

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

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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

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

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

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

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

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.

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■ ***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-sentence¹ 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.

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
Arkansas²
Georgia
Idaho
Iowa
Kansas
Louisiana
Minnesota
Missouri
Nebraska³
New Jersey
New Mexico
North Carolina
Oklahoma
South Carolina
Texas
Washington⁴
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

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

Maine

Vermont

STATE OF ALASKA

SARAH PALIN
GOVERNOR

DEPARTMENT OF CORRECTIONS Office of the Commissioner

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March 1, 2007

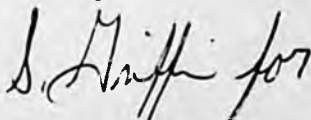
Honorable Hollis French
State Capitol
Juneau, Alaska 99801-1182

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,



Dwayne Peoples, 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

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 million¹ 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	POST SENTENCE	
				All	Part:
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-

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.

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

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/OTTable?_bm=v&-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).



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: encouraging 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



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MEMORANDUM

3600 San Jeronimo Drive, Suite 264 • Anchorage, AK 99508 t 907.793.3550 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

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

STATE	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
2. Disqualifications
3. Methods of Voting;
Election Contests
4. Voting Precincts; Registration
5. General Elections

§ 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



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**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 Alaska¹. 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 capital 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 Court², 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 population³, they account for 37% of its prison population⁴. Similar disparity exists in the cases of other minorities, including African Americans, who account for over 10% of the prison population⁵ while representing less than 3.5% of the state's general population⁶.

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

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

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

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A convincing argument has been made that because of these racial and ethnic disparities Alaska's disenfranchisement laws violate the Voting Rights Act of 1965⁷. 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 rights⁸.

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.

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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 Fenumial, 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

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



**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 Alaska¹. 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 capital 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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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 Court², 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 15% 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 population³, they account for 37% of its prison population⁴. Similar disparity exists in the cases of other minorities, including African Americans, who account for over 10% of the prison population⁵ while representing less than 3.5% of the state's general population⁶.

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

² Hunter v. Underwood, 471 U.S. at 232-37

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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 1965⁷. 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 rights⁸.

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.

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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
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**STATEMENT OF MR. HILARY O. SHELTON
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Alaska State Legislature

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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.”

SB

8

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

DATE: April 30, 2007

TO: Leg. Legal

FROM: Cindy Smith, Senator French

A handwritten signature in black ink, appearing to read "Cindy Smith", written over the printed name.

RE: As passed JUD CS for SB8

Please draft a final Judiciary CS for SB 8, with the following change:

On page 1, at line 7, after the word "patient" delete "18" and insert "16".



April 30, 2007

Senator Hollis French
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 8

Senator French:

The Disability Law Center supports SB 8. Unfortunately, we are not able to attend the committee meeting this afternoon. Attached you will find the testimony I provided to the HESS committee when they considered the bill. If you have any questions, please do not hesitate to contact me or someone from my office.

Thank you,

Holly Johanknecht
Staff Attorney

ANCHORAGE

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FAX (907) 565-1000

1-800-478-1234

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MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

April 18, 2007
Testimony of Holly Johanknecht (Disability Law Center of Alaska)
Senate Bill 8

The Disability Law Center supports Senate Bill 8 and recommends its passage.

This bill would codify existing rights of individuals receiving mental health treatment that are not currently acknowledged or protected.

Alaska's constitution clearly recognizes that the right to privacy is an important one. Alaska Const. Art. 1, § 22. Additionally, the 9th Circuit has held that the right to shield ones unclothed body from view - particularly from the opposite sex - is encompassed within the right to privacy

- *Story v. York*, 324 F.2d 450, 455 (9th Cir. 1963).

Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a mental health facility, that does not mean that a patient has forfeited all rights to privacy.

- *Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25 et al.*, 635 F. Supp. 1010, 1013-1014 (E.D. Mich. 1986).

Courts in other states and circuits have held that the privacy rights of individuals receiving mental health treatment should be protected to whatever degree feasible

- *Jennings v. NY State Office of Mental Health*, 786 F. Supp. 376 (S.D. N.Y. 1992).
- *Local 567 v. Michigan Council 25*, 635 F. Supp. at 1013

Furthermore, sensitivity towards the privacy rights of individuals receiving mental health treatment might further the treatment goals of some individuals.

