisement is rehabilitative. Get them back into the

community because they are with us anyway. he said.

SENATOR WIELECHOWSKI asked how house arrests would figure in.

MS. OBERMEYER replied the Department of Corrections and the Division of Elections would need to establish rules to handle such circumstances.

CHAIR FRENCH opened public testimony.

1:41:22 PM
MARGARET PUGH, Former Commissioner of the Department of Corrections and retired state employee, stated strong support for SB 7 and described the issue as emotional for some and political for others. Amendment 14 of the US Constitution gives each state the right to determine who votes and who does not vote and clearly there is not just one American way to restore voting rights, she stated.

Some states never restore the right; some restore the right upon petition of the governor for a pardon; some restore the right after incarceration regardless of probation or parole; and some states, like Alaska, restore the right after probation and parole have been served. She noted that in Alaska almost all felons have some period of probation and/or parole following release from incarceration.

MS. PUGH said American democracy is an evolving process. In the early days the elite governed and as a result disabilities were visited on women, slaves, illiterates, and non-property owners. These legal disqualifications continued for years and some states, notably in the south, instituted other disabilities such as the poll tax. Ms. Pugh relayed that her great-grandfather had to pay poll taxes and her great-grandmother could not buy her own sewing machine.

The purpose of these disabilities was clearly discriminatory and fortunately most of these practices have been overcome. She pointed out that today her great-grandmother could purchase a sewing machine on her own and she could vote. Today there is no more slavery, there are no more poll taxes, voters are not required to be literate, and vision or hearing is not a requirement. However, she said, a disability that many states have not revisited, is the one that is visited upon convicted felons.

MS. PUGH said she views SB 7 as a first step because all it does is restore voting rights to persons convicted of felonies upon release from custody; they could vote before probation and parole is complete. Because the Alaska constitution says that voting rights are surrendered by people convicted of felonies of moral turpitude, and because most felonies in Alaska are, by definition, considered to be crimes of moral turpitude, SB 7 would not restore voting rights to very many people, she stated.

SB 7 does not restore other forfeited civil rights. For example a convicted felon on probation and/or parole must submit to search of a person, home, or property of any sort without protection of a warrant; must provide urine samples; must continue treatment; can not work in certain fields; and can not bear arms.

MS. PUGH pointed out that restoring voting rights does not present a threat to any person, place or thing. This is a very small thing for the legislature to do, she said, but it's a huge leap for American democracy. In her view the current practice is blatant racial discrimination and it is time for change.

1:50:58 PM
SENATOR McGUIRE agreed with the previous testimony and said she has never understood why restoring a felon's right to vote would be problematic.

She asked Ms Pugh to comment on testimony last year from the Department of Corrections suggesting that it would be difficult to maintain a registry of the different conditions of release to show the people who have their voting rights restored and those who do not.

MS. PUGH replied it is an issue, but the Department of Corrections (DOC) and the Permanent Fund Division already exchange data bases for forfeited permanent fund dividends so the technology is available for DOC and the Division of Elections to exchange data. There will always be a few issues, but there is no reason they can't be overcome, she said.

SENATOR McGUIRE asked if she believes that rehabilitation is still a tenet of the penal system. If so, how large a part does restoring voting rights play in the rehabilitation process.

MS PUGH said the very definition of correction means to change and correct and not punish. "I believe that corrections should have treatment programs of all types and offenders should be able to vote when they are released from custody," she stated.

1:57:14 PM

NATALIE LANDRETH, Staff Attorney, Native American Rights Fund (NARF), stated strong support for SB 7. The most critical reason is that the current law disproportionately impacts Alaska Natives because they comprise a disproportionate part of the felon population. In 2004 a study by the Alaska Judicial Council concluded: that Alaska Natives were overrepresented in the felon population; that Alaska Natives receive longer sentences than non-Natives; that Alaska Natives typically have lower per capita incomes than non-Natives and can not afford private attorneys; and that people with private counsel generally served less time in prison and on parole and were generally more successful in getting reduced charges.

MS LANDRETH said Alaska Judicial Council statistics highlight the following: 61 percent of all felons are male, almost 50 percent are under 30 years of age, 50 percent are Caucasian, 17 percent are Alaska Native, 61 percent have alcohol problems, 45 percent have drug problems, more than 33 percent have identifiable mental health problems, and almost 80 percent financially qualified for a public defender.

MS. LANDRETH, responding to a question from the state affairs hearing, relayed that "65 percent of felons were convicted of class C felonies with property crimes comprising 30 percent and drug crimes 20 percent. Murder and sexual assault by the way are only 2 percent and 12 percent of these felons respectively."

In conclusion she said that the people most likely to benefit from the bill are young men who need help reintegrating into society. Re-enfranchising these people after they have served their sentence is a positive and empowering way to achieve that.

2:02:16 PM

MICHAEL MACLEOD-BALL, Executive Director, American Civil Liberties Union of Alaska (ACLU), noted that he had submitted written testimony. He asked the committee to think of the issue of restoring voting rights in the larger context of the right to rehabilitation under the state constitution. The people who would benefit from this law are the ones that the court system has said are ready and worthy of reentering society. The scope and context of rehabilitation should encompass the notion of giving these people a vote of confidence to exercise a basic right of citizenship - the right to vote.

He suggested committee members refer to the December 2006 issue of the Alaska Law Review. It contains a relevant article by Christopher R. Murray titled "Felon Disenfranchisement in Alaska and the Voting Rights Act of 1965."

2:05:24 PM

DANIEL LEVITAS, American Civil Liberties Union (ACLU), said he submitted written testimony. His work focuses on the issue of felon enfranchisement and in the last 10 years 16 states have taken positive steps in this direction. Of the 11,000 Alaskans who are disenfranchised as a result of felony convictions, roughly 54 percent would be reenfranchised if SB 7 were to pass.

MR. LEVITAS said the issue enjoys bipartisan support because it is a fundamental issue of democratic participation, rights and community safety. It's axiomatic that giving former offenders a stake in society will make them feel less inclined to repeat their behavior. In fact, one study shows a clear link between voting behavior and lower re-arrest rates.

MR. LEVITAS echoed Ms. Pugh's point that SB 7 simply restores the right to vote in a narrow and specific context. It does not restore full civil rights to people on parole/probation or parole. In conclusion he said SB 7 will reduce risks to communities by promoting the reintegration of ex-offenders.

CHAIR FRENCH noted that Deputy Commissioner Peoples sent a letter dated March 1 responding to a question raised at the previous hearing. The data shows the numbers of probationers and parolees whose last conviction was a felony crime of moral turpitude. Unclassified felonies are the most serious and C felonies the least.

Unclassified Felony:	101
A Felony:	200
B Felony:	728
C Felony:	1,640

He asked Mr. Levitas if he is aware of any state that conditions the right to vote upon the severity of the crime.

MR. LEVITAS replied the majority of states use the simplest scheme of not distinguishing between particular crimes, but it is not unheard of to make a distinction and set aside enfranchising people who commit violent crimes or crimes against persons until release from probation or parole. The patchwork approach can be quite confusing and perhaps it contributes to the fact that most felons who are released from jail believe they can never vote again, he said.

2:19:47 PM

CHAIR FRENCH found no further public testimony and announced he would hold SB 7 in committee to look at possible modifications.

At ease

Committee Minutes

Feb 22, 2007

SB 7-FELONS' RIGHT TO VOTE

CHAIR McGUIRE announced the consideration of SB 7.

9:18:00 AM

SENATOR BETTYE DAVIS, Alaska State Legislature, said her aide would introduce the bill.

THOMAS OBERMEYER staff to Senator Bettye Davis, described the bill as an opportunity for a second chance to reenter society for felons. It is of great significance to Alaska because there are over 5,000 felons who have been disenfranchised and a great many are minorities, which should bring cause for alarm. He read a statement from Justice Marshall, as follows:

> It is doubtful whether a state can demonstrate either a compelling or rational policy interest in denying former felons the right to vote Ex-offenders have already paid their debt to society. They are as much affected by the actions of government as any other citizen and have as much of a right to participate in governmental decision making. Furthermore, the denial of a right to vote to such persons is hindrance to the efforts of society to rehabilitate former felons and convert them into law abiding and productive citizens.

MR. OBERMEYER said some states allow felons to always vote, but SB 7 just asks that felons be allowed to vote once they are released from prison instead of waiting until after probation and parole. It would require some change in the Department of Corrections (DOC) and the Division of Elections to recognize those affected by the bill. There are 5.5 million people prohibited from voting in the United States now. "These people are coming back to society! America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life." He noted that 47 percent of those incarcerated in Alaska are Alaska Native and 11 percent are African American. This is the last form of disenfranchisement in the United States. Alaska's laws weren't enacted in a discriminatory process so are likely constitutional, he said.

9:22:47 AM

CHAIR McGUIRE surmised that the bill doesn't allow a felon to vote while in prison. She asked what district they would vote in, and she assumed it would be wherever they took up residency.

MR. OBERMEYER spoke with the Division of Elections and the lieutenant governor and said it could be done simply and without added costs. Instructions could be put on a website.

CHAIR McGUIRE asked why the original law was enacted.

MR. OBERMEYER said Alaska likely followed what other states did. He said two states allow felons to vote all the time, some states use the language in SB 7, about 21 states have the same law Alaska has, and some never allow felons to vote. He said some felons in Alaska don't know they are allowed to vote after probation. He said 600,000 felons re-enter society every year.

9:26:12 AM

CHAIR McGUIRE made a comment about non-felons who don't vote. She said she couldn't see why those who have paid their debt to society shouldn't be allowed to vote.

MR. OBERMEYER said disenfranchisement has a long history, but society is now rejecting practices that were formally accepted.

9:37:39 AM

SENATOR GREEN said she can't support this at all. The sentence comprises probation and parole when the felon is still under certain obligations. The loss of the ability to vote is part of the conviction, and it isn't over when they walk out the door.

SENATOR FRENCH said this is difficult. He is a former prosecuter and knows it is not easy to get convicted of a felony. He asked about how it will work for Alaska, and where the statistic of 5,000 felons comes from.

MR. OBERMEYER said he wasn't sure but about 47% are Native and 11 percent are African American. He said the Division of Elections doesn't oppose the bill. In response to Senator Green that this is part of the sentence, "it's my understanding that in the past there was opposition by the Department of Corrections because so many of these people were recidivists and they didn't want to go through the aggravation of trying to reestablish them on the rolls." It will be simpler with electronic data use. He said recidivism is a problem because of drug use, and there needs to be rehabilitation in the medical community and not just in prison. This is just one step in encouraging people to get back in society.

CHAIR McGUIRE asked if someone on probation would be a "bad voter." Some restrictions make sense, like contacting a victim or drinking, but encouraging positive things, like getting an education or voting-"I just can't see the other side of it."

9:32:12 AM

MR. OBERMEYER said a past argument is that felons would vote liberal.

CHAIR McGUIRE said she is trying to understand the policy.

SENATOR DAVIS asked if Senator French wanted more information.

SENATOR FRENCH said he wants to hear from the DOC to learn how many people this will effect.

SENATOR DAVIS said the department was contacted.

9:34:39 AM

JASON MOOLEY, Special Assistant, Office of Lieutenant Governor, said he is testifying for Whitney Brewster, the director of the Division of Elections. He said the division is not opposed to the bill. He asked how the DOC intends to notify the division when a voter has been incarcerated for a felony of moral turpitude and when individuals are released from prison so they can restore voting rights. He explained, in detail, the current process and the difficulties of information exchange between the DOC and the division. He noted that the committee substitute makes an important change in Section 1, which specifies that the DOC should funnel all notifications through the director.

9:40:11 AM

SENATOR FRENCH made a motion to adopt the committee substitute labeled, 25-LS0100\N, Bullard, as the working document. Hearing no objection, version N was before the committee.

CHAIR MCGUIRE said it is disturbing that some who should be able to vote still don't have that right because the information is not transmitted in a timely manner.

MR. MOOLEY said that is disturbing to his division as well.

9:41:27 AM

SENATOR FRENCH said it seems that the division should be wildly enthusiastic about this bill because of the clear distinction of a person behind bars and one who is not.

SENATOR GREEN asked if a felony involving moral turpitude is the only one that is restored and not the lesser felonies.

MR. MOOLEY said the lesser felonies don't fall under the moral turpitude label and don't lose the right to vote.

SENATOR FRENCH asked for the list of the lesser felonies.

MR. MOOLEY said felonies of moral turpitude are felonies that are wrong in and of themselves--murder and assault for example.

9:41:11 AM
CHAIR McGUIRE asked the other testifiers to confine their remarks to those that have not yet been made.

9:44:21 AM
MICHAEL MACLEOD-BALL, Executive Director, American Civil Liberties Union of Alaska (ACLU), said he submitted testimony. He asked the committee to think about who would get the right to vote as a result of SB 7. The Alaska constitution has a specific right of reform, which the courts have interpreted to include a right to rehabilitation. Rehabilitation is what incarceration is attempting to do, he stated. Parole and probation comes when someone plays by the rules and they ought to get the small reward of voting. "That's all part of this grand scheme that we have to try to reintegrate these offenders into society." He added that "if it's deemed to be better for society that somebody is reintegrated into society at a particular point in the sentence, shouldn't we also include with that the right to participate in civil society through the franchise?"

9:48:51 AM
SENATOR FRENCH asked how many individuals have been released and are still on probation or parole in Alaska.

DWAYNE PEEPLES, Deputy Commissioner, Department of Corrections, said there are 5,946 as of February.

SENATOR FRENCH asked for the average length of probation or parole and what kind of felonies occurred.

MR. PEEPLES said he will get that information to him.

CHAIR McGUIRE said the felonies of moral turpitude matter most to this bill. The list includes rioting, procession of gambling records, and "all kinds of things." She asked for that information and for demographic information.

MR. PEEPLES said locations are tracked, and he will try to develop a matrix by the seriousness of the crimes.

9:51:26 AM
DENISE MORRIS, Alaska Native Justice Center, noted she would fax her memorandum. She said that Alaska's current restriction on felony voting is limited to felonies of moral turpitude; however, the definition is designed by statute and includes almost all felonies. The theft of something worth over $499 is a felony. Most assault cases and misconduct involving a controlled substance are felonies. Many individuals don't commit crimes against people, but the crime is a felony nonetheless. Restrictions on voting rights impact Natives more. Alaska Natives constitute 16 percent of the state, but they account for 37 percent of the prisoners. Cultural factors make Natives more susceptible to felony disenfranchisement, she said. Restoring voting rights is an important element to an individual's reintegration back into the community. She said there is some indication that voting reduces recidivism. One study found that 27 percent of nonvoters were rearrested, compared with 12 percent of voters. A recent report by the Alaska Judicial Council showed that recidivism rates were greatly reduced for individuals who went through the therapeutic court. A condition of parole or probation should even require the registration to

vote. She concluded by saying that the Alaska Native Justice Center supports lessening the restrictions on felony disenfranchisement, specifically voting rights, which will bring Alaska into the modern national trend.

9:47:02 AM

ALONZO PATTERSON, Former Parole Board Chair, said he served on the parole board for 12 years and he is involved with the Baptist Church, MLK Foundation, and Alaska Black Leadership Conference. He supports SB 7, and he has been involved with issuing parole releases and probation recidivism. He has looked at the recidivism rates and the disparity in sentencing. The disparity begins long before the person is released from prison. When releasing people, the message is a restoration of their rights, but when the voting rights aren't included it is a farce. Those people can develop an attitude of hopelessness, and recidivism levels rise. It is difficult for these people to get jobs. Looking at the greatest number of people in the institution doesn't indicate discrimination, but "it is culturally impacting because if you have a greater number of minorities in the institution, then you have a greater number of people being impacted in that culture based on the fact that they are not able to have their voting rights." He encouraged the committee to strongly support SB 7.

MR. PATTERSON said the problem of going in and out of jail could mean that a person could spend 20 years trying to serve a 5-year term, "and that recycling process can put your voting rights off a long time." He added, "One's right to vote is one's right to vote whether one votes liberal or whatever. That is a part of their right as a citizen." Denying the right to vote creates an attitude that overcrowds the prison system. He said he works with some of these people as a chaplain, and allowing them to vote and fully participate as citizens of Alaska removes an obstacle from their intended rehabilitation.

10:01:47 AM

DR. WILLIAM GREENE, President, NAACP Alaska, said he has worked with Mr. Patterson for 25 years and has seen a lot of change in inmate life. The bill is part of making them whole and feel like they are a part of society once again. Voting rights give the indication that persons are accepted back into society and not outcasts. Passing the legislation will make the community better, he stated.

DANIEL LEVITAS, American Civil Liberties Union, ACLU, Atlanta, Georgia, said his work focuses specifically on voter disenfranchisement. He has submitted testimony. He said there are 11,132 Alaskans who are disfranchised as a result of felony convictions. There is a distinction in the law between felonies and felonies of moral turpitude, but mostly everyone convicted of a felony in Alaska ends up being disfranchised. He said he was pleasantly surprised that the Division of Election makes an effort to fully enfranchise these people who haven't committed so-called moral turpitude crimes, but that system isn't fully efficient. Data from 2004 show more than half of these people are out working in the community: 5,000 on felony probation and 927 on parole. These people would be enfranchised through SB 7. There are 20 states that treat felony offenders less harshly than Alaska, and 11 states are considering this same change. This bill will eliminate a tremendous amount of the bureaucratic paperwork complications that disenfranchise people because no one knows their status.

MR. LEVITAS said here have been few studies, but one shows a clear link between voting behavior and lower re-arrest rates. The problems in the notification system would be fixed by SB 7, he concluded. Registration instructions and eligibility can be handed to people as they walk out of prison.

10:08:59 AM

CAROL KAPLAN, National Association for the Advancement of

Colored People (NAACP). said the NAACP 'logic is simple: by allowing individuals to invest in their community through the electoral process, they are more likely to feel a sense of ownership and become productive members of that society and less likely to return to anti-social destructive behavior that led to their previous incarceration.'

CHAIR McGUIRE asked the will of the committee.

SENATOR FRENCH moved to report the CS for SB 7, labeled, 25-LS0100\N, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 7(STA) moved from committee.

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

DATE: 2-23-07

Senator Hollis French, Chairman
Senate Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

RE: Request for Hearing –SB 7 (CSSB 7) – Voting Rights for Felons

Dear Senator French,

As sponsor of CSSB 7 I respectfully request a hearing before Senate Finance Committee on this bill concerning voting rights for felons. Attached in order are the following:

1. Sponsor Statement
2. The most recent version of the bill, CCSB 7 - 25-LS0100\M
3. The original SB 7
4. Sectional analysis
5. Additional Documentation

I will submit a complete list of people who may wish testify in Juneau in person and in Anchorage telephonically within a couple of days of the hearing.

Sincerely,

Bettye Davis

Senator Bettye Davis

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Senator Bettye Davis

SB 7 "An Act relating to the voting rights of felons"

Sponsor Statement

It is essential to a democracy that every citizen who wishes to be a productive member of society be afforded the right to vote. Art. I, Sec. 12 of the Alaska Constitution provides that criminal administration is based on the "principle of reformation" in addition to protecting the public, community condemnation of the offender, and the rights of victims. Political participation helps with rehabilitation and reintegration into the community.

SB 7 grants felons the right and opportunity to vote if they wish to exercise that right immediately after having served their time. In Alaska 5,000 Alaskans have lost their right to vote because of felony convictions. Current Alaska law bars the vote to persons convicted of felonies of moral turpitude until the expiration of a post-incarceration period of parole or probation, which is often years after they have reentered society as productive citizens and tax payers. While Vermont and Maine do not disenfranchise felons at all, other states are reforming their laws to allow felons to vote either after release (13 states), after release and completion of probation or parole (21 states including Alaska), or permanent disenfranchisement to certain felons (14 states).

Harsh sentencing laws over the past 30 years have allowed the prison population to burgeon, while reducing the rehabilitative model to an anachronism. Over 4.7 million Americans or 1 in 43 adults cannot vote due to felony convictions, with 1/3 or more of them due to alcohol and drug offenses. Of those incarcerated in Alaska 47% are white; 37% Alaska Native; 11% African American; 2% Hispanic; and 3% Asian/Pacific Islanders. Minority felons are disproportionately disenfranchised under current law and the harm of continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society.

SB 7 will help rehabilitate released felons by welcoming them back into the voting community immediately after release and encouraging them to become good citizens. Studies show that felons who vote have a lower rate of recidivism. CSSB 7 will streamline the process by which the state restores voting rights to felons and thus will save money. I urge your support of CSSB 7.

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Senator Bettye Davis

SB 7 "An Act relating to the voting rights of felons"

Explanation of changes in CS for Senate Bill No. 7 ( )

1. Section 1. AS 15.05.030(b) provides a cue to the Commissioner of Corrections of more specific procedures required of the Department of Corrections to advise persons of their restored right to vote upon release from incarceration, as well as providing notice to the Director of Elections of the same.
Note: These procedures are not exhaustive: In the latter case, for example, the Commissioner of Corrections may wish to establish policy and procedure for a reasonable number of days, e.g., 60 days, to advise the Director of Elections of released person's restored right to vote, as well as expedited procedures for prompt reapplication for participation in an up-coming election.

2. Section 2. AS 15.07.135(a) does not change the law, but only changes the title of the section to more accurately reflect the nature of the section.

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR OF THE NAACP WASHINGTON BUREAU
ON SB7,
AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

before the

ALASKA SENATE STATE OF AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE – FIRST SESSION

February 22, 2007

My name is Hilary Shelton and I am the Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP). The NAACP is our nation's oldest, largest and best known civil rights organization in the United States. We are proud to have more than 2,200 membership units across the country, with 5 units at last count in the state of Alaska[1]. The Washington Bureau is responsible for the federal legislative and national policy advocacy for the NAACP.

I would like to begin by thanking the Alaska Senate Committee on State Affairs for inviting me to testify here today. The NAACP strongly supports bills like SB7 that would allow ex-felons to register and vote immediately upon leaving prison, even if they are on probation or parole.

Our logic is simple: by allowing individuals to invest civic capitol in their community through the electoral process, they are more likely to feel a sense of ownership and become productive and constructive members of their communities and society while being less likely to return to the anti-social, destructive behavior that led to their previous

[1] There are active NAACP branches in Juneau, Fairbanks and Anchorage as well as youth councils in Anchorage and Fairbanks.

incarceration. Voting allows people to feel that they have a voice in and have made a commitment to their community, and it is a powerful deterrent to recidivism. People are more likely to help build and protect communities of which they feel a sense of ownership.

The NAACP is also concerned about the disparate impact disenfranchisement laws have on racial and ethnic minorities across the nation as well as in Alaska. Historically state disenfranchisement laws have been, in some instances, targeted to exclude racial and ethnic minorities, specifically African Americans. Although some of the more egregious laws have been struck down by the US Supreme Court[2], many others remain in place and, as a result, racial and ethnic minority Americans are disenfranchised at vastly disparate rates.

Currently 48 states including Alaska place varying limits on the voting rights of felons and ex-felony offenders. As a result of these laws, nationally about 13% of African American men cannot vote, with as many as 31% of African American men in two states – Florida and Alabama – essentially permanently disenfranchised.

Alaska's current laws, which are harsher in their treatment of offenders than at least 20 other states, continue to have a clear and indisputable disparate impact on who can and cannot vote in the state.

Although Alaska's largest minority group, Alaska Natives, comprise more than 14% of the state's general population[3], they account for 37% of its prison population[4]. Similar disparity exists in the cases of other minorities, including African Americans, who account for over 10% of the prison population[5] while representing less than 3.5% of the state's general population[6].

It stands to reason that these disparities will persist once people are released from prison, whether on probation or parole. Thus, as a

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[2] Hunter v. Underwood, 471 U.S. at 232-33

[3] United States Census: 2005 American Community Survey Data Profile Highlights: Alaska

[4] ALASKA DEPT. OF CORRECTIONS, 2003 OFFENDER PROFILE 11 (2004), *available at* http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf

[5] Id.

[6] United States Census: 2005 American Community Survey Data Profile Highlights: Alaska

result of Alaska's disenfranchisement of ex-felony offenders who may be out of jail on probation or parole, a disparate number of racial and ethnic minorities are not allowed to vote.

At last count, more than 11,000 Alaskans are disenfranchised; the majority of whom (54%) are not in prison or jail, but are in fact back in their communities on either probation or parole. In other words, these people have been deemed sufficiently rehabilitated so that they may reenter our community, but they are being told that they cannot be trusted enough to vote.

A convincing argument has been made that because of these racial and ethnic disparities Alaska's disenfranchisement laws violate the Voting Rights Act of 1965[7]. While some might argue against this, it is next to impossible, given the empirical evidence, that the state's disenfranchisement laws go against the very premise of the VRA, which is that state's shall make no laws that disparately infringe on the voting rights of certain groups of people.

I would be remiss if I didn't also point out that many states have taken, or are also considering, steps to ease ex-felon disenfranchisement laws. Within the past 10 years, 16 states have implemented policy reforms that have reduced the restrictiveness of these laws, and more than 600,000 people in seven states have regained their voting rights[8].

Furthermore, just last November the voters in Rhode Island passed a ballot initiative allowing ex-prisoners to register and vote once they were released from prison, even if they were on probation or parole. Prior to the referendum's passage, more than 15,500 residents of Rhode Island could not vote due to a felony conviction. An overwhelming 86 percent of those individuals were no longer in prison.

Another reason for the NAACP's support of SB7 is that Alaska's current law can lead to confusion as well as an opening for abuse on

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[7] Christopher R. Murray, *Cited: 23 Alaska L. Rev. 28*, "Felon Disenfrachisement in Alaska and the Voting Rights Act of 1965"

[8] Ryan King, "A Decade of Reform: Felony disenfranchisement policy in the United States" October 2006

the part of unscrupulous, misdirected and / or insensitive election officials.

Election officials have no way of knowing, by sight, if an individual is on probation or parole. If the law says that an individual on probation or parole cannot vote, it is up to the election official to determine who falls into that category.

Experience has shown that in all too many cases, election officials with less than pure motives or through ignorance may target only people from particular racial or ethnic groups to ask if they have ever been convicted of a felony. This is not only blatantly unfair, it can also have a terribly demoralizing and potentially destabilizing effect on voters and whole communities.

Thus, the NAACP strongly supports reenfranchising initiatives like SB7 and hopes that you will act swiftly to address this crucial issue. I would again like to thank the chair of this committee, Senator McGuire, for holding this hearing as well as Senator Davis for her efforts on this issue. I would welcome any questions you may have.

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Anchorage, AK 99501
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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Office of Senator Bettye Davis

SB 7 - Voting Rights of Felons

Additional Issues Presented to Senate Judiciary Committee

1. **Constitutional Issue – Article 5, section 2- suggested bifurcation of restored voting rights**
2. **Restored voting rights for felons "collateral" to "unconditional discharge"**
3. **Bifurcating voting rights by classification of felony serves no legitimate state purpose and contradicts the intent of Article 1, Section 12 to rehabilitate prisoners**

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1. Article 5, Section 2 – Alaska Constitution – Disqualification of felon's right to vote until restoration of "civil rights."

Article 5, Section 2 reads:

"No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored."

Statutory interpretation of restoration of "civil rights" to felons for the purpose of voting under SB 7

All "civil rights" are not clearly defined in the Alaska Constitution, but restoration of civil rights to felons for the purpose of voting under Article 5, section 2 has been construed to mean that a felon convicted of a crime of "moral turpitude" was disqualified to vote until "unconditional discharge." "Unconditional discharge" was defined in Code of Criminal Procedure AS 12.55.185 and codified in Election Code AS 15.05.030. SB 7 amends AS 15.05.030 to interpret restoration of "civil rights" under Article 5, section 2 to mean "release from incarceration."

Bifurcation of voting rights between types of felonies is likely unconstitutional under Article 5, section 2, Alaska Constitution

The suggested bifurcation of restoring voting rights to felons by classification of felony may be unconstitutional. Legislative Legal Services has advised that "civil rights" under Article 5, section 2 can only be interpreted one way. Restoration of "civil rights" for ex-felons to vote after being convicted of crimes of "moral turpitude" cannot mean until "unconditional discharge" for Class A and Unclassified felonies, and "release from incarceration" for Class B and C felonies. Therefore, the suggestion to bifurcate restoration of voting rights between types of felonies may be unconstitutional, absent perhaps, a redefinition of crimes of "moral turpitude—discussed below.

2. Restoration of felon's right to vote is "collateral" to "unconditional discharge"

The definition of "Unconditional Discharge" in subsection 39 of the Election Code, AS 15.60.010, is functionally identical to the definition of the same term set out in AS 12.55.285, Code of Criminal Procedure. Neither require unconditional discharge to restore collaterally affected rights or privileges, such as voting and carrying a gun. According to statutory definition, restriction on voting rights is not part of the punishment determined by judgment of conviction and sentencing by court.

AS 12.55.185 reads:

> "The definition of "unconditional discharge" set forth in this section must be interpreted to require the completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction; restoration of collaterally affected rights or privileges, such as to vote and to carry a gun, is not required. *Singleton v. State*, 921 P.2d 636 (Alaska Ct. App. 1996)."

In *Singleton*, Chief Judge Bryner wrote in his opinion:

> "This definition conditions renewed eligibility for jury service upon release from all restrictions directly imposed "under a sentence," but not from collateral disabilities --such as loss of firearms or voting privileges--that flow from sources outside the judgment of conviction or sentencing order (emphasis added)." . . .
>
> "[1] We conclude that the definition of "unconditional discharge' set forth in AS 12.55.185 must be interpreted in accordance with the statute's plain meaning. So interpreted, unconditional discharge requires completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction. Restoration of collaterally affected rights or privileges is not required" (emphasis added).
>
> FN1. In this connection it is worth noting that the Attorney General has interpreted "unconditional discharge" in the context of the voting rights statutes to require completion of probation or parole, but not formal restoration of collaterally affected civil rights. See 1985 Op. Att'y Gen. No. 103 (Alaska, Jan. 29, 1985).

The above definitions highlight that restoration of voting rights are "collateral" to "unconditional discharge," or "release from prison" because they are not part of the judgment of conviction or to the sentence.

3. Redefining "moral turpitude" to avoid a potential constitutional violation by bifurcating voting rights of ex-felons serves no legitimate state purpose and contradicts intent of Art. I, Sec.12

Rather than redefining crimes of "moral turpitude" to avoid the anticipated constitutional prohibition against bifurcating disqualification of voting rights between types of felonies, as suggested, it makes more sense to allow all ex-felons to vote upon release. Allowing all ex-felons to vote after release under SB 7 contradicts the intent of the Alaska Constitution to treat all similarly situated persons fairly, if not equally, and to rehabilitate prisoners under Art. I, Section 12. All released ex-felons have served their time and repaid their debt to society, regardless of the classification of their crimes; they are back in the

community, and restriction of collateral voting rights was never part of their sentences or judgments of conviction.

Making only ex-felons who committed Unclassified and Class A felonies wait to vote under SB 7 until after probation/parole, instead of upon release, is like inflicting an additional form of punishment on them dissimilar to other ex-felons after they have served their time in prison. It is tantamount to saying, "the state has deemed it appropriate upon your release to flog you on last time as a reminder of the heinous nature of your crime." Moreover, the decision to refuse voting rights to ex-felons of only certain classes of felonies until after probation and parole would seem punitive, arbitrary, and unsupported by a compelling, or legitimate state interest or "rational policy" (Justice Marshall, in dissent in *Richardson v. Ramirez*, 418 U.S. 78 (1974).

As Hilary O. Shelton, Director of the NAACP Washington Bureau, stated in a letter recently submitted in support of SB 7 before the Alaska Senate State Affairs Committee:

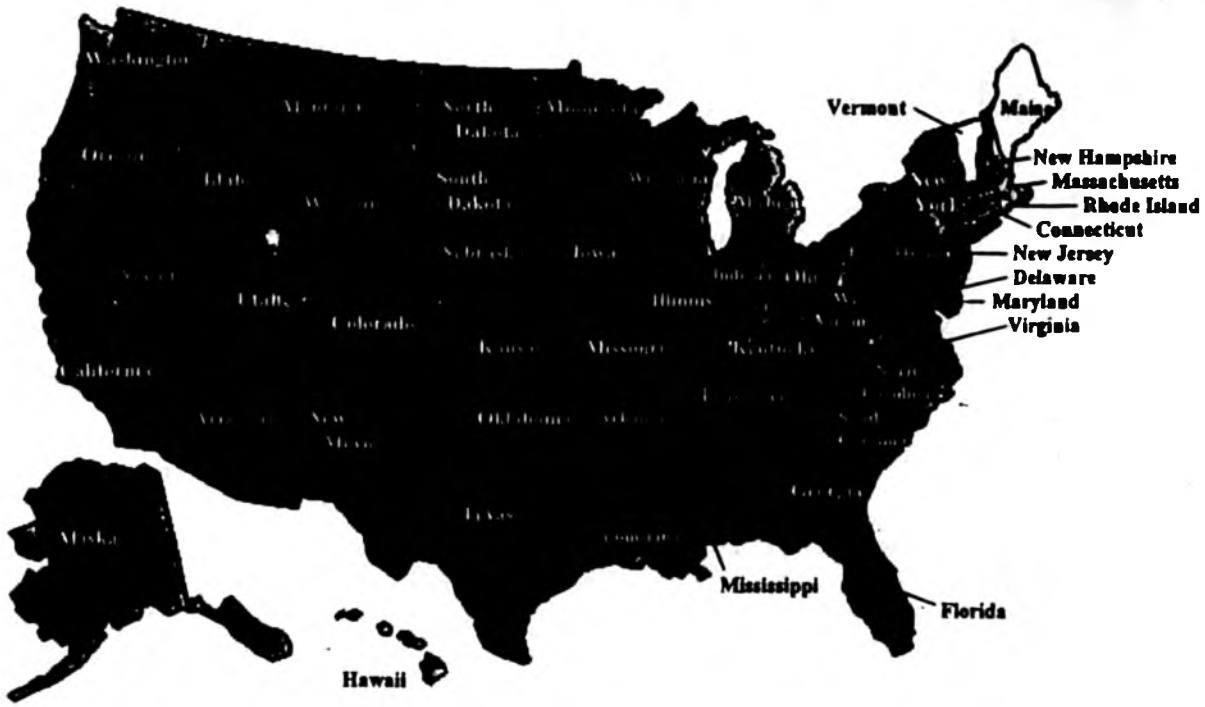
> "At last count, more than 11,000 Alaskans are disenfranchised; the majority of whom (54%) are not in prison or jail, but are in fact back in their communities on either probation or parole. In other words, these people have been deemed sufficiently rehabilitated so that they may reenter our community, but they are being told that they cannot be trusted enough to vote." (emphasis added).

This is a true statement, whether ex-felons were convicted of more serious Unclassified or Class A felonies, or Class B or Class C felonies.

Conclusion

SB 7 will allow Alaska to join more than 16 states which in the last ten years have implemented policy reforms that have reduced restrictiveness in voting and have allowed more than 600,000 people in seven states to regain their voting rights. (Hilary Shelton, above, referencing Ryan King, "A Decade of Reform: Felony disenfranchisement policy in the United States," October 2006). Rhode Island last November, 2006 reportedly passed a ballot initiative allowing over 15,500 resident ex-felons to register and vote once they were released from prison, even if they were on probation or parole. 86% of those were no longer in prison. (Shelton). New Florida Republican Governor, Charles Crist, announced in February, 2007 that he intends to restore voting rights to an estimated 990,00 ex-felons. Alaska can add to this momentum by passing SB 7. Allowing all felons to vote immediately after release and informing them of their restored voting rights reduces the disparate racial impact on voting in Alaska, since so many prisoners are minorities. At the same time uniform application of SB 7 to all felons reduces administrative time and expense for the State Department of Corrections and the Division of Elections.

FELONY DISENFRANCHISEMENT LAWS ACROSS THE UNITED STATES



Permanent disenfranchisement for all felony offenders, unless government approves individual rights restoration
FL, KY, VA

Permanent disenfranchisement for at least some felony offenders, unless government approves individual rights restoration
AL, AZ, DE, MD, MS, NV, TN, WY

Voting rights restored automatically after completion of sentence, including prison, parole and probation
AK, AR, GA, ID, IA, KS, LA, MN, MO, NE, NJ, NM, NC, OK, SC, TX, WA, WV, WI

Voting rights restored automatically after release from prison and discharge from parole (probationers may vote)
CA, CO, CT, NY, SD

Voting rights restored automatically after release from prison
DC, HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT

No disenfranchisement for felony convictions
ME, VT

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Senator Bettye Davis

Senate Bill SB 7 **"An Act relating to the voting rights of felons."**

Tentative list of people to testify in person and by teleconference

Persons to testify telephonically from Anchorage LIO:

1. **Reverend Alonzo Patterson, pastor and former mer .ber of Parole Board**
2. **NAACP – Alaska (Anchorage)**
3. **Denise Morris, Pres./CEO AK Native Justice Center, Anchorage.**

Call-in from out-of-state: 888-295-4546

1. **Daniel Levitas, Representative, American Civil Liberties Union, Atlanta Georgia, State Legislative Strategist, Felon Disenfranchisement, Voters Right Project.** ✓
2. **Hilary O. Shelton, Washington DC Bureau, NAACP**
3. **Wade Henderson, President/CEO (or representative), Leadership Conference on Civil Rights, Washington, DC**

Persons in Juneau to testify in person

1. **Margaret Pugh, former Commissioner, Dept. Corrections Dept.** ✓
2. **Mike Miller, former State Representative**
3. **Whitney Brewster, Alaska Director of Elections**
4. **Michael Macleod-Ball, Executive Director, Alaska ACLU** ✓

LEGAL SERVICES
DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 13, 2007

SUBJECT: Voting rights of felons (CSSB 7(JUD)
(Work Order No. 25-LS0100\L)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

Enclosed is the draft committee substitute you requested that would restore voting rights to persons convicted of felonies involving moral turpitude at different times, depending on which felony was committed or the repeat nature of the felony. Please be advised that this disparate treatment may invite a constitutional challenge based on two different theories:

Restoration of Civil Rights.
Article V, sec. 2 of the Alaska Constitution provides that "[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored." While the Alaska Supreme Court has not yet addressed what constitute "civil rights" for the purposes of this clause, conceivably "civil rights have been restored" could be equated to either (1) a person's release from incarceration or (2) a person's unconditional discharge from conditions of parole or probation. While arguments can be made as to whether "civil rights have been restored" should be interpreted in one manner or the other, it is unlikely, in my opinion that art. V, sec. 2 of the state constitution can be interpreted to permit both interpretations, as this draft would require.

Equal Protection.
In employing a bifurcated system that restores the right to vote at different times for different felons, the committee substitute may also invite an equal protection challenge. If the law is challenged, a court will ask: what is the governmental purpose behind having these two regimes? Is the unclassified, class A, or repeat felony conviction relevant to a reduced opportunity to vote? Since the right to vote is a fundamental right, a court may require that the state show that a compelling governmental purpose is served by restoring the right to vote effective on release from incarceration to some felons but not others.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
07-133.ljw

Enclosure

ATTORNEYS
[redacted]

Native American Rights Fund

420 L Street, Suite 505, Anchorage, AK 99501 • (907) 276-0680 • FAX (907) 276-3466

[redacted]

[redacted]

[redacted]

March 5, 2007

VIA FACSIMILE
Senator Hollis French
Chair, Senate Committee on the Judiciary
State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 7, the Voting Rights of Felons

Senator French:

The Native American Rights Fund was founded in 1970 and has been in Alaska since 1984. We have also been working on the voting rights of Alaskans since 1990. The Native American Rights Fund supports the passage of SB7, which would restore the voting rights of felons immediately upon release from prison. There are several reasons we support this bill, the most critical reason being that current law disproportionately impacts Alaska Natives because they comprise a disproportionately large part of the felon population.

In 2004, the Alaska Judicial Council released a study about the felony process in Alaska that considered whether there were a disproportionately large percentage of ethic minorities in the criminal justice system and, if so, why. The study concluded that Alaska Natives were in fact overrepresented in the felon population. Although they are only 16% of the general population, Alaska Natives comprise more than 37% of those charged with felonies. The study also concluded that Alaska Natives received longer sentences than non-Natives for drug offenses. In addition, Natives outside of Anchorage also received longer sentences for drug offenses. Furthermore, many Alaska Natives have lower per capita incomes (some as low as $8,000 per year) and this means they cannot afford private attorneys; this too is critical because the study also found that those with private counsel served less time in prison, served less time on parole or probation and were more successful at having their charges reduced. Overall, this study highlights the disparate treatment Alaska Natives receive in the criminal justice system.

One of the significant impacts of the Judicial Council's study is that it means Alaska Natives also represent a disproportionately high percentage of those disenfranchised under the current law. While this bill of course does not solve all of the problems in the current justice system, we believe it is an important first step in remedying the impacts of the system upon the Native population and returning them to society as proud productive members of their communities.

We would also like to briefly dispel some of the myths about who felons are in Alaska. Again according to the Alaska Judicial Council's 2004 report, 83% of all felons are male, almost half are under 30 years of age, half are Caucasian while 30% are Native, 63% have alcohol problems and 45% have drug problems, and more than one third have identifiable mental health problems. Almost 80% financially qualified for the assistance of a public defender. Sixty-five percent of these felons were convicted of Class C felonies, with property crimes comprising 30% and drug crimes comprising 20%. (Murder and sexual assault are only 2% and 12% of felons respectively.) Therefore, the average felon is a poor young man, Caucasian or Native, with an alcohol and/or drug problem, who was convicted of a Class C felony, most likely a property crime. This is the person who will most likely benefit from this bill. These are people who need alcohol and/or drug treatment and counseling – in other words they need help reintegrating into society and we believe re-enfranchising them after they have served their time is a positive and empowering way to achieve that.

We strongly encourage you to pass SB7. Thank you for considering our point of view.

Sincerely,

Natalie A. Landreth
Staff Attorney

FELON DISENFRANCHISEMENT IN ALASKA AND THE VOTING RIGHTS ACT OF 1965

CHRISTOPHER R. MURRAY*

Alaska and forty-seven other states have provisions that limit the voting rights of felons. In many of these states, including Alaska, minority groups are disproprtionately affected by these felon disenfranchisement laws. This Note examines the validity of these laws generally, and Alaska's laws in particular, under the the Voting Rights Act of 1965.

I. INTRODUCTION

Alaska limits the voting rights of felons.[1] Forty-seven other states have similar policies.[2] And, as in many of these other states, racial minorities in Alaska are disproportionately affected.[3] Indeed, the state's largest minority group Alaska Natives, is overrepresented in the state's prison population, indicating a greater likelihood of disenfranchisement.[4] Because the right to vote is central to democratic government, any law that tends more frequently to disenfranchise racial minorities should be cause for

* The author would like to thank Professor Erwin Chemerinsky and the ALR staff for valuable contributions.

1. ALASKA CONST. art. V, § 2 ("No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored.").

2. JAMIE FELLNER & MARC MAUER, LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES pt. IV (1998), *available at* http://www.hrw.org/reports98/vote.

3. *Id.* pt. III.

4. Alaska Natives constituted approximately sixteen percent of Alaska's general population as of 2000, United States Census, *available at* http://factfinder.census.gov (under "get a Fact Sheet for your community" enter "Alaska" into "state" field; then follow "2000" link) [hereinafter U.S. Census], but represent over thirty-seven percent of the state's prison population, ALASKA DEPT. OF CORRECTIONS, 2003 OFFENDER PROFILE 11 (2004), *available at* http://www.correct.state.ak.us/corrections/admin.docs/profile2003.pdf [hereinafter ALASKA OFFENDER PROFILE].

alarm. Nevertheless, because Alaska's felon disenfranchisement laws appear not to have been enacted with a discriminatory purpose, they likely do not violate the Federal Constitution.[5]

The laws may, however, run afoul of the Voting Rights Act of 1965 ("VRA"), which was amended in 1982 to invalidate state voting qualifications that have a racially disproportionate impact.[6] Recent litigation has challenged state felon disenfranchisement laws on this basis.[7] Though none of these challenges have succeeded—and two circuits have held that the VRA simply does not apply to felon disenfranchisement[8]—the Ninth Circuit recently allowed a VRA challenge to the State of Washington's felon disenfranchisement provision.[9]

To date, 1 case has been brought challenging felon disenfranchisement in Alaska. This Note is directed to that possibility. Part II puts Alaska's felon disenfranchisement laws into national context and explains why, even if they produce a racially discriminatory impact, they are likely not unconstitutional. Next, Part III assesses the circuit split over whether the VRA applies to felon disenfranchisement laws and the Ninth Circuit's decision that it does. Lastly, Part IV outlines the Ninth Circuit law that would govern a VRA challenge to Alaska's felon disenfranchisement laws in light of a recent similar challenge in Washington.

II. ALASKA'S FELON DISENFRANCHISEMENT LAWS

A. National Context

Disenfranchisement of criminals is neither a unique nor a recent phenomenon. The United Kingdom, Canada, and Australia all, to some degree, have voting qualifications based on criminal status.[10] The ancient Greeks and Romans disenfranchised those guilty of infamous crimes, and voting was among a range of civil

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5. *See* discussion *infra* Part II.C.

6. *See* Thornburg v. Gingles, 478 U.S. 30, 43–44 (1986).

7. *See, e.g.*, Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006); Johnson v. Governor of Fla., 405 F.3d 1214 (11th Cir. 2005).

8. *Hayden*, 449 F.3d at 310; *Johnson*, 405 F.3d at 1234.

9. Farrakhan v. Washington (*Farrakhan I*), 338 F.3d 1009, 1016 (9th Cir. 2003).

10. Debra Parkes, *Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws*, 13 TEMP. POL. & CIV. RTS. L. REV. 71, 73 (2003). Restrictions abroad, however, tend to be more mild than those found in the United States. *Id.*

rights denied in post-Renaissance Europe on the theory that criminals suffer a "civil death."[11]

Today in the United States, disenfranchisement is among many collateral consequences of felony conviction such as exclusion from certain professions and restrictions on carrying a concealed weapon.[12] In a frequently quoted opinion, Judge Henry Friendly justified the practice on a Lockean social-contract theory by arguing that criminals, in breaking societal rules, waive their rights to participate in the rule-making.[13] Other courts have expressed an interest in preserving the "purity of the ballot box" from infection by those who by their acts have proven themselves morally unfit.[14]

Nevertheless, the practice is not without critics.[15] With respect to traditional justifications for criminal sanction—rehabilitation, retribution, and deterrence—felon disenfranchisement seems to fall short given the counter-productivity of keeping criminals from participating in civil society, the disproportionate application of, in some cases, lifetime disenfranchisement to a broad range of crimes, and the limited deterrent effect of the threat of disenfranchisement.[16] Abroad, felon disenfranchisement laws have been judicially rejected on political and human-rights grounds.[17]

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11. *Id.* at 73–74; Alec C. Ewald, *"Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1059–60 (2002).

12. *See* Scott M. Bennett, Note, *Giving Ex-Felons the Right to Vote*, 6 CAL. CRIM. L. REV. 1 (2004) (outlining the most common normative arguments for and against felon disenfranchisement).

13. Green v. Bd. of Elections, 380 F.2d 445, 451–52 (2d Cir. 1967) (Friendly, J.) ("A contention that the equal protection clause requires New York to allow convicted mafiosi to vote for district attorneys or judges would not only be without merit but as obviously so as anything can be.").

14. Dunn v. Blumstein, 405 U.S. 330, 345 (1972) (quoting TENN. CONST. art. IV, § 1).

15. *See, e.g.*, Alec. C. Ewald, *An "Agenda for Demolition": The Fallacy and the Danger of the "Subversive Voting" Argument for Felony Disenfranchisement*, 36 COLUM. HUM. RTS. L. REV. 109 (2004).

16. *See* Bennett, *supra* note 12, ¶¶ 29–45.

17. The Canadian Supreme Court recently struck down a law preventing prisoners from voting. Suavé v. Canada, [2002] S.C.R. 519. The European Court of Human Rights held that a United Kingdom felon disenfranchisement law violated the human rights of convicts. Hirst v. United Kingdom (No 2), 38 Eur. Ct. H.R. 40 (2005). For a detailed analysis of the Canadian decision, see Parkes, *supra* note 10, at 79–85. For an analysis of the ECHR decision as well as an assessment of a "growing international consensus," see Robin L. Nunn, Comment, *Lock Them Up and Throw Away the Vote*, 5 CHI. J. INT'L L. 763, 778–79 (2005).

The modern practice of felon disenfranchisement in the United States is primarily a function of state law.[18] Forty-eight states and the District of Columbia have some form of felon disenfranchisement, generally consisting of constitutional provisions buttressed by statute.[19] Felon disenfranchisement expanded after the nation's founding, with most such laws enacted during the mid- to late-nineteenth century.[20] At the time the Reconstruction Amendments were enacted, twenty-nine of the thirty-six states had some form of felon disenfranchisement.[21]

Modern practice varies by state. At the extreme, at least three states impose lifetime voting bans on felons.[22] These jurisdictions go beyond the historical scope of felon disenfranchisement laws in the United States and the contemporary practice in other states and internationally.[23] The reach of these laws is striking—lifetime disenfranchisement may even be predicated upon crimes such as jaywalking, vagrancy, or breaking a water pipe.[24]

Alaska's felon disenfranchisement law is not as severe. The state constitution provides that "[n]o person may vote who has

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18. Although the United States Constitution generally grants states the authority to establish voter qualifications, *see* U.S. CONST. art. I, § 2, cl. 1, that authority is constrained, not only by other express constitutional provisions, *e.g.*, U.S. CONST. amend. XV (right to vote cannot be denied on account of race); U.S. CONST. amend. XIX (gender); U.S. CONST. amend. XXIV (poll taxes), but also by strict scrutiny under the Equal Protection Clause as interfering with the fundamental right of voting, *see* Kramer v. Union Free Sch. Dist., 395 U.S. 621 (1969); Reynolds v. Sims, 377 U.S. 533 (1964).

19. *See* FELLNER & MAUER, *supra* note 2, pt. II (surveying severity of felon disenfranchisement laws by state). For a state-by-state summary of state felon disenfranchisement laws, see SUSAN M. KUZMA, U.S DEP'T OF JUSTICE, OFFICE OF THE PARDON ATTORNEY (DOJ/OPA), CIVIL DISABILITIES OF CONVICTED FELONS: A STATE-BY-STATE SURVEY (1996), http://www.usdoj.gov/pardon/forms/state_survey.pdf (last visited Oct. 2, 2006).

20. Angela Behrens, Christopher Uggens & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559, 563–67 (2003).

21. Johnson v. Governor of Fla., 405 F.3d 1214, 1218 n.5 (11th Cir. 2005).

22. *See* FELLNER & MAUER, *supra* note 2, pt. II. Restoration of civil rights, including the franchise, is possible in some states upon pardon of the offense. *See id.*

23. For example, the United Kingdom, Canada, and Australia generally restore voting rights upon the completion of sentence. *See* Parkes, *supra* note 10, at 73.

24. Richardson v. Ramirez, 418 U.S. 24, 75–76 n.24 (1964) (Marshall, J., dissenting).

been convicted of a felony involving moral turpitude unless his civil rights have been restored."[25] The provision was adopted at Alaska's constitutional convention in 1956 and became law upon Alaska's admission to the union in 1959.[26] Congress approved Alaska's constitution, including the felon disenfranchisement provision, when it granted statehood.[27] The language mirrored that of contemporary provisions in other states' constitutions.[28]

The contours of the constitutional provision are set by statute. The term "felony involving moral turpitude" is defined to include nearly all felonies.[29] Voting registration is automatically cancelled upon conviction.[30] Voting rights are restored, and felons may re-register to vote upon completion of their sentences including any terms of parole or probation.[31] Felon disenfranchisement in Alaska, which is more lenient than the lifetime ban imposed in

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25. ALASKA CONST. art. V, § 2.

26. GORDON HARRISON, ALASKA'S CONSTITUTION: A CITIZEN'S GUIDE, 3 (4th ed. 2003), *available at* http://w3.legis.state.ak.us/infodocs/constitution/citizens_guide.pdf [hereinafter CITIZEN'S GUIDE].

27. *See id.* at 3–4.

28. GERALD A. MCBEATH, THE ALASKA STATE CONSTITUTION: A REFERENCE GUIDE 125 (1997). The voting qualifications in Alaska's original constitution included a literacy test. CITIZEN'S GUIDE, *supra* note 26, at 105.

29. ALASKA STAT. § 15.60.010(8) (2006). At present, crimes meriting disenfranchisement ("felon[ies] involving moral turpitude") include:

> those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography . . . .

Id.

30. ALASKA STAT. § 15.07.135.

31. ALASKA STAT. § 15.05.030 ("Upon the unconditional discharge, the person may register under AS 15.07."). "Unconditional discharge" occurs when "a person is released from all disability arising under a conviction and sentence, including probation and parole." ALASKA STAT. § 15.60.010(38).

some states, is in line with the policies of a majority of other states.[32]

B. Felon Disenfranchisement and Race

Though facially race-neutral, felon disenfranchisement laws were, historically, enacted with a discriminatory purpose. Authors have noted that many states enacted such laws in the aftermath of the Civil War as part of a larger defensive response to the Reconstruction Amendments' extension of the franchise to African-Americans.[33] This response included poll taxes, literacy tests, and other Jim Crow measures to suppress the voting power of African-Americans.[34] For example, a 1901 felon disenfranchisement provision to Alabama's state constitution was expressly intended to single out only those felonies believed to be more frequently committed by African-Americans.[35] In 1985, the Supreme Court struck down that provision in the case of *Hunter v. Underwood*.[36]

To the extent felon disenfranchisement laws were tailored to maximize a racially disparate impact, they have enjoyed considerable success.[37] Nationally, an estimated thirteen percent of African-American men are disenfranchised, with as many as thirty-one percent of African-American men in two states—Alabama and Florida—permanently disenfranchised.[38] Following a review of voting in the United States, the National Commission on Federal Election Reform, chaired by former presidents Jimmy Carter and Gerald Ford, urged states to scale back felon disenfranchisement laws, citing that as many as one in six African-Americans were disenfranchised in many states.[39] Even where discriminatory intent

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32. *See* FELLNER & MAUER, *supra* note 2, pt. III.

33. Behrens et al., *supra* note 20, at 563 (analyzing post-Civil War responses to extending the franchise to African-Americans and drawing on social science theories of race competition and criminal justice).

34. *Id.*

35. Hunter v. Underwood, 471 U.S. 222, 228–29 (1985). The Alabama statute at issue was not discriminatory on its face, but the Court nevertheless struck it down on the basis of discriminatory intent evidenced in the legislative history. *See id.* at 227–32; Underwood v. Hunter, 730 F.2d 614, 618–20 (11th Cir. 1984).

36. Hunter v. Underwood, 471 U.S. at 232–33.

37. *See* FELLNER & MAUER, *supra* note 2, pt. II (setting out the racially disproportionate impact of felon disenfranchisement laws).

38. *Id.* pt III.

39. THE NATIONAL COMMISSION ON FEDERAL ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS 51 (August 2001), *available at* http://millercenter.virginia.edu/programs/natl_commissions/final_report.html.

has not been proven, discriminatory effect continues to be the reality.[40]

Alaska's experience is comparable. Although comprehensive studies of racial disparity in felon disenfranchisement in Alaska are unavailable, incarceration statistics provide a useful proxy.[41] Alaska's largest minority group, Alaska Natives, comprise approximately sixteen percent of the state's general population,[42] but they account for thirty-seven percent of its prison population.[43] Similar disparity exists in the cases of other minorities, including African-Americans, who account for over ten percent of the prison population[44] while representing less than four percent of the general population.[45] It has been suggested that cultural factors may make Alaska Natives more susceptible to felon disenfranchisement.[46] The precise mechanism by which racial bias in the criminal justice system may result in disproportionate disenfranchisement, and indeed whether racial bias is the cause of the disparity, is unclear and would require further study.

C. Constitutionality of Alaska's Felon Disenfranchisement Law

Felon disenfranchisement laws come under constitutional scrutiny in two ways. First, as a restriction on voting, the laws interfere with a fundamental right and implicate the Equal

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40. In Florida, the Eleventh Circuit denied an equal protection challenge to the state's felon disenfranchisement laws for lack of demonstrated racially discriminatory intent, Johnson v. Governor of Fla., 405 F.3d 1214, 1223 (11th Cir. 2005), even though nearly one in three African-American men in Florida is permanently disenfranchised, *see* FELLNER & MAUER, *supra* note 2, pt. III.

41. Incarceration rates are, at best, an imprecise proxy for felon disenfranchisement. They are over-inclusive in that they include those inmates who are ineligible to vote, as well as those incarcerated for misdemeanors, and they are under-inclusive in that they do not include parolees or Alaska felons incarcerated outside of the state who are also unable to vote.

42. U.S. Census, *supra* note 4.

43. ALASKA OFFENDER PROFILE, *supra* note 4.

44. *Id.*

45. U.S. Census, *supra* note 4.

46. *See, e.g.*, Dave Stephenson, *For Alaska Natives: Extermination by Incarceration?*, INDIAN COUNTRY TODAY, June 26, 2003, *available at* http://www.indiancountry.com/content.cfm?id=1056628610 (advancing the argument that Alaska Natives may be more likely to confess to a crime upon arrest than are white arrestees, thereby reducing the likelihood of a plea agreement for a lesser charge or sentence). If true, such factors might make felony—as opposed to misdemeanor—conviction more likely, leading to longer incarceration periods and thereby exacerbating the impact of felon disenfranchisement.

Protection Clause of the Fourteenth Amendment. Second, because the laws affect the voting rights of racial minorities, they also implicate the Fifteenth Amendment's prohibition on disenfranchisement "on account of race."[47] Supreme Court decisions addressing both theories have concluded that felon disenfranchisement laws are constitutional unless it can be proved they were enacted with racially discriminatory intent.[48]

Ordinarily, a state law affecting a fundamental right, such as voting, would be subject to strict scrutiny.[49] However, in the 1974 case of *Richardson v. Ramirez*, the Supreme Court held that felon disenfranchisement laws are not subject to heightened scrutiny under Section 1 of the Fourteenth Amendment because Section 2 of that Amendment includes an "affirmative sanction" of such laws.[50] Section 2 of the Fourteenth Amendment, which reduces a state's representation in Congress in proportion to its disenfranchisement of otherwise qualified voters, provides an exception for disenfranchisement based on "participation in rebellion, or other crime."[51] Chief Justice Rehnquist, writing for a divided court, reasoned that "those who framed and adopted the Fourteenth Amendment could not have intended to prohibit outright in § 1 of that Amendment that which was expressly exempted from the lesser sanction of reduced representation imposed by § 2 of the Amendment."[52] Put another way, the voting

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47. *See* U.S. CONST. amend. XV.

48. The Court has also heard and rejected Eighth Amendment challenges to felon disenfranchisement. *See* Trop v. Dulles, 356 U.S. 86, 96–97 (1958) (felon disenfranchisement is not punitive and merely designates a grounds for voting eligibility). For an in-depth treatment of felon disenfranchisement as punishment in the context of the Eighth Amendment, see Pamela A. Wilkins, *The Mark of Cain: Disenfranchised Felons and the Constitutional No Man's Land*, 56 SYRACUSE L. REV. 85 (2005).

49. *See, e.g.*, Kramer v. Union Free Sch. Dist., 395 U.S. 621, 627–28 (1969) (applying strict scrutiny to voting restrictions); Reynolds v. Sims, 377 U.S. 533, 561–62 (1964) ("Undoubtedly, the right of suffrage is a fundamental matter. . . ."); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) ("[T]he political franchise . . . is regarded as a fundamental political right . . . .").

50. Richardson v. Ramirez, 418 U.S. 24, 54 (1974).

51. U.S. CONST. amend. XIV, § 2. The Amendment provides in pertinent part that "when the right to vote at any election . . . is denied . . . or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation [in Congress] shall be reduced . . . ." *Id.* (emphasis added).

52. *Richardson*, 418 U.S. at 43.

rights of *felons* are not protected as "fundamental" under the Equal Protection Clause.

Nevertheless, even if *Richardson* shields felon disenfranchisement laws from strict scrutiny under the Equal Protection Clause,[54] Section 1 of the Fourteenth Amendment still operates independently to prevent purposeful racial discrimination. In *Hunter v. Underwood*,[55] the Supreme Court struck down a provision in Alabama's constitution disenfranchising those convicted of certain enumerated felonies.[56] The provision was enacted in 1901 with the purpose of disenfranchising on the basis of race and applied only to felonies believed committed more frequently by African-Americans.[57] Chief Justice Rehnquist, writing for the Court as he did in *Richardson*, explained that "[w]ithout again considering the implicit authorization of [felon disenfranchisement under § 2 of the Fourteenth Amendment], we are confident that § 2 was not designed to permit the purposeful

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53. At least one circuit has framed the law in this way. *See* Owens v. Barnes, 711 F.2d 25, 27 (3d Cir. 1983).

54. *Richardson*'s reading of Section 2 of the Fourteenth Amendment has been widely criticized. *See, e.g.*, Carlos M. Portugal, *Democracy Frozen in Devonian Amber: The Racial Impact of Permanent Felon Disenfranchisement in Florida*, 57 U. MIAMI L. REV. 1317, 1325–26 (2003); John Hart Ely, *Interclausal Immunity*, 87 VA. L. REV. 1185, 1195 (2001). Dissenting, Justice Marshall argued in *Richardson* that Section 2 merely established a system of punitive reduction in representation for disenfranchisement as a compromise because wholesale enfranchisement of African-Americans would have been unpalatable and, therefore, that the scope of the language of Section 2 is limited to the operation of its punitive sanction and not to the entirety of the Fourteenth Amendment. *Richardson*, 418 U.S. at 73–74 (Marshall, J., dissenting).

For an argument that the Fifteenth Amendment effectively repealed Section 2 of the Fourteenth Amendment and, therefore, that the latter cannot shield felon disenfranchisement laws from equal protection scrutiny, see Gabriel J. Chin, *Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?*, 92 GEO. L.J. 259 (2004).

Richardson preempts the question of whether, without a Section 2 shield, felon disenfranchisement would survive strict scrutiny. For an argument that felon disenfranchisement fails strict scrutiny because it is over-inclusive and only tenuously related to the most commonly cited state interests, see Angela Behrens, Note, *Voting—Not Quite a Fundamental Right? A Look at Legal and Legislative Challenges to Felon Disenfranchisement Laws*, 98 MINN. L. REV. 231, 259–72 (2004).

55. 471 U.S. 222, 232 (1985).

56. *Id.* at 232.

57. *Id.* at 227–28; *see* discussion *supra* note 35.

racial discrimination attending the enactment and operation of [a law] which otherwise violates § 1 of the Fourteenth Amendment."[58]

Independently of the Fourteenth Amendment, the Fifteenth Amendment prohibits the denial of the right to vote "on account of race."[59] The Supreme Court has construed this prohibition to apply only to intentional discrimination.[60] In *City of Mobile v. Bolden*, the Supreme Court held that "action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose."[61]

Alaska's felon disenfranchisement laws are facially neutral and would, therefore, be unconstitutional only if enacted with a discriminatory purpose. Because the laws do not appear to have been adopted with racially discriminatory intent,[62] they are subject to legal challenge, if at all, only under federal legislation.[63]

III. THE VOTING RIGHTS ACT OF 1965

A. The Voting Rights Act of 1965 and the 1982 Amendments

Though the Fifteenth Amendment was ratified in 1870, it took nearly one hundred years before Congress systematically addressed disenfranchisement of racial minorities.[64] The Voting Rights Act of 1965[65] was enacted by Congress to "banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century."[66] Congress was prompted to act after case-by-case litigation under previous legislation, including the Civil Rights Act of 1957, failed to

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58. *Id.* at 233.

59. U.S. CONST. amend. XV.

60. City of Mobile v. Bolden, 446 U.S. 55, 62 (1980).

61. *Id.*

62. This Note assumes, for the purpose of analysis, that discriminatory intent did not drive enactment of Alaska's felon disenfranchisement laws—or, at the very least, that discriminatory purpose likely could not be proven in the context of a constitutional challenge.

63. Of course, less countermajoritarian methods of legal reform remain available to Alaskans, such as constitutional amendment and the state legislative process.

64. Portugal, *supra* note 54, at 1328.

65. 42 U.S.C. §§ 1971–1973 (2000), as amended in 1970, Pub. L. 91-285, 84 Stat. 314 (1970), and in 1982, Pub. L. 97-205, 96 Stat. 131 (1982). The VRA has been reauthorized and amended by Congress on several occasions, including in 1970, 1975, and 1982 and was reauthorized by the President in July 2006. *Bush Signs Extension of Voting Rights Act*, N.Y. TIMES, July 28, 2006, at A22.

66. South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966).

adequately prevent disenfranchisement on account of race.[67] The VRA imposed bold measures, including section 5, which prohibited the use of discriminatory tests or devices, such as literacy tests, and required that any state making use of such devices would thereafter have to apply for pre-clearance from the U.S. Attorney General or a federal circuit judge in Washington, D.C. for any future changes to voting laws.[68] At the time of the VRA's enactment, Alaska employed a literacy test and was, therefore, designated a "covered jurisdiction" for these purposes.[69] Federal supervision of the voting laws of "covered jurisdictions," most of which are in the South, continues today.[70]

In 1966, the Supreme Court upheld the VRA as a valid exercise of Congress's enforcement powers under Section 2 of the Fifteenth Amendment.[71] In 1980, however, the Court narrowed the effect of the VRA in *City of Mobile v. Bolden*.[72] There, the Court held that section 2 of the VRA[73] had "an effect no different from that of the Fifteenth Amendment itself" and that a voting qualification law would only be struck down under the Act if it were proved that the law was enacted with a racially discriminatory purpose.[74] In so doing, the Court overruled the then-applicable "effects test" for voting qualifications.[75]

In 1982, Congress responded to *City of Mobile* by adding a "totality of the circumstances" test to section 2 of the VRA.[76]

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67. *Id.* at 313.

68. *See* Voting Rights Act of 1965, 89 Pub. L. 110, 79 Stat. 437 (1965).

69. *See* Laughlin McDonald, *The Voting Rights Act in Indian Country: South Dakota, A Case Study*, 29 AM. INDIAN L. REV. 43, 45–46 (2004); CITIZEN'S GUIDE, *supra* note 26, at 107.

70. Congressional representatives from southern states covered ' the VRA's section 5 pre-clearance provisions sought to remove those provisions during the reauthorization of the VRA in 2006. *See* Raymond Hernandez, *After Challenges, House Approves Renewal of Voting Act*, N.Y. TIMES, July 14, 2006, at A13.

71. *Katzenbach*, 383 U.S. at 337.

72. 446 U.S. 55 (1980) (plurality opinion).

73. The original text of the section read, "No voting qualification or prerequisites to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." Voting Rights Act of 1965, 89 Pub. L. 11, 79 Stat. 437 (1965).

74. *City of Mobile*, 446 U.S. at 61–62.

75. *See, e.g.*, White v. Regester, 412 U.S. 755, 769 (1973) (totality of the circumstances test applied to vote dilution case brought under section 2 of the VRA).

76. Thornburg v. Gingles, 478 U.S. 30, 43 (1986). The amended section 2 provides, in pertinent part:

Under the amended VRA, "plaintiffs [can] prevail by showing that, under the totality of the circumstances, a challenged election law or procedure [has] the effect of denying a protected minority an equal chance to participate in the electoral process."[77] As the Court later explained, "[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions" to cause unequal voting power.[78]

B. Applicability of the VRA to Felon Disenfranchisement Laws

Since the 1982 amendments to the VRA, several plaintiffs have sought to use it to invalidate felon disenfranchisement laws on the basis of their racially disproportionate effects.[79] Circuits have split over whether the VRA does, in fact, apply to felon disenfranchisement laws. The Second Circuit in *Hayden v. Pataki* and the Tenth Circuit in *Johnson v. Governor of Florida* both held the VRA inapplicable to felon disenfranchisement laws.[80] In contrast, in *Farrakhan v. Washington*,[81] the Ninth Circuit held that "[f]elon disenfranchisement is a voting qualification, and Section 2 is clear that *any* voting qualification that denies citizens the right to vote in a discriminatory manner violates the VRA."[82] Therefore, a claim against Alaska's felon disenfranchisement laws would be

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(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision *in a manner which results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . .

(b) A violation of subsection (a) of this section is established if, based on the *totality of the circumstances*, it is shown that . . . members of [protected racial minorities] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973 (2000) (emphasis added).

77. *Gingles*, 478 U.S. at 44 n.8.

78. *Id.* at 47.

79. *Id.*; *see, e.g.*, Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006); Johnson v. Governor of Fla., 405 F.3d 1214 (11th Cir. 2005).

80. *Hayden*, 449 F.3d at 310; *see Johnson*, 405 F.3d at 1234.

81. Farrakhan v. Washington (*Farrakhan I*), 338 F.3d 1009, 1016 (9th Cir. 2003).

82. *Id.* The Sixth Circuit also considered a VRA challenge to Tennessee's felon disenfranchisement law in *Wesley v. Collins*, 791 F.2d 1255 (2d Cir. 1986). The court did not directly consider whether the VRA applies to felon disenfranchisement but appears to have assumed that it did. *See id.* at 1262 (affirming dismissal of the VRA claim on summary judgment).

"cognizable under Section 2 of the VRA" under Ninth Circuit precedent.[83]

The Second and Tenth Circuit opinions concluding that the VRA does not apply to felon disenfranchisement laws rely on three arguments: (1) that the Fourteenth Amendment authorizes felon disenfranchisement laws (the "affirmative sanction" argument); (2) that application of the VRA to felon disenfranchisement would be an unconstitutional exercise of Congress's enforcement power; and (3) that canons of statutory construction support construing the VRA not to apply to felon disenfranchisement laws. The relative merits of each argument are assessed in turn.

1. The "Affirmative Sanction" Argument. As discussed previously, the *Richardson* case established that felon disenfranchisement laws enacted without racially discriminatory intent do not violate the Equal Protection Clause.[84] This is because Section 2 of the Fourteenth Amendment's enforcement mechanism—that a state's representation in Congress will be reduced in proportion to the disenfranchisement of otherwise qualified voters—carries an express exception for disenfranchisement based on "participation in rebellion, or other crime."[85]

The Eleventh Circuit, in *Johnson*, seized on language in *Richardson* describing Section 2 of the Fourteenth Amendment as an "affirmative sanction" of felon disenfranchisement and cited it for the proposition that states have discretion to deny the vote to convicted felons.[86] The court argued that applying the VRA to Florida's felon disenfranchisement law would allow "a congressional statute to override the text of the Constitution."[87] More recently, the Second Circuit, in *Hayden*, cited Section 2 of the Fourteenth Amendment as the "starting point" in the analysis of the VRA's applicability to New York's felon disenfranchisement law.[88] The Second Circuit, while noting that felon

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83. *Farrakhan I*, 338 F.3d at 1016.

84. *See* Richardson v. Ramirez, 418 U.S. 24, 54–55 (1974); *supra* notes 50–58 and accompanying text.

85. U.S. CONST. amend. XIV, § 2.

86. Johnson v. Governor of Fla., 405 F.3d 1214, 1228–29 (11th Cir. 2005) (quoting *Richardson*, 418 U.S. at 54).

87. *Id.* at 1229.

88. Hayden v. Pataki, 449 F.3d 305, 316 (2d Cir. 2006); *accord* Muntaqim v. Coombe, 366 F.3d 102, 122 (2d Cir. 2004). *Hayden* is the *en banc* rehearing of the *Muntaqim* decision, which is incorporated by reference. *Hayden*, 449 F.3d at 313–14.

disenfranchisement provisions are not entirely immune from constitutional or congressional scrutiny, found that the Fourteenth Amendment provided "explicit approval" of those types of laws.[89] Dissenting from the Ninth Circuit's denial of an *en banc* rehearing of the *Farrakhan* case, Judge Alex Kozinski argued that felon disenfranchisement laws were presumptively valid due to the Fourteenth Amendment's textual endorsement of such laws.[90]

Interestingly, neither the Second Circuit nor Judge Kozinski addressed the fact that the VRA was enacted to enforce the Fifteenth Amendment, not the Fourteenth. The Eleventh Circuit brushed off the distinction in a footnote.[91] The distinction is, however, the key weakness to the "affirmative sanction" argument because the Fifteenth Amendment grants its own protections that are not hindered by purported limitations to the scope of the Fourteenth Amendment.

Judge Barrington Daniels Parker, Jr. of the Second Circuit made this point in his dissent in *Hayden*. Pointing out that *Richardson's* "affirmative sanction" came in the context of a claim that felon disenfranchisement was a *per se* violation of the Fourteenth Amendment, Judge Parker noted that "*Richardson* did not grant felon disenfranchisement immunity against any other ground of invalidity. . . ."[92] As a textual matter, Section 2 of the Fourteenth Amendment at most "*declines to prohibit*" felon disenfranchisement and does not affirmatively immunize the practice relative to other constitutional protections.[93] As Judge Parker reasoned:

> The Constitution does not endorse felon disenfranchisement when it declines to prohibit the practice, any more than the Constitution endorses felon enslavement when the Thirteenth Amendment states: "Neither slavery nor involuntary servitude, *except as punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States . . . ." Declining to prohibit something is not the same as protecting it.[94]

Nor does Section 2 of the Fourteenth Amendment *require* states to disenfranchise felons. If states can choose not to disenfranchise felons without running afoul of the Fourteenth Amendment, then Congress, acting pursuant to its power to

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89. *Hayden*, 449 F.3d at 316.

90. Farrakhan v. Washington (*Farrakhan II*), 359 F.3d 1116, 1121 (9th Cir. 2004) (Kozinski, J., dissenting).

91. *Johnson*, 405 F.3d at 1228–29 n.29.

92. *Hayden*, 449 F.3d at 349 (Parker, J., dissenting).

93. *Id.* (citation omitted) (emphasis added).

94. *Id.* (citation omitted).

enforce the Fifteenth Amendment, can compel the same result. Indeed, the "affirmative sanction" argument is more of a rhetorical device than an independent constitutional limitation on the VRA.

2. Arguments on the Constitutionality of the VRA as Enforcement Legislation. Enforcement legislation under the Fourteenth and Fifteenth Amendments is valid only to the extent that it remedies or prevents actual constitutional violations.[95] The Eleventh Circuit, Chief Judge John M. Walker, Jr.'s concurrence to the Second Circuit's *Hayden* opinion, and Judge Kozinski's dissent in the Ninth Circuit have all argued that the VRA would be unconstitutional as applied to felon disenfranchisement laws.[96]

The enforcement power is limited by two independent requirements. The first is that enforcement legislation must be supported by a history of constitutional violations.[97] The second is that the measures must be narrowly tailored to the constitutional ill sought to be avoided.[98] In his *Hayden* concurrence, Chief Judge Walker found no congressional record establishing that felon disenfranchisement laws have been used to discriminate against minority voters.[99] In *Johnson*, the petitioners had argued that specific examples of violations should not be required because Congress could not envision every possible means of racial discrimination.[100] The Eleventh Circuit rejected this argument, citing the widespread use of felon disenfranchisement laws at the time that the VRA was enacted.[101] Lastly, Judge Kozinski emphasized in his dissent from the Ninth Circuit's denial of a rehearing in *Farrakhan* that "[t]he theoretical, undocumented threat of unconstitutional felon disenfranchisement laws simply doesn't justify" application of section 2 to those state laws.[102]

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95. *See* City of Boerne v. Flores, 521 U.S. 507, 519 (1997).

96. *See Hayden*, 449 F.3d at 330 (Walker, C.J., concurring); *Johnson*, 405 F.3d at 1231–32; Farrakhan v. Washington (*Farrakhan II*), 359 F.3d 1116, 1121 (9th Cir. 2004) (Kozinski, J., dissenting).

97. Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 374 (2001); Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 91 (2000); Oregon v. Mitchell, 400 U.S. 112, 130 (1970) (holding the amendment to VRA lowering the voting age to eighteen invalid because Congress made no findings that an age limit of twenty-one was used to discriminate on race).

98. *See City of Boerne*, 521 U.S. at 520.

99. *Hayden*, 449 F.3d at 330–31 (Walker, C.J., concurring).

100. *Johnson*, 405 F.3d at 1231 n.33.

101. *Id.*

102. Farrakhan v. Washington (*Farrakhan II*), 359 F.3d 1116, 1123 (9th Cir. 2004) (Kozinski, J., dissenting).

Lack of congressional findings of a pattern of historical discrimination through felon disenfranchisement laws[103] informs the analysis of the proportionality and congruence of the purported remedial measure at issue. Although the Supreme Court has repeatedly emphasized the importance that enforcement legislation be geographically targeted,[104] the VRA applies to all states regardless of their individual histories.[105] To the extent the VRA is either inadequately supported by findings of a pattern of discrimination or not narrowly tailored, application of the VRA to felon disenfranchisement would be unconstitutional.

The Ninth Circuit did not consider this issue in *Farrakhan* when it allowed a VRA challenge to Washington's felon disenfranchisement law to proceed.[106] On remand, the *Farrakhan* case was dismissed on summary judgment, mooting for now the question of constitutionality of the VRA as applied to felon disenfranchisement laws.[107] Indeed, the narrow issue of as-applied constitutionality of the VRA as enforcement legislation relative to felon disenfranchisement laws would not be ripe until such a law is actually invalidated. Rather, the constitutional doubt associated with application of the VRA to felon disenfranchisement serves primarily as a predicate for the statutory construction arguments discussed next.

3. Statutory Interpretation Arguments. The Ninth Circuit's interpretation of the VRA was the same as that pointedly expressed in a dissent by Judge Sonia Sotomayor of the Second Circuit: "[i]t is plain to anyone reading the Voting Rights Act that it applies to all 'voting qualification[s].'"[108] The majority in the

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103. This is not to say that there is not an actual record of state use of felon disenfranchisement laws to discriminate on race. That states used felon disenfranchisement laws in order to discriminate is well documented. *See supra* notes 33-37 and accompanying text. Rather, that history is not part of the congressional findings made at the time of the enactment of the VRA and its relevant amendments. *See Hayden*, 449 F.3d at 330–31 (Walker, C.J., concurring).

104. *Farrakhan II*, 359 F.3d at 1124 (Kozinski, J., dissenting) (noting that a purported enforcement legislation was not geographically targeted and was therefore struck down in United States v. Morrison, 529 U.S. 598 (2000)).

105. Geographic targetedness is particularly relevant to the present analysis of Alaska and is addressed in Part IV.

106. *See* Farrakhan v. Washington (*Farrakhan I*), 338 F.3d 1009, 1016 (9th Cir. 2003).

107. *See* Farrakhan v. Gregoire (*Farrakhan III*), No. CV-96-076-RHW, 2006 U.S. Dist. LEXIS 45987, at *2 (E.D. Wash. July 7, 2006).

108. *Hayden*, 449 F.3d at 367–68 (Sotomayor, J., dissenting) (second alteration in original); *Farrakhan I*, 338 F.3d at 1016.

Second Circuit, though admitting that "[t]here is no question that the language of [section 2] is extremely broad . . . and could be read to include felon disenfranchisement provisions," nevertheless stressed the importance of interpretation in light of congressional intent, cryptically citing dated authority for the proposition that "[t]he circumstances of the enactment of particular legislation may persuade a court that Congress did not intend the words of common meaning to have their literal effect."[109]

Two canons of construction have been deployed to interpret the VRA away from felon disenfranchisement provisions: the avoidance canon and the clear statement rule. The Eleventh Circuit relied upon the avoidance canon, which counsels that, in the case of an ambiguous statute, "where an otherwise acceptable construction of a statue would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress."[110]

The Second Circuit—both sitting *en banc* in *Hayden* and through the three-judge panel that decided *Muntaqim v. Coombe*, the predecessor to *Hayden*—distanced itself from the Eleventh Circuit's reliance on the avoidance canon.[111] The reason expressed in *Muntaqim* is that the clarity of the text of section 2 of the VRA is impossible to reconcile with the avoidance canon's ambiguity requirement.[112] Indeed, a concurring judge on the Eleventh Circuit conceded that the majority "overstates the case for constitutional avoidance" because "[a]s a purely textual matter, a voting

109. *Hayden*, 449 F.3d at 315 (quoting Watt v. Alaska, 451 U.S. 259, 266 (1981)).

110. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988).

111. *See* 366 F.3d 102, 128 n.22 (2d Cir. 2004) ("[Section 2], while vague, does not seem ambiguous."), *aff'd en banc*, *Hayden*, 449 F.3d 305. The *Hayden* court barely mentioned the avoidance canon and made only passing reference to the Eleventh Circuit's reliance on it. 449 F.3d at 313, 328 n.24.

112. *See Muntaqim*, 366 F.3d at 128 n.22. The *Johnson* court, ironically, turned to the *Muntaqim* decision for the proposition that section 2 is ambiguous, citing that court's assessment that the meaning of section 2 is "exceedingly difficult to discern." Johnson v. Governor of Fla., 405 F.3d 1214, 1229 n.30 (11th Cir. 2005) (quoting *Muntaqim*, 366 F.3d at 116). In the quoted passage, however, the *Muntaqim* court referred to ambiguity in the degree of intent required to establish a violation of section 2, not the scope of the Act's coverage relative to felon disenfranchisement laws. *Johnson*, 405 F.3d at 1229 n.30; *Muntaqim*, 366 F.3d at 116–18.

qualification based on felony status . . . falls within the scope of the VRA."[113]

A stronger statutory construction argument, and the one adopted by the majority in *Hayden*, is premised on the so-called clear statement rule. The rule provides that "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'"[114] The *Hayden* court held that the clear statement rule does not require ambiguity but only a lack of a clear statement, explaining that "we will apply the clear statement rule when a statute admits of an interpretation that would alter the federal balance but there is reason to believe . . . that Congress may not have intended such an alteration of the federal balance."[115] The rule is intended to prevent a statute from inadvertently affecting the federal-state balance of power. The Supreme Court has held, in another context, that "clear statement rules ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation."[116] Given that sweeping language alone may not satisfy the clear statement rule, the question becomes one of congressional intent.

Considerable evidence suggests that Congress did not intend the VRA to apply to felon disenfranchisement laws.[117] For example, though Congress expressly identified common forms of discriminatory voter qualifications, including literacy, educational, and moral character tests, it never mentioned felon disenfranchisement in the text of the VRA.[118] In fact, as noted by the *Hayden* court, the only reference to felon disenfranchisement in the legislative history of the VRA was to clarify that the VRA's character test provisions "would not result in the proscription of the frequent requirement of States and political subdivisions that an applicant for voting or registration for voting be free of conviction of a felony or mental disability."[119] Indeed, the *Hayden*

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113. *Johnson*, 405 F.3d at 1239–40 (Wilson, J., concurring in part).

114. Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991) (quoting Will v. Mich., 491 U.S. 58, 65 (1989) (internal citation omitted)).

115. *Hayden*, 449 F.3d at 325.

116. Spector v. Norwegian Cruise Line, Ltd., 545 U.S. 119, 139 (2005) (addressing a presumption against applying statutes to the internal affairs of foreign vessels).

117. *See, e.g.*, *Hayden*, 449 F.3d at 315.

118. *See* 42 U.S.C. § 1973b(c) (2000).

119. *Hayden*, 449 F.3d at 318 (quoting S. Rep. No. 89-162, at 24 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2508, 2562); *see also* H.R. Rep. No. 89-439, at 19

court reasoned that, given the prevalence of felon disenfranchisement statutes, "it seems unfathomable that Congress would silently amend the Voting Rights Act in a way that would affect them."[120]

Whether application of the VRA to felon disenfranchisement laws would upset the federal-state balance is in dispute. In *Muntaqim*, the Second Circuit held that the federal-state balance would be upset because applying the VRA to felon disenfranchisement laws would exceed Congress's enforcement power and contradict Section 2 of the Fourteenth Amendment.[121] The Eleventh Circuit in *Johnson* concurred generally with that conclusion but did not rely on it.[122] On a rehearing of *Muntaqim* in *Hayden*, the Second Circuit hewed its analysis more directly to "three important state interests" that would be affected by applying the VRA to New York's felon disenfranchisement law: "(1) the regulation of the franchise; (2) the State's authority to craft its criminal law; and (3) the regulation of correctional institutions."[123]

Rejecting the federalism concerns similarly raised by the Tenth Circuit in *Johnson*, Judge Rosemary Barkett in dissent reasoned that federalism is not implicated by the VRA because the "Fourteenth and Fifteenth Amendments altered the constitutional balance between the two sovereigns—*not* the Voting Rights Act, which merely enforces the guarantees of those amendments."[124] This argument was repeated in Judge Parker's *Hayden* dissent.[125]

(1965), *reprinted in* 1965 U.S.C.C.A.N. 2437, 2457. Nor did the 1982 amendments expand the scope of the VRA. Chisom v. Roemer, 501 U.S. 380, 383–84 (1991) ("[T]he coverage provided by the 1982 amendment is coextensive with the coverage provided by the Act prior to 1982."). The 1982 amendments merely lowered the evidentiary burden to establish a violation by replacing an "intent" test with an "effects" test. *Id.* at 403–04.

120. *Hayden*, 449 F.3d at 317 (quoting Johnson v. Governor of Fla., 405 F.3d 1214, 1234 (11th Cir. 2005)).

121. *See* Muntaqim v. Coombe, 366 F.3d 102, 126 (2d Cir. 2004). Both arguments against applying the VRA to felon disenfranchisement discussed serve as predicates for application of the clear statement rule because they implicate federalism.

122. The court makes passing reference to the clear statement rule in a footnote. *See Johnson*, 405 F.3d at 1232 n.35.

123. *Hayden*, 449 F.3d at 326.

124. *Johnson*, 405 F.3d at 1250 (Barkett, J., dissenting) (citing a dissent from an equally divided court in the Second Circuit's first consideration of the question in *Baker v. Pataki*, 85 F.3d 919, 938 (2d Cir. 1996) (Feinberg, J., dissenting)).

125. *Hayden*, 449 F.3d at 358.

Whatever the uncertainties of the basis for these divergent circuit decisions, Ninth Circuit law is, for now, clear that a challenge to Alaska's felon disenfranchisement law is possible under section 2 of the VRA.

IV. ALASKA'S FELON DISENFRANCHISEMENT LAW AND THE VOTING RIGHTS ACT OF 1965

A. Ninth Circuit's Framework for Challenges Under Section 2 of the VRA

Nearly a decade before *Farrakhan*, the Ninth Circuit set a framework for challenges under section 2 of the VRA in *Smith v. Salt River*.[126] *Salt River* involved an Arizona agricultural district power board election rule that limited voting to landowners within the district.[127] African-American plaintiffs claimed that the voting qualification combined with racial disparities in land ownership rates had a racially disproportionate effect on voting rights in violation of section 2 of the VRA.[128]

The *Salt River* court affirmed that section 2 of the VRA "prohibits voting qualifications which *result in* discrimination on account of race or color . . . [and] requires proof only of a discriminatory result, not of discriminatory intent."[129] Further, the intent is judged under the "totality of the circumstances" test with reference to several non-exclusive, so-called Senate Factors identified in the legislative history of the VRA.[130]

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126. Smith v. Salt River Project Agric. Improvement & Power Dist., 109 F.3d 586 (9th Cir. 1997).

127. *Id.* at 589.

128. *Id.* at 588.

129. *Id.* at 594 (citing Chisom v. Roemer, 501 U.S. 380, 394 (1991)).

130. *Id.* at 594 n.6. The Senate Factors are:

> (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process[;]
>
> (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as

Significantly, in interpreting the "totality of the circumstances" test under the VRA, the *Salt River* court held that "a bare statistical showing of disproportionate *impact* on a racial minority does not satisfy the § 2 'results' inquiry. Instead, 'section 2 plaintiffs must show a causal connection between the challenged voting practice and [a] prohibited discriminatory result.'"[131]

As the Ninth Circuit explained, "[t]he real question this case presents is whether the land ownership requirement denies African-Americans the right and opportunity to vote...."[132] Affirming the district court's dismissal for lack of a "causal connection," the Ninth Circuit, relying heavily on a stipulated lack of historical racial discrimination, concluded that "the statistical disparity in African-American and white home ownership does not prove the District has violated § 2."[133]

B. Applying the VRA in *Farrakhan*

In late 2000, the Eastern District of Washington dismissed for the first time a claim by Muhammad Shabazz Farrakhan and others that Washington's felon disenfranchisement law violated section 2 of the VRA.[134] The court held that "although the disenfranchisement provision clearly has a disproportionate impact on racial minorities, there is no evidence that the provision's enactment was motivated by racial animus, or that its operation *by*

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education, employment and health, which hinder their ability to participate effectively in the political process;

(6) whether political campaigns have been characterized by overt or subtle racial appeals;

(7) the extent to which members of the minority group have been elected to public office in the jurisdiction;

Additional factors . . . are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized need of the members of the minority group; [and] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

Id. (citing S Rep. No. 97-417, at 28–29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206–07).

131. *Id.* at 595 (alteration in original) (quoting Ortiz v. City of Philadelphia Office of the City Comm'rs Voter Registration Div., 28 F.3d 306, 312 (9th Cir. 1997)).

132. *Id.* at 596.

133. *Id.*

134. Farrakhan v. Locke, No. CS-96-76-RHW, 2000 U.S. Dist. LEXIS 22212, at *18 (E.D. Wash. Dec. 1, 2000), *rev'd in part sub nom.*, Farrakhan v. Washington (*Farrakhan I*), 338 F.3d 1009 (9th Cir. 2003).

itself has a discriminatory effect."[135] The court referenced the Senate Factors but declined to apply them directly.[136] Instead, the court reasoned that, factoring out racial discrimination in the criminal justice system, it was impossible to show a discriminatory effect from the disenfranchisement provision.[137]

The Ninth Circuit rejected the district court's reasoning and held that section 2 of the VRA required more than an isolated inquiry into the challenged voting qualification without reference to external factors.[138] Instead, the court emphasized that section 2's "totality of the circumstances" test "requires courts to consider how a challenged voting practice *interacts with* external factors such as 'social and historical conditions' to result in denial of the right to vote on account of race or color."[139] Holding that an inquiry into a "causal connection" between racial discrimination and denial of voting rights involves reference to the relevant Senate Factors, the court specifically noted that "racial bias in the criminal justice system" is relevant and encompassed in the factors.[140]

Having rejected the "by itself" causation standard applied by the district court, the Ninth Circuit remanded the case for an evaluation of the external factors that may establish a causal relationship between discrimination in the criminal justice system and the voting mechanism based on felony status.[141] The court explained that "a causal connection may be shown where the discriminatory impact of a challenged voting practice is attributable to racial discrimination in the surrounding social and historical circumstances."[142] The court illustrated the test with reference to the *Salt River* case.[143] There, the challenge failed because the external factor—a difference in land ownership rates—was not "*substantially explained by race.*"[144]

Captioned *Farrakhan v. Gregoire* on remand, the case was heard a second time by Judge Robert Whaley of the Eastern

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135. *Locke*, 2000 U.S. Dist. LEXIS 22212, at *9–*10.

136. *Id.* at *9 n.4.

137. *Id.* at *10.

138. *Farrakhan I*, 338 F.3d at 1011–12.

139. *Id.* (quoting Thornburg v. Gingles, 478 U.S. 30, 47 (1986)).

140. *Id.* at 1020.

141. *Id.* at 1019–20 ("[C]ourts must be able to consider whether voting practices 'accommodate or amplify the effect that . . . discrimination has on the voting process.'" (alteration in original) (quoting Smith v. Salt River Project Agric. Improvement and Power Dist., 109 F.3d 595 n.7 (9th Cir. 1997))).

142. *Id.* at 1019.

143. *Id.* (citing *Salt River*, 109 F.3d at 595).

144. *Id.* at 1017 (quoting *Salt River*, 109 F.3d at 591).

District of Washington.[145] Reviewing statistical evidence of racial discrimination in Washington's criminal justice system, Judge Whaley wrote that "the Court is compelled to find that there is discrimination in Washington's criminal justice system on account of race . . . [and] this discrimination 'clearly hinder[s] the ability of racial minorities to participate effectively in the political process . . . .'"[146]

In spite of this finding, the court in *Farrakhan III* took the "totality of the circumstances" test as an opportunity to balance away intentional discrimination in the criminal justice system with reference to historical and social factors indicating a lack of discriminatory intent in Washington. Addressing the Senate Factors, the court cited a range of historical and social conditions such as: Washington's support for racial minorities; a lack of discriminatory intent in the enactment of the felon disenfranchisement law; the long tradition of felon disenfranchisement in the United States; and even the implicit endorsement of felon disenfranchisement in Section 2 of the Fourteenth Amendment.[147] Weighing the factors, the court concluded that "the totality of the circumstances does not support a finding that Washington's felon disenfranchisement law results in discrimination in its electoral process on account of race."[148]

C. Alaska's Felon Disenfranchisement Law in Light of *Farrakhan III*

The court in *Farrakhan III* found that Washington's felon disenfranchisement law did not violate section 2 of the VRA in spite of "compelling" evidence of racial discrimination in the criminal justice system.[149] Despite the Ninth Circuit's holding that a violation depends on the interaction between a voting mechanism and external factors, the court in *Farrakhan III* weighed "Washington's history, or lack thereof, of racial bias in its electoral process" to find that the totality of the circumstances test does not support a finding that Washington's felon disenfranchisement law violates the VRA.[150]

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145. Farrakhan v. Gregoire (*Farrakhan III*), No. CV-96-076-RHW, 2006 U.S. Dist. LEXIS 45987 (E.D. Wash. July 7, 2006).

146. *Id.* at *18 (quoting *Farrakhan I*, 338 F.3d at 1020) (evaluating evidence under the summary judgment standard).

147. *Id.* at *23–*28.

148. *Id.* at *29.

149. *Id.* at *28.

150. *Id.* at *28–*29.

Significantly, the court in *Farrakhan III* allowed historical evidence to stand in for an analysis of the required causal connection between discrimination and racially disproportionate effects of a voting qualification. In *Salt River*, the disproportionate land ownership rates were not the result of discrimination—they were simply a statistical anomaly.[151] In *Farrakhan III*, disproportionate felony conviction was more than a statistical anomaly—it was evidence of racial discrimination.[152] Nevertheless, this causal nexus was deemed outweighed by other Senate Factors. Indeed, applying a balancing test to the Senate Factors may provide a back door for other arguments, such as the "affirmative sanction argument," which the Ninth Circuit has rejected.[153]

In Alaska, the statistics demonstrate that felon disenfranchisement has a racially disproportionate impact.[154] Compared with Washington, however, Alaska may not be able to rely so heavily on evidence of a historical lack of racial bias to defeat a challenge to its felon disenfranchisement law. One factor sure to be considered by any court hearing a VRA challenge to Alaska's felon disenfranchisement law will be that Alaska was designated a "covered jurisdiction" because of its use of a literacy test at the time of the VRA's enactment.[155] Although Alaska was able to demonstrate in 1966 that it had not made racially discriminatory use of that test for the preceding five years,[156] the stigma of having been singled out under section 5 of the VRA weighs in favor, perhaps, of additional scrutiny under section 2. Nevertheless, the outcome of a challenge to Alaska's felon disenfranchisement law is certain to be, as it was in *Salt River* and *Farrakhan III*, a fact-specific inquiry shaded by the trial court's view of the proper application of the totality of the circumstances test.

V. CONCLUSION

Felon disenfranchisement in Alaska will continue to be cause for concern as long as it works a racially disproportionate effect. Though recent decisions in the Tenth and Second Circuits have

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151. Smith v. Salt River Project Agric. Improvement & Power Dist., 109 F.3d 586, 596 (9th Cir. 1997).

152. *Farrakhan III*, 2006 U.S. Dist. LEXIS 45987 at *28.

153. *See* Wesley v. Collins, 791 F.2d 1255, 1261 (6th Cir. 1986) (considering the Fourteenth Amendment as a factor in the totality of the circumstances test).

154. *See* discussion *supra* Part II.B.

155. *See supra* note 68 and accompanying text.

156. CITIZEN'S GUIDE, *supra* note 26, at 107 (noting that literacy tests in Alaska "lingered under a cloud of suspicion").

rejected claims against state felon disenfranchisement laws brought under section 2 of the Voting Rights Act of 1965, the Ninth Circuit has expressly held that such challenges can proceed. One such claim, in the State of Washington, was ultimately unsuccessful. Nevertheless, a case brought in Alaska, on different facts and before a different court, may well invalidate the state's practice of disenfranchising felons on the basis of its racially disproportionate impact.

■ ***Permanent disenfranchisement for all felony offenders, unless government approves individual rights restoration***

Florida
Kentucky
Virginia

■ ***Permanent disenfranchisement for at least some felony offenders, unless government approves individual rights restoration***

Alabama: People with certain felony convictions involving moral turpitude can apply to have their voting rights restored upon completion of sentence and payment of fines and fees; people convicted of some specific crimes are permanently barred from voting.

Arizona: People convicted of one felony can have their voting rights restored upon completion of sentence, including all prison, parole, and probation terms and payment of legal financial obligations. People convicted of two or more felonies are permanently barred from voting unless pardoned or restored by a judge.

Delaware: Felony offenders can have their voting rights restored five years after completion of sentence and payment of fines and fees. People who are convicted of certain disqualifying felonies are permanently disenfranchised.

Maryland: Voting rights are restored post-sentence[1] after a first conviction for an "infamous crime." A three-year waiting period is imposed post-sentence for individuals with subsequent convictions. People who are convicted of a second or subsequent *violent* crime are permanently disenfranchised.

Mississippi: People who are convicted of one of ten disqualifying offenses are permanently disenfranchised. Others never lose the right to vote.

Nevada: The right to vote is automatically restored to first-time offenders of non-violent crimes upon completion of sentence. Repeat offenders and those convicted of violent crimes cannot vote unless pardoned or granted a restoration of civil rights from the court in which they were convicted.

Tennessee: People convicted of felonies after 1981 can have their voting rights restored if they have completed their full sentences, paid all restitution, and are current with child support payments. People convicted of some categories of crimes cannot regain the right to vote unless pardoned.

Wyoming: First-time nonviolent felony offenders can have their rights restored five years after completion of sentence. Repeat offenders and those convicted of violent crimes are permanently barred from voting, unless pardoned or restored to rights by the Governor.

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[1] In Maryland, post-sentence means the individual "has completed the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines." Md. Code Ann., Elec. Law § 3-102(b)(1)(ii).

■ ***Voting rights restored automatically after completion of sentence, including prison, parole and probation***

Alaska
Arkansas[2]
Georgia
Idaho
Iowa
Kansas
Louisiana
Minnesota
Missouri
Nebraska[3]
New Jersey
New Mexico
North Carolina
Oklahoma
South Carolina
Texas
Washington[4]
West Virginia
Wisconsin

■ ***Voting rights restored automatically after release from prison and discharge from parole (probationers may vote)***

California
Colorado
Connecticut
New York
South Dakota

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[2] Under Arkansas law, failure to satisfy legal financial obligations associated with convictions may result in post-sentence loss of voting rights.

[3] In Nebraska, voting rights are restored two years after the completion of sentence.

[4] Under Washington law, failure to satisfy legal financial obligations associated with convictions may result in post-sentence loss of voting rights.

Voting rights restored automatically after release from prison

District of Columbia
Hawaii
Illinois
Indiana
Massachusetts
Michigan
Montana
New Hampshire
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
Utah

☐ ***No disenfranchisement for felony convictions***

[redacted]
Vermont

STATE OF ALASKA

SARAH PALIN
GOVERNOR

DEPARTMENT OF CORRECTIONS
Office of the Commissioner

P.O. Box 112000
Juneau, AK 99811-2000
PHONE: (907) 465-4652
FAX: (907) 465-3390

March 1, 2007

Honorable Hollis French
State Capitol
Juneau, Alaska 99801-1182

Dear Senator French:

The following information is provided in response to your question regarding probationer and parolees whose last conviction was a felony crime of moral turpitude:

Office	Felony	Felony Unclass	Felony A	Felony B	Felony C	Total
Anchorage Probation	1	49	106	321	616	1093
Barrow Probation	0	0	0	3	20	23
Bethel Probation	0	2	3	42	95	142
Dillingham Probation	0	0	0	9	30	39
Fairbanks Probation	0	5	13	59	181	258
Interstate Compact	9	24	30	66	128	257
Juneau Probation	0	3	11	33	68	115
Kenai Probation	0	6	10	48	139	203
Ketchikan Probation	0	2	1	31	51	85
Kodiak Probation	0	1	1	17	32	51
Kotzebue Probation	0	1	2	3	46	52
Nome Probation	0	0	1	3	28	32
Palmer Probation	0	8	21	75	180	284
Sitka Probation	0	0	1	18	26	45
Total	10	101	200	728	1640	2679

Sincerely,

D. Griffin for

Dwayne Peeples, Deputy Commissioner

cc: Budget and Finance Files
Legislative Finance
Office of Management and Budget

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(1) "absentee voting official" means a person appointed to serve as an absentee voting official in accordance with AS 15.20.045 ;

(2) "ballot" means any document provided by the director on which votes may be cast for candidates, propositions, or questions;

(3) "director" means the director of elections who is the chief elections officer of the state appointed in accordance with AS 15.10.105(a);

(4) "division" means the division of elections created under AS 15.10.105;

(5) "election board" means the board appointed in accordance with AS 15.10.120;

(6) "election official" means election board members, members of counting or review boards, employees of the division of elections, and absentee voting officials;

(7) "electronically generated ballot" means any ballot other than a paper ballot that is physically marked by the voter using a writing instrument or a mechanical device;

(8) "federal election" means a general, special, or primary election held solely or in part for the purpose of selecting, nominating or electing a candidate for the office of President, Vice-President, presidential elector, United States senator, or United States representative;

(9) "felony involving moral turpitude" includes those crimes that are immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, offering a false instrument for recording, scheme to defraud, falsifying business records, commercial bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography;

(10) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years;

(11) "hand-counted ballot" means a ballot designated to be counted by hand in precincts where precinct tabulators are not available;

(12) "house district" means one of the districts described in art. VI, sec. 1, Constitution of the State

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES

Overview

Since the founding of the country, most states in the U.S. have enacted laws disenfranchising convicted felons and ex-felons. In the last 30 years, due to the dramatic expansion of the criminal justice system, these laws have significantly affected the political voice of many American communities. The momentum toward reform of these policies has been based on a reconsideration of their wisdom in meeting legitimate correctional objectives and the interests of full democratic participation.

State Disenfranchisement Laws

- 48 states and the District of Columbia prohibit inmates from voting while incarcerated for a felony offense.
- Only two states - Maine and Vermont - permit inmates to vote.
- 35 states prohibit felons from voting while they are on parole and 30 of these states exclude felony probationers as well.
- Three states deny the right to vote to all ex-offenders who have completed their sentences. Nine others disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Delaware and Wyoming, three years in Maryland, and two years in Nebraska).
- Each state has developed its own process of restoring voting rights to ex-offenders but most of these restoration processes are so cumbersome that few ex-offenders are able to take advantage of them.

Impact of Felony Disenfranchisement

- 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.
- 1.4 million African American men, or 13% of black men, are disenfranchised, a rate seven times the national average.
- An estimated 676,730 women are currently ineligible to vote as a result of a felony conviction.
- More than 2 million[1] white Americans (Hispanic and non-Hispanic)[2] are disenfranchised.
- In five states that deny the vote to ex-offenders, one in four black men is *permanently* disenfranchised.
- Given current rates of incarceration, three in ten of the next generation of black men can expect to be disenfranchised at some point in their lifetime. In states that disenfranchise ex-offenders, as many as 40% of black men may permanently lose their right to vote.
- 2.1 million disenfranchised persons are ex-offenders who have completed their sentences. The state of Florida had an estimated 960,000 ex-felons who were unable to vote in the 2004 presidential election.

[1] This estimate is based on the proportion of whites convicted of felony offenses for the period 1988-1996.
[2] Bureau of Justice Statistics' reports on felony sentences in state courts do not provide separate conviction data for Hispanics.

Policy Changes

- **Alabama**: In 2003, Governor Riley signed into law a bill that permits most felons to apply for a certificate of eligibility to register to vote after completing their sentence.
- **Connecticut**: In 2001, Governor Rowland signed into law a bill that extends voting rights to felons on probation. The law is expected to make 36,000 persons eligible to vote.
- **Delaware**: In 2000, the General Assembly passed a constitutional amendment restoring voting rights to some ex-felons five years after the completion of their sentence.
- **Iowa**: Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all ex-felons, a process that will continue on a monthly basis upon the completion of sentence.
- **Kansas**: In 2002, the legislature added probationers to the category of excluded felons.
- **Kentucky**: In 2001, the legislature passed a bill that requires that the Department of Corrections inform and aid eligible offenders in completing the restoration process to regain their civil rights.
- **Maryland**: In 2002, the legislature repealed its lifetime ban on two-time ex-felons (with the exception of felons with two violent convictions) and imposed a three-year waiting period after completion of sentence before rights can be restored.
- **Massachusetts**: In 2000, the Massachusetts electorate voted in favor of a constitutional amendment, which strips persons incarcerated for a felony offense of their right to vote.
- **Nebraska:** In 2005, the Legislature repealed the lifetime ban on all felons and replaced it with a two-year post-sentence ban.
- **Nevada**: In 2003, the state approved a provision to automatically restore voting rights for first-time nonviolent felons immediately after completion of sentence.
- **New Mexico**: In 2001, the Legislature adopted a bill repealing the state's lifetime ban on ex-felon voting. In 2005, a bill was passed that requires the Department of Corrections to provide notification of completion of sentence to the Secretary of State's office.
- **Pennsylvania**: A Commonwealth Court restored the right to vote to thousands of ex-felons who, as a result, were entitled to vote in the 2000 presidential election.
- **Rhode Island**: In 2006, Rhode Island voters approved a referendum to amend the state constitution and restore voting rights to persons currently serving a sentence of probation or parole.
- **Tennessee:** In 2006, the Tennessee legislature amended the country's most complex restoration system by greatly simplifying the procedure. All persons convicted of a felony (except electoral or serious violent offenses) are now eligible to have their right to vote restored upon completion of sentence and may apply for a "certificate of restoration" from the Board of Probation and Parole. All applicants must also satisfy any court-ordered restitution or child support obligations.
- **Texas**: In 1997, the Texas Legislature passed a bill, signed by Governor George W. Bush, eliminating the two-year waiting period after completion of sentence before individuals can regain their right to vote.
- **Utah**: In 1998, Utah voters approved an amendment prohibiting persons incarcerated for a felony conviction from voting.
- **Virginia**: The Virginia legislature passed a law in 2000 enabling certain ex-felons to apply to the circuit court for the restoration of their voting rights five years after the completion of their sentence; those convicted of felony drug offenses must wait seven years after completion. The circuit court's decisions are subject to the Governor's approval.
- **Wyoming**: In 2003, Governor Freudenthal signed a bill to allow people convicted of a non-violent first-time felony to apply for restoration of voting rights five years after completion of sentence.

Sources: Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, Human Rights Watch, The Sentencing Project, October 1998; Patricia Allard and Marc Mauer, *Regaining the Vote: An Assessment of Activity Relating to Felon Disenfranchisement Laws*, The Sentencing Project, January 2000, updates by The Sentencing Project, and Jeff Manza and Christopher Uggen, Locked Out: Felony Disenfranchisement and American Democracy, 2006

Disenfranchisement Categories Under State Law

STATE	PRISON	PROBATION	PAROLE	ALL	POST SENTENCE (certain...)
Alabama	X	X	X		X (certain offenses)
Alaska	X	X	X		
Arizona	X	X	X		X (2nd felony)
Arkansas*	X	X	X		
California	X		X		
Colorado	X		X		
Connecticut	X		X		
Delaware	X	X	X		X (5 years)
District of Columbia	X				
Florida	X	X	X	X	
Georgia	X	X	X		
Hawaii	X				
Idaho	X	X	X		
Illinois	X				
Indiana	X				
Iowa	X	X	X		
Kansas	X	X	X		
Kentucky	X	X	X	X	
Louisiana	X	X	X		
Maine					
Maryland	X	X	X		X (2nd felony, 3 years)
Massachusetts	X				
Michigan	X				
Minnesota	X	X	X		
Mississippi	X	X	X		X (certain offenses)
Missouri	X	X	X		
Montana	X				
Nebraska	X	X	X		X (2 years)
Nevada	X	X	X		X (except first-time nonviolent)
New Hampshire	X				
New Jersey	X	X	X		
New Mexico	X	X	X		
New York	X		X		
North Carolina	X	X	X		
North Dakota	X				
Ohio	X				
Oklahoma	X	X	X		
Oregon	X				
Pennsylvania	X				
Rhode Island	X				
South Carolina	X	X	X		
South Dakota	X		X		
Tennessee	X	X	X		X (certain offenses)
Texas	X	X	X		
Utah	X				
Vermont					
Virginia	X	X	X	X	
Washington*	X	X	X		
West Virginia	X	X	X		
Wisconsin	X	X	X		
Wyoming	X	X	X		X (5 years)
U.S. Total	49	30	35	3	9

* Failure to satisfy obligations associated with convictions may result in post –sentence loss of voting rights.

Testimony of

DANIEL LEVITAS

On behalf of

THE AMERICAN CIVIL LIBERTIES UNION

On

SB 7

AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

Before the

STATE AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE - FIRST SESSION
STATE OF ALASKA

February 22, 2007

Good afternoon Madam Chairman and members of the Committee. Thank you very much for the opportunity to testify today on SB 7, a measure addressing the voting rights of persons with felony convictions in Alaska. I urge your support for this important legislation.

My name is Daniel Levitas and I am a consultant to the American Civil Liberties Union on the issue of felon enfranchisement and am based in Atlanta, Georgia. Founded in 1920, the ACLU is a nonprofit, nonpartisan organization with more than 500,000 members nationwide dedicated to preserving and protecting civil liberties and civil rights.

Currently there are an estimated 5.3 million Americans who are disfranchised as a result of a prior criminal conviction, including approximately 11,132 persons in Alaska, which represents 2.42% of the state's voting age population.[1] It is especially important to note that the majority of Alaska's disfranchised population is *not* in prison or jail, but actually living in the community. In fact, slightly more than half the 11,132 disfranchised persons in Alaska, or 6,010 people, are on felony probation (5,083 and 46%) or parole (927 and 8%).

[1] Alaska's voting age population was 459,529 people as of December 31, 2004 – the date for which we have the most recent comprehensive data on disfranchised persons.

Currently Alaska is one of 19 states where the right to vote is automatically restored upon completion of sentence, including the term of incarceration, probation and parole.

However, there are a growing number of states – 20 to be exact – whose disfranchisement policies are less harsh than Alaska's and whose policies are likely to promote more effective reintegration of ex-offenders. I hope that you and your colleagues in the Alaska legislature will give strong consideration to embracing this trend with the adoption of SB 7.

For example, in 13 states and the District of Columbia (including Oregon, Montana, Utah and Indiana), individuals with felony convictions can vote automatically upon release from prison.[2] In five other states voting rights are restored automatically after release from prison and discharge from parole, but probationers may vote.[3] And in two states – Maine and Vermont – there are no felon disfranchising provisions.

In taking up SB 7, Alaska policymakers are hardly alone in considering less restrictive disfranchising provisions. Over the past ten years there has been a broad national trend of adopting less restrictive measures with 16 states implementing positive reforms to their felon disfranchisement policies. And legislators in Colorado and Washington State are currently debating measures nearly identical to SB 7, which would fully enfranchise all ex-offenders upon release from incarceration. And just last fall, Rhode Island voters approved a statewide ballot initiative that restored voting rights to approximately 15,000 ex-felons on parole and probation in that state.

This trend is also one that enjoys support across the political spectrum. While testifying last summer in favor of renewing the expiring provisions of the Voting Rights Act, former Cabinet Secretary Jack Kemp declared his support for felon enfranchisement. And Florida's new Governor, Charlie Crist, who said during his campaign that he favored instituting automatic restoration of voting rights, was recently scheduled to meet personally with Kemp to discuss how to move forward on this issue. In Virginia, one of only three states that still permanently disfranchise felony offenders, the Republican controlled state senate voted overwhelmingly early this month in favor of a constitutional amendment that would allow the General Assembly to restore voting rights to formerly incarcerated individuals who committed nonviolent crimes.

In Alaska, as is the case elsewhere in the United States, the vast majority of inmates are going to return to their communities. It is therefore in our collective interest for ex-offenders to function as responsible taxpayers and citizens, recognizing the full range of their responsibilities to society. Passage of SB 7 would help facilitate this goal by enabling more people with prior felony convictions to vote and thereby giving them a higher stake in their Alaska communities. After all, probationers and parolees are law-

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[2] The 13 states are: HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT.

[3] The five states are: CA, CO, CT, NY, and SD.

abiding citizens who are living in the community, working or seeking work, raising their families and paying taxes.

Restricting voting rights does not prevent crime or provide compensation to victims. Instead, disfranchising people following their release from incarceration accomplishes exactly the opposite of what we should be doing to promote re-entry. In this way, prolonged disfranchisement of citizens with criminal convictions after their release from incarceration is actually harmful to the prospects for sustainable reintegration of ex-offenders into society. In fact, extending the right to vote to ex-offenders who are released from incarceration is also likely to reduce the chances that offenders will re-offend as recent research finds a link between voting participation and re-offense: people who voted after release from supervision were half as likely to be re-arrested as those who did not vote.[4] Similar effects were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted.[5]

In contrast, maintaining Alaska's current policy of disfranchising offenders who are deemed safe enough to be living and working in local communities on probation or parole can only discourage these offenders from becoming productive members of society, enhance their likelihood of re-arrest, and weaken democratic institutions by decreasing participation in the voting process.

Overall, criminal disenfranchisement also has a disproportionate impact on minority communities. While disfranchisement policies prevent 2.5% of the total population from voting nationwide, they prevent 13% of the total population of African American men from casting a ballot.[6] In Alaska, while the majority of individuals with felony convictions are Caucasian, felony disfranchisement still has a very significant racially disproportionate effect. For example, 1,469 of the 11,132 Alaskans who are disfranchised as a result of a felony conviction are African American, which represents 7.6% of the overall black voting age population in the state. This compares with the aforementioned disfranchisement rate of just 2.4% for all voters (including minorities). Put another way, African Americans are disfranchised at a rate nearly four times that of whites in Alaska as a result of current disfranchisement policy.

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[4] Uggen, Christopher & Jeff Manza (2004) "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," *Columbia Human Rights Law Review*, Vol. 36, No. 1, p. 193-215.

[5] Ibid.

[6] See: Jeff Uggen and Christopher Manza, "Locked Out: Felon Disenfranchisement and American Democracy," (Oxford University Press, USA, 2006), Table A3-3, p. 249 and Table A3-4, p. 252. See, also: "Losing the Vote. The Impact of Felony Disenfranchisement Laws in the United States," The Sentencing Project and Human Rights Watch, October 1998. Found at: http://www.sentencingproject.org/tmp/File/FVR/fd_losingthevote.pdf.

Alaska Natives are similarly impacted. According to state Department of Corrections statistics, in 2000, Alaska Natives constituted 31%[7] of the total disfranchised population, though they comprised only 15.6% of the total population.[8] And of the 5,046 persons on probation and parole as of December 2003, approximately 55% (or 2,774 persons) were white, while 28% were Alaska Natives, and approximately 9% were African American, which is more than double the state's 3.7% black population.[9] The remaining 6% of parolees and probationers were divided roughly equally between Latinos and Asian Americans/Pacific Islanders.

Voting is a fundamental right and a civic duty. As the U.S. Supreme Court stated in its landmark 1964 decision, Reynolds v. Sims, "*The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.*"[10]

Thank you very much

END

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[7] Alaska Department of Corrections. "2003 Offender Profile" (2003). p. 11, 66. Accessed: January 22, 2007 <http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf>

[8] US Census Bureau. "Profile of General Demographic Characteristics: Alaska." (April 1, 2000). Accessed: January 22, 2007 < http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US02&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-_sse=on >

[9] http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf

[10] Reynolds v. Sims, 377 U.S. 533 (1964).

P. O. Box 201844
Anchorage, AK 99520
(907) 258-0044
(907) 258-0288 (fax)
www.aclu.org

ACLU
AMERICAN CIVIL LIBERTIES UNION of ALASKA

To: Senate State Affairs Committee
From: Michael W. Macleod-Ball, Executive Director
Date: February 22, 2007

RE: SB 7 - *An Act relating to the voting rights of felons*

Madame Chair, Members of the Committee:

I am Michael Macleod-Ball and I am the Executive Director of the ACLU of Alaska. You should already have a copy of a letter of support I wrote to Senator Davis in regard to this bill. I speak to you today in strong support of SB 7.

Since at least the mid-1980's, the ACLU has formally supported the right of any person convicted of any offense to vote, retaining residency – for voting purposes – at the place of residence at time of confinement. The ACLU believes that prisoners should be able to express their beliefs freely – except when the state can demonstrate a compelling interest in limiting such expression. In our view, no compelling state interest can justify barring a prisoner from expressing his or her belief in the form of casting a secret ballot in a popular election.

A sentence meted out to a prisoner should advance some valid penal interest. Four such interests have generally been elucidated: deterrence, retribution, incapacitation, and rehabilitation. In our view, the most important of these goals is rehabilitation. What could be more important than making sure a prisoner can rejoin society in a successful manner – and avoid stepping afoul of society's rules again? Reintegration into the community, if successful, means that the offender will not re-offend and that society has no further need to pursue the other penal goals. There can be no question that reintegration is advanced by establishing a comprehensive set of connections between the offender and the community.

Yet, people with felony convictions who have served their time in prison and reenter the community on parole, or are serving terms of probation in the community, face overwhelming odds against successful reintegration. Housing, educational loans, and many other benefits provided to others in society are denied to felony offenders. There are so many challenges a released offender faces, and yet we continue to expect him or her to stand up and fly right in the face of these challenges. If that's our demand, we ought to act by the same standard and give the released offender the opportunity to exercise his or her full rights as a functioning member of society.

I would refer you to a brief filed in NAACP v. Harvey, a challenge to New Jersey's disenfranchisement of parolees and probationers. Some of the nation's foremost social scientists and criminologists contend that there is no rational purpose in denying the vote to parolees and probationers; denying suffrage to them in fact contradicts the purpose of rehabilitating offenders. Voting is a positive and re-integrative experience that connects the offender to his or her

community, and disenfranchisement laws frustrate offenders' in their attempts to reenter society fully and successfully. Disenfranchisement hinders the rehabilitative purposes of parole and probation by denying to parolees and probationers the rights and responsibilities of citizenship and participation in community life necessary to rehabilitation, preventing the very rehabilitation and restoration that these programs seek to achieve. Probationers and those on parole find themselves in their communities, ready for their second chance, many working to support themselves and/or their families and paying taxes. Yet, at election time when they might go to the polls with family and community members, to attempt to influence the conditions that impact their families and communities, they find themselves humiliated by their disenfranchisement. This simply perpetuates an offender's alienation from the community, frustrates attempts to reenter society successfully and reintegrate, and may lead to recidivism.

As noted in my letter of support, a recent study in Minneapolis has in fact found a strong correlation between voting and recidivism – voters being about half as likely to be re-arrested as non-voters. ("Voting and Subsequent Crime and Arrest: Evidence from a Community Sample." Christopher Uggen and Jeff Manza, 2004.) This study is nothing more than common sense: enocuraging former offenders to vote fosters rehabilitation and successful community reentry. Restoring the vote tells the offender that awareness of political issues in the community and participation in voting are positive pro-social endeavors. This message has both the psychological and sociological effect of weaving the offender back into the community – the very goal of rehabilitation. And since the purposes of probation and parole are rehabilitative rather than punitive, this bill makes particular sense – as it focuses strictly on returning the right to vote to those released from incarceration.

And consider examining this issue from another angle – by evaluating the core circumstances of a prisoner released on parole or probation. Each such prisoner is no longer incarcerated due to some evaluative process that has resulted in a determination that the individual and society is better served by reintegrating the individual into Alaskan society. The parolee typically has been approved for release by a parole board that considers the former prisoner's behavior in jail, among other factors. The probationer has successfully concluded an imprisonment term and is in an extended term that a court has determined to be more appropriately served in the community. Shouldn't these individuals be treated more like active members of society – with the concomitant basic citizenship right to vote – than like those of their still-incarcerated former colleagues?

The ACLU is troubled by the disturbing statistics that tend to show very significant discriminatory impact on minorities – blacks and Alaska Natives, especially. According to a 2006 publication, an estimated 11,132 people with felony convictions are barred from voting in Alaska. See Uggen, Christopher et al., *Locked Out: Felon Disfranchisement and American Democracy*, Oxford University Press (2006), at Table A3.3. The Department of Corrections' 2003 Offender Profile shows that 46% of disfranchised people are in prison, another 46% are on probation, and the remaining 8% are on parole. That same report shows that Alaska Natives are significantly overrepresented in affected population. While Alaska Natives comprised 31% of the total disfranchised population, the 200 U. S. Census shows they comprised only 15.6% of the population. Moreover, Alaska Natives are less likely to gain the benefits of parole or probation, comprising 37% of the prison population, but only 27% of the probation/parole population. These statistics put Alaska at odds with a number of international treaties to which the United States is a

signatory – conditions that suggest Alaska is in violation of international standards of basic human rights.

As troubling as those statistics are, however, we'd rather focus on the benefits of this bill rather than the problems with the current law. This legislation will remove an impediment to successful reintegration of offenders into society. Alaska will join a movement of states who are recognizing that there is no practical reason for these arbitrary restrictions on voting rights. The best solution would be to narrow even more dramatically the number of felons who are barred from voting. But short of that kind of solution, the modifications proposed in SB 7 are a good first step.

The American Bar Association has taken a position that exactly matches the intent of this bill – to extend the right to vote upon release from incarceration. The ABA focused on the public safety benefits associated with successful prisoner reintegration into society. President Bush has spoken favorably and optimistically of giving offenders a second chance – of helping them to overcome the great obstacles they face upon release. In Reynolds v. Sims, the US Supreme Court has described the "right to vote freely" as the "essence of a democratic society", stating further that "any restrictions on that right strike at the heart of a representative government". SB 7 offers you the opportunity to work for positive change in advancing the ideals of our nation. The ACLU of Alaska strongly urges enactment of this bill.

Thomas Obermeyer

From: Daniel Levitas [dlevitas@aclu.org]

Sent: Thursday, February 22, 2007 12:10 PM

To: Thomas Obermeyer; 'Michael W. Macleod-Ball'; 'Shelton, Hilary O.'; ckaplan@naacpnet.org; carolnkaplan@email.com

Subject: The latest news from Fla:"Crist: I'll restore felons' rights"

Crist: I'll restore felons' rights

STEVE BOUSQUET
Published February 22, 2007

TALLAHASSEE - Gov. Charlie Crist said Wednesday that he may issue an executive order single-handedly restoring civil rights to felons who have completed their sentences.

The announcement from the Republican governor drew applause from nearly two dozen Democratic lawmakers from the legislative black caucus, known formally as the Florida Conference of Black State Legislators.

"My plan is to work with you to make sure we restore civil rights," Crist said during a visit with the group. "The important thing is that we get there. It's going to be better than where we are now, I can tell you that."

Under a Florida law in effect since shortly after the end of the Civil War, most ex-felons who leave prison must petition the state to regain the right to vote, serve on a jury, own a firearm or hold a professional license. The backlog is so large that cases can take years to resolve.

During his campaign last year, Crist advocated automatic restoration of civil rights for felons who complete the terms of their sentences, including probation and payment of restitution to victims.

He said Wednesday that he still may seek a policy change in the four-member Cabinet that he chairs, or through a change in state law. One Cabinet member, Attorney General Bill McCollum, opposes automatic restoration of civil rights for ex-felons.

The legislators were much more enthusiastic about an executive order - an indication of their lack of confidence in a Republican-controlled Legislature that has never passed a bill to streamline the civil rights restoration system.

During his campaign last year, Crist aggressively sought black support. At times he met people who said they wanted to vote for him but couldn't because they had run afoul of the law and had lost their right to vote.

For an hour, Crist listened as the lawmakers presented a wish list of projects and proposed changes to health care, juvenile justice and education programs, including an end to grading schools based on student scores on FCAT tests.

Crist said teacher salaries should be based on factors other than the test, but he did not advocate dropping the FCAT.

The governor got a hero's welcome from the group, which frequently was at odds with his predecessor, Jeb Bush. "The first black governor of the state of Florida," said Rep. Terry Fields, D-Jacksonville.

The black caucus met occasionally with Bush during his eight years in office, but they battled constantly over education, tax cuts, affirmative action and other issues.

Another change Wednesday is that Crist met lawmakers' on their turf in the Senate Office Building, not in the governor's office. "People don't have to come to me," Crist said. "I think it's important to reach out, and I'm going to keep doing it."

Sen. Tony Hill, D-Jacksonville, said a key difference is that Crist served in the Legislature. "I think he feels comfortable being around us," Hill said.

Exit polls taken on Election Day in November estimated that Crist received nearly 20 percent of the black vote in Florida, a high number for a Republican gubernatorial candidate in Florida.

END

Alaska Native
JUSTICE CENTER
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MEMORANDUM

3600 San Jeronimo Drive, Suite 264 • Anchorage, AK 99508 [redacted] f 907.793.3570 www.anjc.net

TO: Alaska Senate State Affairs Committee

FROM: Denise Morris
President/CEO

DATE: February 22, 2007

RE: CS SB 7 – An Act Relating to the Voting Rights of Felons

The purpose of this memorandum is to support the Committee Substitute for Senate Bill 7, An Act Relating to the Voting Rights of Felons.

Passage of CS SB 7 will make Alaska part of the modern trend towards less restrictive legislation on felony voting rights. Since 1997, 16 states have lessened their restrictions on felony disenfranchisement.[1] Attached is a copy of a chart summarizing this national trend towards reform.

Alaska's current restriction on felony voting is limited to "felonies involving moral turpitude." However, this definition, as defined by statute, includes almost all felonies.[2] For example, felonies involving moral turpitude include theft and misconduct involving a controlled substance.

Alaska's restrictions on felony voting rights have a disproportionate impact on Alaska Natives. There are no studies on the disproportionate impact of felony disenfranchisement laws on Alaska Natives. However, statistics of Alaska's prison population point to the disparate impact such restrictions have on Alaska Natives.

While Alaska Natives constitute approximately 16 percent of the State's population, Alaska Natives account for approximately 37 percent of the State's prison population.[3] In addition, it has been argued that "cultural factors may make Alaska Natives more susceptible to felon disenfranchisement."[4] These statistics, along with any aggravating cultural factors, are certain to produce a disproportionate impact on Alaska Natives.

In addition, the restoration of voting rights is an important element to an individual's reintegration back into his/her community. There is an indication that voting reduces recidivism, with one study finding that 27 percent of nonvoters were rearrested, compared with 12 percent of voters.[5]

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[1] Ryan S. King, A Decade of Reform: Felony Disenfranchisement Policy in the U.S., The Sentencing Project, October 2006, p. 1.
[2] Christopher Murray, Felon Disenfranchisement in Alaska and the Voting Rights Act of 1965, 23 Alaska Law Review 289, p. 293.
[3] Id. at 289, fn 4.
[4] Id. at 295, referencing Dave Stephenson, For Alaska Natives: Extermination by Incarceration?, Indian Country Today, June 26, 2003.
[5] King at 19, referencing C. Uggen and J. Manza, Voting and Subsequent Crime and Arrest: Evidence from a Community Sample, Columbia Human Rights Law Review, Vol. 36, No. 1, 193-215, 213.

In conclusion, the Alaska Native Justice Center supports lessening the restrictions on felony disenfranchisement. In particular, fewer restrictions on felony voting rights will bring Alaska into the modern national trend, lessen the disparate impact of the current legislation on Alaska's minority groups, particularly Alaska Natives. and encourage the reintegration of released felons back into our communities through their active participation in the democratic process.

A Decade of Felony Disenfranchisement Policy Reform, 1997-2006

[illegible]	Year	Reform
ALABAMA	2003	Streamlined restoration for most persons upon completion of sentence
CONNECTICUT	2001	Restored voting rights to persons on felony probation
CONNECTICUT	2006	Repealed requirement to present proof of restoration in order to register
DELAWARE	2000	Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses
FLORIDA	2004	Simplified clemency process
FLORIDA	2006	Adopted requirement for county jail officials to assist with rights restoration
HAWAII	2006	Codified data sharing procedures regarding removal and restoration process
IOWA	2005	Eliminated lifetime disenfranchisement law
MARYLAND	2002	Repealed lifetime disenfranchisement for persons convicted of two non-violent offenses, replaced with three-year waiting period
NEBRASKA	2005	Repealed lifetime disenfranchisement, replaced with two-year waiting period
NEVADA	2001	Repealed five-year waiting period to restore rights
NEVADA	2003	Restored voting rights to persons convicted of first-time non-violent offense
NEW MEXICO	2001	Repealed lifetime disenfranchisement law
NEW MEXICO	2005	Codified data sharing procedures, certificate of completion provided after sentence
RHODE ISLAND	2006	Ballot initiative for 2006 election to amend constitution to restore voting rights to persons on parole and probation
TENNESSEE	2006	Streamlined restoration process for most persons upon completion of sentence
TEXAS	1997	Repealed two-year waiting period to restore rights
UTAH	2006	Clarified state law pertaining to federal and out-of-state convictions
VIRGINIA	2000	Required notification of rights and restoration process by Department of Corrections
VIRGINIA	2002	Streamlined restoration process
WYOMING	2003	Restored voting rights to persons convicted of first-time non-violent offense

Ryan S. King, A Decade of Reform: Felony Disenfranchisement Policy in the United States, The Sentencing Project, October 2006.

Sharon Jason Hooley

Testimony for (S) State Affairs on SB 7 – Voting Rights of Felons

The Division of Elections is not opposed to this legislation. It is the Division's opinion that this is a policy call for the Legislature to make. The only concern the Division Director has, and it is a serious question that she has posed to the Department of Corrections, is how Corrections intends to notify the Division when a voter has been incarcerated for a felony of moral turpitude and when that individual has been released from prison so that we know that they have had their voting rights restored. It will take the Department of Corrections providing consistent, accurate information to the Division of Elections so that we can accurately track these individuals in our voter registration database. It is important to note that we maintain the voter registration database for the entire state, including local governments who use our information for their local elections.

Background information on the current process:

The Department of Corrections maintains a list of convicted felons that can be accessed by the Division of Elections via the Internet. This list is to contain convicted felons of moral turpitude, however, it often includes additional felonies including, but not limited to DUIs, misconduct involving weapons and felons in possession of a weapon. None of these are listed in AS 15.60.010 (9), and therefore, the Division has to pick out the applicable felonies of moral turpitude from the list provided by Corrections. Sometimes the file will simply state "probation violation", which requires Division staff to go in and research through the court system whether or not the individual was originally convicted of a felony of moral turpitude. It would be very helpful if Corrections could indicate what the original conviction was so that the Division did not have to research each of these individuals listed as "probation violation."

A report is created weekly from the list of convicted felons to get the most current information for the purpose of inactivating registration records. United States Federal Courts also supplies the Division with information regarding felony convictions in their courts. These are paper copies of the actual court judgment and processed the same as state convictions but not through an electronic download report process.

Once the report is saved and printed from Corrections, a comparison of the information on the report is made against the registration records in the Voter Registration and Election Management System (VREMS) to determine if a record can be inactivated. If a registration record is found, the registration record is inactivated using the Felony Conviction code (FC) and the suspended date is the date of the conviction that appears on the list.

The report will often times have charges for probation violations. A charge of Probation Violation is a felony within itself, and therefore, a record in VREMS is inactivated if the probation violation was on a felony involving moral turpitude.

The Division of Elections also receives Notifications of Restoration of Rights from the Department of Corrections once a felon is unconditionally discharged from custody or supervision. If we received original notification from Corrections then the record in VREMS will appear as an FC (felony conviction code). The record would then be changed in VREMS to FD (felony discharge code) effective the date of discharge. The record remains in inactive status in VREMS until the voter completes all requirements to register.

If the Division of Elections receives a Notification of Restoration of Rights from Corrections for a record in VREMS that is active, the Division of Elections did not receive the original notification of the felony charge involving moral turpitude in the Corrections list. The record would be inactivated to FC (felony conviction code) and then changed to FD (felony discharge code) effective the date of discharge. The record remains in inactive status in VREMS until the voter completes all requirements to register.

There are also instances where the Division does not receive Notifications of Restoration Rights from Corrections and therefore does not know that the felon was unconditionally discharged until he/she goes to register. The Division then has to contact Corrections before we can process the applicants voter registration. This slows down the process and makes it difficult particularly as we bump up against voter registration deadlines.

The committee substitute does make one important change, that being in Sec. 1 which specifies that Corrections should funnel all notifications through the director.

Article 5 ~ Suffrage and Elections

Article 5, Sections:

§ 1. Qualified Voters ~ Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions. [Amended 1966, 1970 & 1972]

§ 2. Disqualifications ~ No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

§ 3. Methods of Voting; Election Contests ~ Methods of voting, including absentee voting, shall be prescribed by law. Secrecy of voting shall be preserved. The procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law.

§ 4. Voting Precincts; Registration ~ The legislature may provide a system of permanent registration of voters, and may establish voting precincts within election districts.

§ 5. General Elections ~ General elections shall be held on the second Tuesday in October of every even-numbered year, but the month and day may be changed by law.

Editor's Note: Exercising its authority under this section, the legislature has provided that the date of general elections is the Tuesday after the first Monday in November in every even-numbered year. See AS 15.15.020.

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR OF THE NAACP WASHINGTON BUREAU
ON SB7,
AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

before the

ALASKA SENATE STATE OF AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE – FIRST SESSION

February 22, 2007

My name is Hilary Shelton and I am the Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP). The NAACP is our nation's oldest, largest and best known civil rights organization in the United States. We are proud to have more than 2,200 membership units across the country, with 5 units at last count in the state of Alaska[1]. The Washington Bureau is responsible for the federal legislative and national policy advocacy for the NAACP.

I would like to begin by thanking the Alaska Senate Committee on State Affairs for inviting me to testify here today. The NAACP strongly supports bills like SB7 that would allow ex-felons to register and vote immediately upon leaving prison, even if they are on probation or parole.

Our logic is simple: by allowing individuals to invest civic capitol in their community through the electoral process, they are more likely to feel a sense of ownership and become productive and constructive members of their communities and society while being less likely to return to the anti-social, destructive behavior that led to their previous

[1] There are active NAACP branches in Juneau, Fairbanks and Anchorage as well as youth councils in Anchorage and Fairbanks.

incarceration. Voting allows people to feel that they have a voice in and have made a commitment to their community, and it is a powerful deterrent to recidivism. People are more likely to help build and protect communities of which they feel a sense of ownership.

The NAACP is also concerned about the disparate impact disenfranchisement laws have on racial and ethnic minorities across the nation as well as in Alaska. Historically state disenfranchisement laws have been, in some instances, targeted to exclude racial and ethnic minorities, specifically African Americans. Although some of the more egregious laws have been struck down by the US Supreme Court[2], many others remain in place and, as a result, racial and ethnic minority Americans are disenfranchised at vastly disparate rates.

Currently 48 states including Alaska place varying limits on the voting rights of felons and ex-felony offenders. As a result of these laws, nationally about 13% of African American men cannot vote, with as many as 31% of African American men in two states – Florida and Alabama – essentially permanently disenfranchised.

Alaska's current laws, which are harsher in their treatment of offenders than at least 20 other states, continue to have a clear and indisputable disparate impact on who can and cannot vote in the state.

Although Alaska's largest minority group, Alaska Natives, comprise more than 14% of the state's general population[3], they account for 37% of its prison population[4]. Similar disparity exists in the cases of other minorities, including African Americans, who account for over 10% of the prison population[5] while representing less than 3.5% of the state's general population[6].

It stands to reason that these disparities will persist once people are released from prison, whether on probation or parole. Thus, as a

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[2] Hunter v. Underwood, 471 U.S. at 232-33

[3] United States Census: 2005 American Community Survey Data Profile Highlights: Alaska

[4] ALASKA DEPT. OF CORRECTIONS, 2003 OFFENDER PROFILE 11 (2004), *available at* http://www.correct.state.ak.us/corrections/admin/docs/profile2003.pdf

[5] Id.

[6] United States Census: 2005 American Community Survey Data Profile Highlights: Alaska

result of Alaska's disenfranchisement of ex-felony offenders who may be out of jail on probation or parole, a disparate number of racial and ethnic minorities are not allowed to vote.

At last count, more than 11,000 Alaskans are disenfranchised; the majority of whom (54%) are not in prison or jail, but are in fact back in their communities on either probation or parole. In other words, these people have been deemed sufficiently rehabilitated so that they may reenter our community, but they are being told that they cannot be trusted enough to vote.

A convincing argument has been made that because of these racial and ethnic disparities Alaska's disenfranchisement laws violate the Voting Rights Act of 1965[7]. While some might argue against this, it is next to impossible, given the empirical evidence, that the state's disenfranchisement laws go against the very premise of the VRA, which is that state's shall make no laws that disparately infringe on the voting rights of certain groups of people.

I would be remiss if I didn't also point out that many states have taken, or are also considering, steps to ease ex-felon disenfranchisement laws. Within the past 10 years, 16 states have implemented policy reforms that have reduced the restrictiveness of these laws, and more than 600,000 people in seven states have regained their voting rights[8].

Furthermore, just last November the voters in Rhode Island passed a ballot initiative allowing ex-prisoners to register and vote once they were released from prison, even if they were on probation or parole. Prior to the referendum's passage, more than 15,500 residents of Rhode Island could not vote due to a felony conviction. An overwhelming 86 percent of those individuals were no longer in prison.

Another reason for the NAACP's support of SB7 is that Alaska's current law can lead to confusion as well as an opening for abuse on

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[7] Christopher R. Murray, *Cited: 23 Alaska L. Rev. 28,* "Felon Disenfrachisement in Alaska and the Voting Rights Act of 1965"

[8] Ryan King, "A Decade of Reform: Felony disenfranchisement policy in the United States" October 2006

the part of unscrupulous, misdirected and / or insensitive election officials.

Election officials have no way of knowing, by sight, if an individual is on probation or parole. If the law says that an individual on probation or parole cannot vote, it is up to the election official to determine who falls into that category.

Experience has shown that in all too many cases, election officials with less than pure motives or through ignorance may target only people from particular racial or ethnic groups to ask if they have ever been convicted of a felony. This is not only blatantly unfair, it can also have a terribly demoralizing and potentially destabilizing effect on voters and whole communities.

Thus, the NAACP strongly supports reenfranchising initiatives like SB7 and hopes that you will act swiftly to address this crucial issue. I would again like to thank the chair of this committee, Senator McGuire, for holding this hearing as well as Senator Davis for her efforts on this issue. I would welcome any questions you may have.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 7(STA)
(S) Publish Date: 2/23/07

Revision Date/Time (Note if correction):
Dept. Affected: OOG
Title "An Act relating to the voting rights of felons."
RDU Executive Operations
Component Executive Office
Sponsor Senator Davis
Requester Senate State Affairs Committee
Component No. 6

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This proposed legislation will have no fiscal impact on the Division of Elections.

Prepared by: Gail Fenumiai, Asst. Admin. Director
Phone 465-3885
Division Division of Administrative Services
Date/Time 1/23/07, 11:15am
Approved by: Whitney Brewster, Director
Date 1/23/2007
Agency Office of the Lt. Governor, Division of Elections

(Revised 9/18/2006 OMB)

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 7(STA)
(S) Publish Date: 2/23/07

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title: An Act relating to the voting rights of felons
RDU: Administration and Operations
Component: Officer of the Commissioner
Sponsor: Senator Davis
Requester: Senate State Affairs
Component No.: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 1/23/07 12:46 PM
Approved by: Dwyane Peeples, Deputy Commissioner
Date 1/23/2007
Agency: Department of Corrections

(Revised 9/7/2005 OMB)

COMMITTEE COPY

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

STATEMENT OF MR. HILARY O. SHELTON
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The NAACP is also concerned about the disparate impact disenfranchisement laws have on racial and ethnic minorities across the nation as well as in Alaska. Historically state disenfranchisement laws have been, in some instances, targeted to exclude racial and ethnic minorities, specifically African Americans. Although some of the more egregious laws have been struck down by the US Supreme Court[2], many others remain in pl. e and, as a result, racial and ethnic minority Americans are disenfranchised at vastly disparate rates.

Currently 48 states including Alaska place varying limits on the voting rights of felons and ex-felony offenders. As a result of these laws, nationally about 13% of African American men cannot vote, with as many as 31% of African American men in two states – Florida and Alabama – essentially permanently disenfranchised.

Alaska's current laws, which are harsher in their treatment of offenders than at least 20 other states, continue to have a clear and indisputable disparate impact on who can and cannot vote in the state.

Although Alaska's largest minority group, Alaska Natives, comprise more than 14% of the state's general population[3], they account for 37% of its prison population[4]. Similar disparity exists in the cases of other minorities, including African Americans, who account for over 10% of the prison population[5] while representing less than 3.5% of the state's general population[6].

It stands to reason that these disparities will persist once people are released from prison, whether on probation or parole. Thus, as a

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At last count, more than 11,000 Alaskans are disenfranchised; the majority of whom (54%) are not in prison or jail, but are in fact back in their communities on either probation or parole. In other words, these people have been deemed sufficiently rehabilitated so that they may reenter our community, but they are being told that they cannot be trusted enough to vote.

A convincing argument has been made that because of these racial and ethnic disparities Alaska's disenfranchisement laws violate the Voting Rights Act of 1965[7]. While some might argue against this, it is next to impossible, given the empirical evidence, that the state's disenfranchisement laws go against the very premise of the VRA, which is that state's shall make no laws that disparately infringe on the voting rights of certain groups of people.

I would be remiss if I didn't also point out that many states have taken, or are also considering, steps to ease ex-felon disenfranchisement laws. Within the past 10 years, 16 states have implemented policy reforms that have reduced the restrictiveness of these laws, and more than 600,000 people in seven states have regained their voting rights[8].

Furthermore, just last November the voters in Rhode Island passed a ballot initiative allowing ex-prisoners to register and vote once they were released from prison, even if they were on probation or parole. Prior to the referendum's passage, more than 15,500 residents of Rhode Island could not vote due to a felony conviction. An overwhelming 86 percent of those individuals were no longer in prison.

Another reason for the NAACP's support of SB7 is that Alaska's current law can lead to confusion as well as an opening for abuse on

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Election officials have no way of knowing, by sight, if an individual is on probation or parole. If the law says that an individual on probation or parole cannot vote, it is up to the election official to determine who falls into that category.

Experience has shown that in all too many cases, election officials with less than pure motives or through ignorance may target only people from particular racial or ethnic groups to ask if they have ever been convicted of a felony. This is not only blatantly unfair, it can also have a terribly demoralizing and potentially destabilizing effect on voters and whole communities.

Thus, the NAACP strongly supports reenfranchising initiatives like SB7 and hopes that you will act swiftly to address this crucial issue. I would again like to thank the chair of this committee, Senator McGuire, for holding this hearing as well as Senator Davis for her efforts on this issue. I would welcome any questions you may have.

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR OF THE NAACP WASHINGTON BUREAU
ON SB7,
AN ACT RELATING TO THE VOTING RIGHTS OF INDIVIDUALS WITH FELONY CONVICTIONS

before the

ALASKA SENATE STATE OF AFFAIRS COMMITTEE
IN THE TWENTY-FIFTH LEGISLATURE – FIRST SESSION

February 22, 2007

My name is Hilary Shelton and I am the Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP). The NAACP is our nation's oldest, largest and best known civil rights organization in the United States. We are proud to have more than 2,200 membership units across the country, with 5 units at last count in the state of Alaska[1]. The Washington Bureau is responsible for the federal legislative and national policy advocacy for the NAACP.

I would like to begin by thanking the Alaska Senate Committee on State Affairs for inviting me to testify here today. The NAACP strongly supports bills like SB7 that would allow ex-felons to register and vote immediately upon leaving prison, even if they are on probation or parole.

Our logic is simple: by allowing individuals to invest civic capitol in their community through the electoral process, they are more likely to feel a sense of ownership and become productive and constructive members of their communities and society while being less likely to return to the anti-social, destructive behavior that led to their previous

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Currently 48 states including Alaska place varying limits on the voting rights of felons and ex-felony offenders. As a result of these laws, nationally about 13% of African American men cannot vote, with as many as 31% of African American men in two states – Florida and Alabama – essentially permanently disenfranchised.

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Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

SB 7 **"An Act relating to the voting rights of felons"**
Sponsored by Senator Bettye Davis

Sectional Analysis

Section 1. A person convicted of a crime which constitutes a felony involving moral turpitude under state or federal law may not vote while incarcerated for that crime but may register after release. The Commissioner of Corrections shall establish procedures to give persons notice of voter registration requirements and procedures after release, including giving persons written notification of persons' restored right to vote and notifying the Director of Elections that the persons are entitled to be reregistered as voters.

Section 2. The Director of Elections shall make reasonable efforts to obtain the names of persons convicted of a felony involving moral turpitude and incarcerated for that crime and cancel their registration until further notice. Upon presenting proof that a person whose registration was canceled under this section has been released from incarceration, the person may register. The Director shall make reasonable efforts to verify the release from incarceration of persons applying for registration under this subsection.

Section 3. A person convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a state or municipal election while incarcerated for that crime.

Section 4. Repeals AS 15.60.010(39), definition of "unconditional discharge."