Unfortunately, a large number of individuals with mental illness have a history of physical or sexual abuse. Many such individuals are extremely sensitive to issues of privacy. Being exposed to an invasion of privacy while dressing, showering or in another intimate care situation may re-traumatize the individual and may have an impact on their illness and the treatment they receive. A way to protect people from such an occurrence is to offer them a choice regarding the gender of their staff providing intimate care.

It should be noted that in many circumstances, the type of privacy protections provided in Senate Bill 8 are already available to individuals incarcerated in correctional institutions.

- *E.g. Turner v. Dasley*, 42 U.S. 78 (1987); *Robino v. Iranor*, 145 F.3d 1109 (9th Cir. 1998).

Individuals receiving mental health treatment should be entitled to at least the same degree of privacy protections as prisoners. A federal district court in New York, when deciding a similar issue, stated:

"The patients ... are not convicted criminals but instead are there as a result of civil commitments. Thus, their right to privacy may not be abrogated by virtue of their confinement in a state-run facility unlike a prison inmate who has forfeited some rights in repayment to society.

The patients ... are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible."

- *Jennings v. NY State Office of Mental Health*, 786 F. Supp. at 384.

Given the privacy protections provided in both the Alaska State and US Constitutions, and the sensitive nature of mental health treatment, a mental health patient should be afforded the right to choose the gender of the staff providing their intimate care.

Letters

Attn:

Sen. Hollis French, Ch.
Judiciary Committee

Testimony supporting
Senate Bill 8.

Dear Editor,

We would like to make readers aware of Senate Bill 8, which when passed would

require inpatient psychiatric facilities to make a good faith effort at providing patients receiving intimate care their choice of gender of staff performing that care. We believe if the bill does pass it would eventually carry over into senior care facilities.

The Alaska facilities we have surveyed do not schedule for gender. For example, if there are five men working on one shift at a facility and five women working on the other shift, all of the facilities we have surveyed do not have policies that require the nurse making up the work schedule to make an attempt to see to it there is proper gender on each shift to provide gender choice of staff for intimate care.

We fully understand not hiring for gender, but in Alaska they refuse to schedule the work force for gender.

Also, in larger facilities where there is more than one unit, there is no policy that requires staff to go to the next unit to get the requested gender to give someone a bath.

These are things that they do in other states and it doesn't cost money, but Alaska facilities we surveyed refused to do it.

Providing gender choice of staff for intimate

care reduces traumatization and passing Senate Bill 8 will force psychiatric institutions to write good gender choice policies.

Faith Myers and Dorrance Collins
Anchorage

929 0532

We would like to hear from you

Send letters to the editor to Senior Voice, 325 E. Third Ave., Suite 300, Anchorage AK 99501. Maximum length is 250 words. Senior Voice reserves the right to edit for content and length.

Space may be made available for longer opinion piece essays up to 500 words. Please contact the managing editor at seniorvoice@gci.net to discuss this.

Copy deadline is the 15th of the month prior to publication.

Testimony supporting Senate Bill 8 by Dorrance Collins—April 30, 2007

Mr. Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

Post traumatic stress disorder is one of the most prevalent and costly mental illnesses in America. Not giving gender choice of staff for intimate care in inpatient settings is traumatic to many psychiatric patients and can add to the illness.

In other states some psychiatric facilities take providing gender choice of staff for intimate care seriously. These facilities have policies that require the facility to schedule a portion of their work force by gender. As an example, if there are 5 male staff on one unit and 5 female staff on another unit, policy would require the head nurse, when scheduling, to see to it that there are sufficient men and women staff on each shift to provide gender choice.

Also, in the larger hospitals with multiple units—if the required gender is not available for intimate care, facility policy would require staff to go to the next unit to try and find the requested gender. Units are often just separated by a door.

These are all policies that we have been informed that the Alaska psychiatric hospitals and facilities will not adopt, even when it is pointed out that adopting such policies does not cost money and it reduces trauma.

In a recent Alaska Supreme Court decision, the justices stated there is a clear, unavoidable tension between hospitals seeking convenience/ economics and patient rights, which can manifest itself in patient abuse.

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia and trauma in their background. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing gender choice of staff for intimate care. Adding more loopholes for psychiatric facilities to utilize will make the Bill useless.

In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins