

issue summary

criminal disenfranchisement in Minnesota

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Criminal Disenfranchisement in Minnesota

Denying the Right to Vote to Felons

Lawyers Committee for Civil Rights Under Law

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This issue is one that continues to grow in importance, as the events of the November 2000 election demonstrate. Expanding the franchise to include all citizens is an important step towards a participatory democracy. As we saw during the Civil Rights Movement, the right to vote is understood to be central to freedom. This work takes us one step closer to securing basic civil rights for everyone.

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Criminal Disenfranchisement in Minnesota

Denying the Right to Vote to Felons

INTRODUCTION

Minnesota has had a criminal disenfranchisement law since the adoption of the first Minnesota Constitution on October 13, 1857. The current law (Article VII, Section 1 of the Minnesota Constitution and Minn. Stat. § 201.014) states that individuals are not eligible to vote if they are "convicted of treason or any felony" and their civil rights have not been restored. When the Minnesota criminal disenfranchisement law was first established in 1857, African-Americans were not allowed to vote in Minnesota. In 1968 the Minnesota Supreme Court, in dicta, addressed the application of the Minnesota criminal disenfranchisement law to different groups and stated:

The disqualification as a voter of any person convicted of a felony or for lack of mental capacity **applies equally to everyone.**¹

While the law may be applied equally to everyone, our preliminary analysis of the criminal disenfranchisement law suggests that it does not have an equal impact on all groups in Minnesota.

In 1998, The Sentencing Project and Human Rights Watch completed a state-by-state analysis of the impact of felony disenfranchisement laws in the United States.² They reported that an estimated 3.9 million Americans, or one in 50 adults, had currently or permanently lost the ability to vote because of a felony conviction.³ Approximately 1.4 million of these disenfranchised felons had completed their sentences and approximately another 1.4 million disenfranchised felons were on probation or parole.⁴ Nationally, these laws have a racially disparate impact. Statistics show that 1.4 million African-American men, or 13% of the African-American adult male population, are disenfranchised, reflecting a rate of disenfranchisement that is seven times the national average.⁶

Subsequent to this national study, in an attempt to determine if the law applies equally in Minnesota, Professor Christopher Uggen and others at the University of Minnesota Department of Sociology conducted a study on criminal disenfranchisement.⁷ They determined that in Minnesota:

While Article VII, Section 1 of the Minnesota Constitution states, "The disqualification as a voter of any person convicted of a felony or for lack of mental capacity applies equally to everyone," preliminary analysis of the criminal disenfranchisement law suggests that it does not have an equal impact on all groups in Minnesota.

1.4 million African-American men, or 13% of the African-American adult male population, are disenfranchised, a rate ...that is seven times the national average.¹

- Between 1974 and 2000, the number of disenfranchised felons increased from 8,803 to 46,181.
- For the same time period, the number of disenfranchised African-Americans increased from 895 to 9,991.
- The percentage of disenfranchised felons who are African-American has risen from 9.8% in 1979 to 21% in 2000.
- Approximately 9.43% of the African-American voting age population in Minnesota was thus disenfranchised in the year 2000, compared to about 1.05% of the non-African-American voting population.

They conclude:

Because Minnesota's incarceration rate is among the lowest in the nation, felon disenfranchisement is unlikely to have a major impact on many state elections. Nevertheless, the large racial disparities in disenfranchisement clearly dilute the voting strength of African-Americans, by approximately 9% of African-Americans and 15% of African-American males unable to vote because of a felony conviction. Moreover, disenfranchisement is likely to have played a role in closely contested local elections in Minneapolis and St. Paul. Hennepin County (Minneapolis), for example, reported 9,881 felony probationers in 1998, over one-third of the state probation total.⁸

In light of these findings and conclusions, we undertook additional research on Minnesota's felon disenfranchisement law, its impact on African-Americans, and possible challenges that can be made to the law. Our research reveals that in important respects the State appears to fail to follow its own laws regarding restoration of rights. In addition, we recommend using the legislative process, as was done in Connecticut, to reform the state law regarding disenfranchisement of felons.

Felon disenfranchisement is unlikely to have a major impact on many state elections, however large racial disparities in disenfranchisement clearly dilute the voting strength of African-Americans ... approximately 9% of African-Americans and 15% of African-American males are unable to vote because of a felony conviction.

BACKGROUND

The right to vote has long been recognized as central to the protection and exercise of the other rights guaranteed in our society.⁹ In 1870, the 15th Amendment was ratified to prevent states from denying individuals the right to vote based on race, color, or previous condition of servitude.¹⁰ Almost one hundred years later, the United States Supreme Court stated that "[o]ther rights, even the most basic, are illusory if the right to vote is undermined."¹¹ Further, the United States Supreme Court has recognized that states passed laws, such as literacy and property tests, poll taxes, and grandfather clauses, that either prevented or inhibited blacks from exercising their right to vote.¹²

Another method of restricting blacks' right to vote was the enactment of criminal disenfranchisement laws. Criminal disenfranchisement occurs when a state takes away the right to vote because of a criminal conviction, typically a felony conviction. Although criminal disenfranchisement existed before ratification of the 15th Amendment, between 1890 and 1910, many southern states tailored their criminal disenfranchisement statutes to have the greatest impact possible on black citizens.¹³

Criminal disenfranchisement continues today. Currently, only Maine and Vermont allow incarcerated individuals to vote. The remaining states have laws that disenfranchise felons and ex-felons to varying degrees. In 32 states, felons on parole cannot vote, and in 29 states, felons on probation cannot vote.¹⁴

Although a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens, this right is not absolute.¹ The Constitution leaves to the states the power to impose voter qualifications and to regulate access to the franchise.¹

FELON DISENFRANCHISEMENT LAWS IN MINNESOTA PAST AND PRESENT

Minnesota is one of many states that automatically disenfranchise felons upon conviction. The following summarizes the historical background and current status of Minnesota's criminal disenfranchisement law and reports on our research examining the procedures that Minnesota uses to track those eligible and not eligible to participate in the electoral process. Last, this section discusses the process by which Minnesota felons are notified that their voting rights have been restored.

Legislative History of Minnesota's Criminal Disenfranchisement Law

The Minnesota Constitution was adopted on October 13, 1857. The original constitution contained a criminal disenfranchisement provision in Article IV, § 15 that read as follows:

The Legislature shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or any other infamous crime.

The original constitution also stated in Article VII, § 2 that the following individuals were not eligible to vote:

No person who has been convicted of treason or any felony, unless restored to civil rights, . . .

It is important to understand the status of African-Americans at the time the criminal disenfranchisement law was first enacted in Minnesota in determining whether the law was intended to discriminate against African-Americans. In 1857, African-Americans living in Minnesota did not have the right to vote. Legislation introduced in 1865 and 1867 proposed a constitutional amendment to authorize African-American men to vote. The amendment was rejected by a narrow margin on both occasions. In 1868, African-American men were granted the right to vote in Minnesota. Two years later, the United States followed, and Congress ratified the 15th Amendment in an effort to prevent states from denying individuals the right to vote on account of race, color, or previous condition of servitude.

When the 15th Amendment was ratified, many southern states amended their disenfranchisement laws and created other discriminatory voting qualifications such as literacy tests and poll taxes to exclude African-Americans from the franchise. Our preliminary research did not reveal any

evidence that Minnesota used discriminatory tactics such as poll taxes and literacy tests, or that the criminal disenfranchisement law was intentionally expanded to apply to crimes allegedly committed more frequently by African-Americans, as occurred in other states.

The Current Landscape of Felon Disenfranchisement in Minnesota

The disenfranchising language found in Minnesota's current constitution and enabling statute remains almost identical to the language found in the 1857 constitution. In the early 1970's, the Minnesota Constitutional Study Commission made recommendations to the 1973 Legislature in regard to possible amendments to the Minnesota Constitution. The Commission was created to review the constitution and make recommendations for substantive changes and for a revised format.¹⁵ The Commission addressed the criminal disenfranchisement law found in Article VII. The aim of the Commission's recommendations in regard to the elective franchise was to expand and facilitate greater participation.¹⁶ The Commission recommended that the Legislature be authorized to remove the prohibition of Article VII, Sec. 2, which denies the vote to felons and mentally ill and mentally retarded individuals.¹⁷ The Commission intended to give the Legislature greater flexibility in determining proper restrictions on the franchise rights of these citizens.¹⁸ The Commission felt that the Legislature could enact laws to provide such safeguards or qualifications as were deemed necessary.¹⁹ This recommendation was not adopted by the 1973 Legislature. We were unable to find legislative discussions about this recommended amendment to Article VII, mainly because Minnesota did not begin to record legislative history until the 1980's.

Currently, the Minnesota State Constitution and enabling statutes define voter eligibility in Minnesota. Minnesota Constitution, Article VII, § 1 states:

Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

The enabling statute for Article VII, § 1, is Minn. Stat. § 201.014, and it provides:

Except as provided in subdivision 2, an individual who meets the following requirements at the time of an election is eligible to vote. The individual must:

- Be 18 years of age or older;
- Be a citizen of the United States; and
- Maintain residence in Minnesota for 20 days immediately preceding the election.

Subdivision 2. Not eligible. The following individuals are not eligible to vote. Any individual:

- Convicted of treason or any felony whose civil rights have not been restored;
- Under a guardianship of the person; or
- Found by a court of law to be legally incompetent.

Subdivision 3. Penalty. Any individual who votes who knowingly is not eligible to vote is guilty of a felony.

In Minnesota, a citizen is automatically disenfranchised if he or she is incarcerated or on probation or parole for a felony conviction.

A person committed to prison cannot vote while in prison or while on parole. The convicted felon cannot vote until his or her civil rights are restored.

Once individuals are convicted of a felony, they can only regain their right to participate in the electoral process by having their civil rights restored.

In Minnesota, a citizen is automatically disenfranchised if he or she is incarcerated or on probation or parole for a felony conviction. A felony in the State of Minnesota is defined as a crime for which a sentence of imprisonment for more than one year may be imposed.²⁰ A person convicted of a felony may either be placed on probation or sentenced to prison. If an individual is not sentenced to prison, he will not be allowed to vote while on probation. If a convicted felon is committed to prison, namely the Department of Corrections, he or she will almost always serve two-thirds of the sentence in the custody of the Department of Corrections and the last third of his or her sentence on parole under what is often referred to as supervised release. A person committed to prison cannot vote while in prison or while on parole. The convicted felon cannot vote until his or her civil rights are restored.

Restoration of a Felon's Civil Rights

Once individuals are convicted of a felony, they can only regain their right to participate in the electoral process by having their civil rights restored. The restoration of civil rights is controlled by Minn. Stat. § 609.165:

Subdivision 1. When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil

rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Subdivision 2. The discharge may be:

- By order of the court following stay of sentence or stay of execution of sentence; or
- Upon expiration of sentence.

The defining point of when a person's civil rights are restored is relatively clear: either the individual completes his or her sentence or the district court issues an order discharging the person from probation. What is not clear is how the convicted felon and local election officials are notified that the individual's civil rights have been restored, and thus, that he or she can participate in the electoral process.

For persons sentenced to prison, the Commissioner of Corrections is obliged under law to notify all parolees that their sentence has expired and their civil rights have been restored. During the course of research, and based on informal interviews with Department of Corrections representatives, the practice appears to be to prepare and send a form letter to every parolee as part of the procedure followed in discharging the parolee from his or her parole. The letter states, in part:

On (DATE), (COUNTY) District Court sentenced you to the Commissioner of Corrections. Because that sentence is completed as of (DATE), pursuant to Minnesota Statute Section 609.165, all of your civil rights and full citizenship, right to vote and hold public office, are restored . . .

For those individuals who are not sentenced to prison but are placed on probation, the district court must sign an order discharging the probationer from probation when the sentence is complete. This discharge order will inform the ex-felon that his or her civil liberties and voting rights have been restored. The probation department and the court administrator receive a copy of this order. The court administrator enters the information into the computer system and files the order. We randomly contacted a handful of counties to determine how the probationer was notified that he or she had completed probation and that his or her rights were restored. There was no consistent procedure among them. Some probation departments sent the order to the probationer, but others relied on the court administrator to send the order to the probationer. Some court administrator offices just file the order and do not mail it to the probationer. There appeared to be no consistency to how and even if the probationer is notified that his or her

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State Procedure for Updating Voter Eligibility Records

It is the duty of the State Court Administrator to inform the Secretary of State of the identity, date of sentencing, effective date of sentence and county in which the conviction occurred of each person who has been convicted of a felony. It is also the duty of the State Court Administrator to report the identity of each person previously convicted of a felony whose civil rights have been restored. The Secretary of State then determines whether any of the persons in the report are registered to vote and prepares a list of those registrants for the County Auditor.²¹ It is the responsibility of the County Auditor to change the status of those registrants in the appropriate manner in the statewide registration system.²²

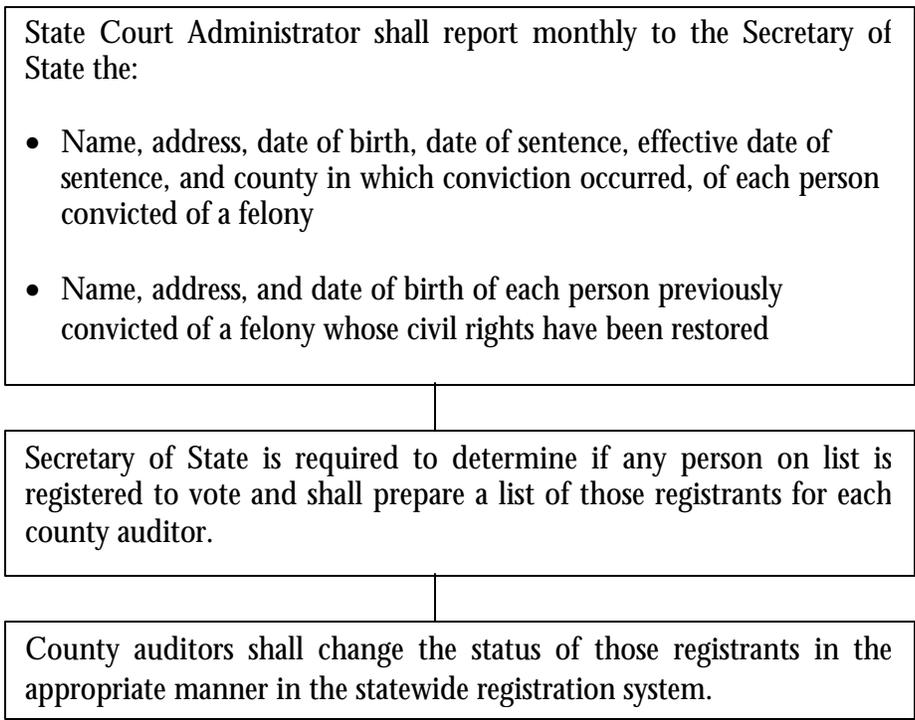
There is a system in Minnesota to track persons who are convicted of felonies and a system to change the status of those individuals once their civil rights are restored, but it appears to not be followed consistently.

Again, we informally inquired of the staff of the State Court Administrator and Secretary of State's offices about their procedures for updating their records of who is disenfranchised and whose civil rights have been restored. The State Court Administrator's office does not have an automated system to record data from each county that would provide them with the information that is mandated by Minn. Stat. § 201.155. Instead, the Court Administrator relies on each individual county to enter the required information into the counties' computer system, the Total Court Information System. Each separate county is told to print a monthly report that details the identity, date of sentencing, effective date of sentence of those convicted of felonies. Each county is also required to report the individuals whose civil rights have been restored for that county. Each separate county mails the monthly report to the Secretary of State, not to the State Court Administrator.

Even though the Secretary of State's office has informed the State Court Administrator's office that certain counties do not appear to be sending all of the required information on a consistent basis, it does not appear that follow-up to correct the problem has occurred. Information indicates that many of the individuals who are responsible for entering the statutorily required data are unsure of when a conviction expires and when civil rights are restored. The information that is supposed to be collected by the State Court Administrator is to be sent to county auditors by the Secretary of State's office so the status of voters can be changed accordingly.

When representatives of the county auditor's offices were interviewed in regard to their duties to update voting records, responses differed. Most county auditors' staff stated that they receive their information from the local court administrator or corrections department and not from the Secretary of State's office. Each county representative stated that they receive reports from the Secretary of State but rely upon the information provided to them from their local district court administrator and/or their local corrections department. One county auditor's staff member stated that once a person was convicted of a felony, it was his or her responsibility to come to the county auditor's office and prove to them their civil rights have been restored before they will change their status in the statewide registration system. The flow chart below sets forth how the system is supposed to work pursuant to Minn. Stat. § 201.155.

**Statutory Structure for Notification from
State Court Administrator to Secretary of State**



There is a system in Minnesota to track persons who are convicted of felonies and a system to change the status of those individuals once their civil rights are restored, but it appears to not be followed consistently. It appears that there is confusion among the local county agencies and the state agencies in regard to how this information is being recorded and disseminated. This problem has the potential to prevent a large number of persons whose civil rights have been restored from being notified that they

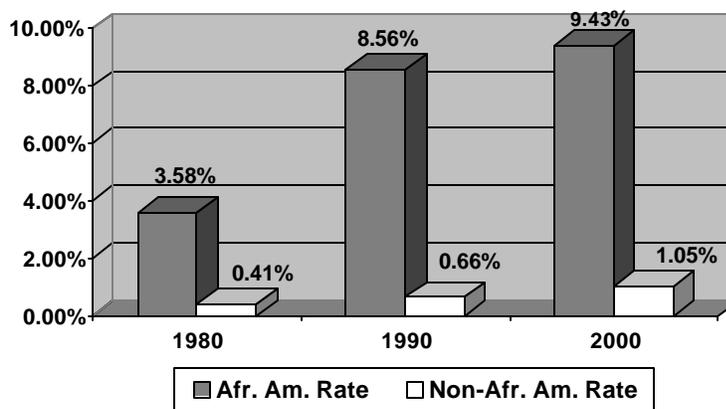
...the process being used in Minnesota needs to be examined and changed so that the statewide registration system accurately reflects those individuals whose civil rights have been restored.

can vote again and from having their status changed in the statewide registration system. In at least one county, the burden is placed on an ex-felon to prove that his or her civil rights have been restored. It appears that these agencies are not fully complying with Minnesota law and the process being used in Minnesota needs to be examined and changed so that the statewide registration system accurately reflects those individuals whose civil rights have been restored.

The Racial Impact of Felony Disenfranchisement in Minnesota

Our research to date has not found any indication that criminal disenfranchisement laws in Minnesota were created or are currently being used for racially discriminatory purposes. However, statistical evidence suggests that Minnesota's disenfranchisement statute has a discriminatory impact. According to a study conducted by the University of Minnesota Department of Sociology, approximately 46,000 convicted felons are currently disenfranchised in Minnesota.²³ "Eight to ten percent of the total African-American voting age population and approximately fifteen percent of voting age African-American men were disenfranchised in 2000."²⁴

Minnesotans Disenfranchised as Percentage of Voting Age Population, By Race



In general, the total number of disenfranchised felons has grown at a disturbing rate in Minnesota. In 1974, 8,803 individuals were disenfranchised because of felony convictions. Twenty-six years later, that number had increased 5 times to 46,181. In 1974, the number of African-Americans disenfranchised because of felony convictions was 895; that number grew 10 times to 9,991 by the year 2000.²⁵ The study reveals that

African-Americans are disenfranchised at a disproportionate rate. According to the study, “about 9.43% of the African-American voting age population was disenfranchised in 2000; compared to about 1.05% of the non-African-American voting age population...” The study concludes:

Because Minnesota’s incarceration rate is among the lowest in the nation, felon disenfranchisement is unlikely to have a major impact on many state elections. Nevertheless, the large racial disparities in disenfranchisement clearly dilute the voting strength of African-Americans, with approximately 9% of African-Americans and 15% of African-American males unable to vote because of a felony conviction. Moreover, disenfranchisement is likely to have played a role in closely contested local elections in Minneapolis and St. Paul. Hennepin County (Minneapolis), for example, reported 9,881 felony probationers in 1998, over one-third of the state probation total.²⁶

ALTERNATIVE APPROACHES TO REFORMING MINNESOTA LAW

While the criminal disenfranchisement laws on many states' books today may appear racially neutral, their effects in many cases are not. The disproportionate representation of African-Americans in the criminal justice system exacerbates the disparate impact of the criminal disenfranchisement laws. The disparate racial impact of felon disenfranchisement laws have made them susceptible to various Constitutional challenges including asserted violations of free speech, double jeopardy, cruel and unusual punishment, equal protection and violations of the Voting Rights Act. This portion of the paper presents alternative approaches to addressing Minnesota law, and the corresponding strengths and weaknesses of each alternative.

Constitutional Challenges

Fourteenth Amendment

When looking at possible strategies to challenge criminal disenfranchisement laws pursuant to the Equal Protection Clause, two Supreme Court decisions must be discussed, *Richardson v. Ramirez*²⁷ and *Hunter v. Underwood*.²⁸ The Court in *Richardson v. Ramirez* held that criminal disenfranchisement laws are constitutional and do not violate the 14th Amendment, Equal Protection Clause; however, in *Hunter v. Underwood*, the Court held that such laws could be found unconstitutional if created with discriminatory intent.

Richardson v. Ramirez

In *Ramirez*, three convicted felons who had completed their sentences as well as parole instituted an action for a writ of mandate compelling election officials to register them as voters.²⁹ The convicted felons alleged that the California statute and implementing statutes that disenfranchised ex-felons denied them equal protection in violation of the 14th Amendment of the United States Constitution.³⁰ The felons pointed to previous Supreme Court decisions that invalidated other state-imposed restrictions on the franchise as violations of the 14th Amendment, Equal Protection Clause and argued that the court was obligated under precedent to invalidate the disenfranchisement of felons as well.³¹ According to the plaintiffs, California was required to show a "compelling state interest" to justify exclusion of ex-felons from the franchise and California failed to do so.³² The Supreme Court disagreed, and found California's disenfranchisement statute constitutional.

Justice Rehnquist, writing for the majority, concluded that "exclusion of felons from the vote has an affirmative sanction in Section 2 of the 14th

Amendment.”³³ Therefore, Section 1 of the 14th Amendment, which prohibits states from denying persons equal protection of the laws, must be read in conjunction with Section 2 of the 14th Amendment, which the Court held gives states the authority to disenfranchise those with criminal convictions.³⁴ More specifically, the Court held that Section 1’s strict scrutiny test, that normally applies to state restrictions on a persons’ right to vote, did not apply to state statutes disenfranchising felons.

Hunter v. Underwood

In 1985, the Supreme Court revisited the constitutionality of criminal disenfranchisement laws in *Hunter v. Underwood*. In *Underwood*, the Court unanimously held that a provision in Alabama’s Constitution disenfranchising persons convicted of crimes involving moral turpitude violated the Equal Protection clause of the 14th Amendment.³⁵ The plaintiffs in *Underwood*, Carmen Edwards, a black man, and Victor Underwood, a white man, were blocked from voter rolls because they had been convicted of presenting a worthless check. They challenged the constitutionality of Section 182 of the Alabama Constitution on two theories: the misdemeanors encompassed within Section 182 were intentionally adopted to disenfranchise African-Americans on account of their race, and their inclusion in Section 182 has had the intended effect.

Alabama’s constitutional provision that disenfranchised those persons convicted of “any crime involving moral turpitude” was adopted in 1901. The legislative history revealed that this provision was enacted with the intent of disenfranchising African-Americans. The Supreme Court agreed with the Court of Appeals’ findings that Section 182 was motivated by a discriminatory purpose.³⁶ The Court stated that once racial discrimination is shown to have been a “substantial” or “motivating” factor behind enactment of the law, the burden shifts to the law’s defenders to demonstrate that the law would have been enacted without this factor.³⁷

The Court held that Section 182 would not have been adopted by the convention or ratified by the electorate in the absence of the racially discriminatory motivation.³⁸ The Court reasoned that the enactment of Section 182 was motivated by a desire to discriminate against African-Americans on account of race and the section continued to that day to have that effect, and therefore, it violates equal protection.³⁹ The Court further noted that Section 2 of the 14th Amendment was not designed to permit purposeful racial discrimination attending the enactment and operation of Section 182 which otherwise violates Section 1 of the 14th Amendment. *Underwood* provides citizens the legal precedent to challenge disenfranchisement statutes if they can show that the laws were enacted with the intent to discriminate on the basis of race.⁴⁰

Application to Minnesota Law

Initial research does not suggest that the legislative history of Minnesota's criminal disenfranchisement provisions were motivated by the intent to discriminate against the State's black citizens. The current language in Minnesota's disenfranchising statute is the same language found in Minnesota's Constitution in 1857, enacted when African-Americans were not even allowed to vote. Minnesota does not have a history of post-Reconstruction laws that have intentionally restricted the right of the members of minority groups to register, vote, or otherwise participate in the democratic process. Therefore, we have not found evidence tending to show that Minnesota's criminal disenfranchisement statute was motivated by invidious racial discrimination.⁴¹

First Amendment and Free Speech

Criminal disenfranchisement laws can be challenged as being violative of free speech under the 1st Amendment of the Constitution.

Criminal disenfranchisement laws can be challenged as being violative of free speech under the 1st Amendment of the Constitution. Since many states provide that only those who are qualified to vote may run for office, laws of this nature impose restrictions on felons and ex-felons that often interfere with their ability to run for office or the right of voters to vote for them. An argument can be made that such restrictions are violative of a felon's and/or ex-felon's 1st Amendment right to free speech or access to the ballot.⁴²

Courts may be reluctant to uphold such challenges because to do so might require them to interpret the Constitution in an "internally inconsistent manner or to determine that the Supreme Court's declaration of the facial validity of felon disenfranchisement laws was based only on the fortuity that the plaintiffs therein did not make their arguments under different sections of the Constitution."⁴³

Eighth Amendment and Cruel and Unusual Punishment

Another theory is to challenge criminal disenfranchisement laws as constituting cruel and unusual punishment in violation of the 8th Amendment because the penalty they impose is grossly disproportionate to the underlying offense or because they punish individuals the state has no authority to punish, such as felons convicted of violating federal law or the law of other states. However, prior challenges to criminal disenfranchisement laws on these grounds generally have failed. In *Trop v. Dulles*, the Supreme Court suggested in dicta that criminal disenfranchisement statutes "designate a reasonable ground of eligibility for voting" and pointed out that courts have sustained such statutes as a "nonpenal exercise of the power to regulate the franchise."⁴⁴ In *Fincher v. Scott*, one District Court reasoned that even if felon disenfranchisement were punishment, the prevalence of this practice in America demonstrates that the framers would not have considered this practice to be cruel and usual.⁴⁵ In *Thiess*, another District Court also

reasoned that felon disenfranchisement could not constitute cruel and unusual punishment because it was a penalty that was specifically sanctioned by the 14th Amendment.⁴⁶

Legal Challenges under the Fifteenth Amendment

The 15th Amendment states: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude." An argument can be made that the word "servitude" found in the 15th Amendment applies to imprisoned criminals, and therefore, that the right to vote cannot be denied to those who were formerly imprisoned criminals.

The word "servitude" is only used twice in the United States Constitution as amended; once in the 13th Amendment and once in the 15th Amendment. The 13th Amendment states that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The language of the 13th Amendment shows that Congress understood the word "servitude" included those "duly convicted" and imprisoned as "punishment for crime."⁴⁷ Congress did not intend to free all of the imprisoned criminals so it included the qualifying phrase, "except as a punishment of a crime whereof the party shall have been duly convicted" to specifically except imprisoned criminals from the protections of the 13th Amendment.

The 15th Amendment was ratified five years after ratification of the 13th Amendment. Unlike the 13th Amendment, the 15th Amendment fails to except former criminals from the protection of the 15th Amendment.⁴⁸ The 15th Amendment takes the meaning of the word "servitude" from the 13th Amendment and takes precedence over the 14th Amendment's provision to allow disenfranchisement of criminals. Thus, the 15th Amendment guarantees former felons the right to vote.⁴⁹

This legal argument is being suggested in South Carolina in response to South Carolina's attempt to pass legislation that would disenfranchise former felons. It is an argument that has yet to be litigated and should be researched in greater depth. It appears South Carolina is attempting to disenfranchise former felons, but in Minnesota, ex-felons are allowed to vote. Thus, Minnesota's situation is distinguishable from the legislation being proposed in South Carolina.

Voting Rights Act

The Voting Rights Act provides litigants with an alternative legal theory to the constitutional challenges discussed above. Section 2 of the Voting Rights Act "was designed as a means of eradicating voting practices that 'minimize or cancel out the voting strength and political effectiveness of minority groups.'⁵⁰ Specifically, two distinct types of discriminatory practices and procedures are covered under Section 2: those that result in "vote denial" and those that result in "vote dilution." In 1982, Congress amended Section 2 to clarify that a plaintiff may establish a violation of the statute by a showing of discriminatory results alone, as opposed to discriminatory intent.⁵¹ As amended, Section 2 states:

(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, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.⁵²

Vote Denial

Vote denial occurs when a state employs a "standard, practice, or procedure" that results in the denial of the right to vote on account of race. 42 U.S.C. § 1973(a). To prevail, Plaintiffs must prove that, "under the totality of the circumstances, . . . the political processes . . . are not equally open to participation by [members of a protected class] . . . in that its members 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(b). In making this determination, "a court must assess the impact of

the contested structure or practice on minority electoral opportunities 'on the basis of objective factors.' "⁵³ However, " 'there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.' "⁵⁴

Vote Dilution

Vote dilution occurs when an election practice results in the dilution of minority voting strength and, thus, impairs a minority community's ability to elect the representative of its choice. In *Thornburg v. Gingles*, the Supreme Court identified three threshold preconditions for establishing a Section 2 vote dilution claim: (1) "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "the minority group must be able to show that it is politically cohesive"; and (3) "the minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."⁵⁵ Proof of each of these *Gingles* factors is necessary, but not sufficient, to prevail under a Section 2 vote dilution claim.⁵⁶ Upon successfully establishing each of the *Gingles* prerequisites, plaintiffs also must show that, under the totality of the circumstances, the challenged electoral scheme deprives them of "an equal measure of political and electoral opportunity" to participate in the political process and to elect representatives of their choice.⁵⁷

Instructive Lower Federal Court Decisions

Felon disenfranchisement laws have been challenged under Section 2 in three cases. In *Wesley v. Collins*, the Sixth Circuit affirmed the dismissal of a Section 2 challenge to Tennessee's felon disenfranchisement statute.⁵⁸ The *Wesley* court, only discussed the vote dilution claim, but nevertheless relied heavily on the Supreme Court's analysis in *Ramirez*. The Sixth Circuit held that a disparate racial impact alone is not enough to sustain a Section 2 challenge and that the totality of the circumstances, specifically, the compelling state interest behind criminal disenfranchisement and the fact that criminal disenfranchisement is constitutional under *Ramirez*, demonstrated there was no Section 2 violation.⁵⁹

Another challenge under the Voting Rights Act was filed in New York. In *Baker v. Cuomo*, the Second Circuit reversed the district court's dismissal of vote dilution and vote denial claims brought against New York based on its criminal disenfranchisement statute.⁶⁰ The court held that although the inmates had adequately stated claims under the Voting Rights Act, the success of their claims was dependent on the totality of the circumstances including evidence of racial discrimination in the New York criminal justice system.⁶¹

A third challenge to felon disenfranchisement laws under Section 2 of the Voting Rights Act is found in *Farrakhan v. Locke*.⁶² In *Farrakhan*, the district court held that on its face the Voting Rights Act applied to plaintiffs' claims and application of the Voting Rights Act to criminal disenfranchisement statutes did not violate Section 2 of the 14th Amendment or otherwise exceed Congress' enforcement powers under the 14th Amendment.⁶³ In denying a motion to dismiss, the District Court rejected the *Wesley* court's analysis, premising its conclusions on the Supreme Court's holding in *Hunter*. The court found that plaintiffs had alleged sufficient facts to state a claim for vote denial under Section 2 but failed to allege sufficient evidence to state a claim for vote dilution. Viewed in light of these cases, a challenge to the Minnesota law on either a vote denial or dilution theory may be possible, depending in part on the outcome in *Farrakhan*. Such a challenge would require extensive development of further evidence that the totality of circumstances demonstrates the discriminatory impact of Minnesota's law.

A Closer Look at Florida Litigation, *Johnson v. Bush* and *Florida Conference of Black State Legislators v. Michael Moore*

Under current Florida law, all individuals who are convicted of a felony are permanently disenfranchised unless they apply for, and are granted, a restoration of their civil rights.⁶⁴ Although convicted felons can apply to Florida's Clemency Board for restoration of the right to vote, many ex-felons are denied restoration, or are not eligible for restoration because they owe monetary penalties.⁶⁵ Many ex-felons never even apply for restoration of their right to vote because the process is too onerous and complicated without the assistance of the Department of Corrections.⁶⁶ There have, however, been a number of challenges to this law.

The Lawyers' Committee for Civil Rights Under Law, in conjunction with the Brennan Center for Justice and James K. Green, PA, initiated a class action suit prior to the November 2000 election alleging that Florida's felon disenfranchisement laws violate the 1st, 14th, 15th and 24th Amendments of the United States Constitution; Sections 2 and 10 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973 et seq., and 42 U.S.C. § 1983.⁶⁷ Specifically, they allege that the disenfranchisement laws were initially adopted with the intent to discriminate against African-Americans, and that even today, Florida's felon disenfranchisement laws have a disproportionate impact on African-Americans, especially African-American men.⁶⁸

Plaintiffs allege that the discriminatory impact of Florida's felon disenfranchisement laws, coupled with the racially polarized voting patterns in Florida, results in African-Americans having fewer opportunities than

other members of the electorate to participate in the political process and to elect representatives of their choice.⁶⁹

The class action complaint emphasizes that the permanent disenfranchisement of felons is arbitrary and irrational and that the disenfranchisement laws serve no legitimate governmental purpose as applied to ex-felons.⁷⁰ The plaintiffs point out that Florida no longer has any legitimate interest in punishing individuals who have fully completed their periods of imprisonment and/or supervision, nor does Florida have any legitimate interest in punishing those felons who were convicted under the laws of other states or under federal law.⁷¹ Additionally, plaintiffs argue Florida has no legitimate interest in denying ex-felons, who have reintegrated into the society and are indistinguishable from other community members, basic political rights when it otherwise treats them as ordinary citizens.⁷² Plaintiffs essentially argue that Florida's felon disenfranchisement laws are status-based enactments that serve no other purpose than to burden and disadvantage ex-felons for life.⁷³

Plaintiffs also challenge the Rules of Executive Clemency. At the time the complaint was filed, Florida's Rules of Executive Clemency required that convicted felons must not have more than \$1,000 in outstanding fines or other monetary penalties in order to have their right to vote restored.⁷⁴ The rules of Executive Clemency's imposition of financial conditions on regaining the right to vote is equivalent to a poll tax.⁷⁵ The plaintiffs argue that basing an ex-felon's ability to regain the right to vote on their financial resources creates a substantial obstacle for many convicted felons.⁷⁶

In another challenge to Florida's disenfranchisement laws, the ACLU of Florida's Equal Voting Rights Project has filed suit against the Florida Department of Corrections asking the court to order the Department to comply with provisions of Florida law that require the Department to assist ex-felons, prior to their release from supervision, with the lengthy and complicated application process of restoring their civil rights, including the right to vote.⁷⁷ Currently, Florida law requires the Department to help ex-felons before they are released from supervision with the complicated application to have their civil rights restored.⁷⁸ The Department, however, does not do this. The Governor and the Cabinet, acting as the Clemency Board, can restore an ex-felon's civil rights, but the ex-felon first has to ask.⁷⁹ The detailed forms and requirements for copies of court documents make it difficult for offenders to complete the application process once they are released. The lawsuit challenges Florida's failure to provide adequate assistance to inmates in submitting an application for restoration of civil rights.⁸⁰

In June 2001, Governor Bush and the Florida Cabinet passed new rules that will affect those people who have served time, are non-violent, and are not classified as habitual offenders.⁸¹ Those felons will be able to get their civil

rights restored, including voting rights, without having to go through a hearing of the State's Executive Board of Clemency, a long and complicated process.⁸² Although the Clemency Board still has to sign off on the list of felons who want their civil rights restored, the process should be faster.⁸³ The twelve page questionnaire that felons must complete has been reduced to four pages.⁸⁴ The new rules also allow people who still have outstanding fines or costs of \$1,000 or more to get their voting rights restored without a hearing.⁸⁵

Minnesota Procedure

There is a possible legal challenge to the process used by Minnesota in notifying and recording felons whose voting rights have been restored. As mentioned above, in *Florida Conference of Black State Legislators v. Michael Moore*, the ACLU of Florida's Equal Voting Rights Project filed a class-action lawsuit challenging the state's failure to assist ex-felons in applying for the restoration of their civil rights, including the right to vote. Under Minnesota law, a convicted felon's voting rights are immediately restored once he or she completes the sentence or is discharged from probation. Unlike Florida, in Minnesota the ex-felon is not required to take any affirmative action to have his or her rights restored. However, if state and local officials fail to follow the statutory requirements, ex-felons who have completed their sentences still may not be allowed to vote.

Advocating for a Legislative End to Criminal Disenfranchisement

Presently, only two states, Maine and Vermont, give all felons, with no restrictions, the right to vote. An examination of the methodology used in these states may be helpful to an understanding of how to change the law in Minnesota through legislation.

Maine

Article II of the Maine Constitution provides the qualifications of electors and contains no restrictions regarding felons or individuals on probation or on parole.⁸⁶ The only restriction contained in the Constitution and echoed in the Maine Statutes on voter eligibility applies to a person under guardianship because of mental illness.⁸⁷

The movement to separate Maine from Massachusetts took place from 1785 to 1820.⁸⁸ Breaking tradition with the Massachusetts Constitution, which established property requirements for voters, the Maine Constitutional Convention took a major step towards universal male suffrage.⁸⁹ During the

delegates' debate over Article II of the Maine Constitution, several delegates recommended the exclusion of felons, but the practice was not adopted.⁹⁰ There is evidence from the debate that opponents to felon disenfranchisement, while understanding the public's desire to keep elections pure, saw voting as a way of rehabilitating felons.⁹¹ Moreover, there was tremendous concern that once a criminal served his or her sentence and was reformed, the privilege of voting should not be permanently taken from such a person.⁹²

In early 2001, President Pro Tempore Richard A. Bennett presented LD 2058 to the members of the Joint Standing Committee on Legal and Veterans Affairs.⁹³ The legislation sought to constitutionally remove a felon's right to vote while incarcerated.⁹⁴ The legislation applied to those convicted of a murder or a Class A, B, or C crime and the bill called for a referendum vote on a constitutional amendment.⁹⁵

An examination of the debate that took place in Maine's House of Representatives explains the policy reasons behind the passage of felon disenfranchisement laws. Opponents to the bill argued that deprivation of an individual's citizenship rights could not be justified as a punishment for committing a crime.⁹⁶ They pointed out that felon disenfranchisement had its roots in the civil war as an attempt to reduce the influence of African-Americans voters.⁹⁷ It was noted that the prison population in Maine was not primarily made up of sophisticated and educated people with in a higher socioeconomic status.⁹⁸ Instead, it was argued that those imprisoned in Maine desperately need the right to vote to reconnect with society.⁹⁹

In addition, the issue of rehabilitation was also discussed. The philosophy of the Maine corrections systems was to send people to prison as punishment and the need for additional punishments was unnecessary.¹⁰⁰ Allowing felons to vote while in prison, it was argued, would help keep them connected to the community.¹⁰¹ The right to vote was also compared to the right to practice religion; it was suggested that if a prisoner made a spiritual connection, the rate of recidivism would be lower.¹⁰² It was argued that, similarly, if felons could vote, this mechanism would help keep those rates low.¹⁰³ Finally, with respect to Class A, B, and C crimes, opponents also argued that the bill was too broad in the types of offenses it covered.¹⁰⁴

In contrast, proponents of the bill argued that the Maine bill did not permanently deny felons the right to vote.¹⁰⁵ They asked the legislature to consider the ability to vote as a privilege and responsibility. Proponents also discussed victims' rights.¹⁰⁶ They argued that when an individual commits a wrong against society, it was entirely permissible to take away their voting rights.¹⁰⁷ An interesting comparison was made to the right to bear arms and it was pointed out that felons lose the right to bear arms while incarcerated and frequently for significant periods of time once they are released.¹⁰⁸

Despite a heated debate, however, the House rejected the bill by a 78-64 tally.¹⁰⁹ As a result, the House and the Senate attempted to reach a compromise.¹¹⁰ The Senate proposed creating a committee of senators and representatives to reach the compromise, but the effort failed, and the bill died between the houses.¹¹¹ Thus, all felons in Maine are still allowed to vote.

Vermont

The Vermont Constitution forbids voting by those who commit election fraud; otherwise, there are no restrictions (other than age and citizenship). Convicted felons have always been allowed to vote in Vermont. Over the years, there have been various attempts to forbid felons to vote, but all have failed.

Connecticut

Although the Maine and Vermont experiences provide useful insights regarding how the right to vote for felons and ex-felons can be preserved, Connecticut is a better model for initial legislative change in Minnesota's criminal disenfranchisement statutes. As a first step, it may be possible to convince the legislature to follow Connecticut and allow felons on probation or parole to vote.

Connecticut's law, like that of Minnesota, provided that felons forfeited their electoral rights and privileges while serving their sentences, which may include parole and probation.¹¹² In the late 1990's, Representative Green, Representative Fleischmann, and House Majority leader David Pudlin met with several groups to discuss supporting a bill to restore the voting rights of convicted felons who were on probation.¹¹³ Eventually, the Voting Rights Restoration Coalition was formed.¹¹⁴ The Coalition, coordinated by Democracy Works, consists of 50 organizations including traditional reform groups like Common Cause and the Connecticut Citizen Action Group; civil rights groups; the official state commissions for women, African-Americans, and Latinos; church groups; and social service agencies working in the criminal justice system.¹¹⁵

Connecticut's Act to restore the voting rights of convicted felons who are on probation was an effort to "re-root" individuals who were returning home from prison.¹¹⁶ Proponents of the bill argued that existing Connecticut law had a disproportionate effect on communities of color and on poor people because these groups comprised the majority of those on probation.¹¹⁷ Opponents of the bill argued that the loss of the right to vote was part of a felon's sentence.¹¹⁸

The Voting Rights Restoration Coalition successfully lobbied for passage of House Bill 5701, An Act Concerning Restoring Voting Rights of Convicted

Felons Who Are on Probation. The bill passed the House with an 80-63 vote and passed the Senate with a 22-14 vote.¹¹⁹ Governor Rowland signed the bill on May 4, 2001.¹²⁰ The new law allows a person who has been convicted of a felony, and who is on probation, the right to register and vote.¹²¹ The Act became effective January 1, 2002.¹²²

Under this Act, an individual's disenfranchisement is limited to the period during which he or she is committed to (1) the Department of Correction for confinement in a correctional institution, facility, or community residence or placed on parole; (2) a federal prison; or (3) the custody of the chief correctional official of another state or county of another state.¹²³ The Act requires that the Department of Correction commissioner, instead of the Judicial Department, send the secretary of state lists of felons whose voting rights should be forfeited and those eligible to have their rights restored.¹²⁴ The Office of Adult Probation must use available appropriations to inform people on probation on January 1, 2002 of their right to become voters and of the new restoration procedures.¹²⁵ Felons who are placed on probation after being confined in a federal or out-of-state correctional facility remain eligible to have their rights restored only after submitting proof that they paid all court-ordered fines related to the conviction and were discharged from confinement or parole, whichever applies.¹²⁶

The only exception to the new law is individuals who committed offenses involving election fraud. Those individuals will not be allowed to register and vote until they have completed all terms of their conviction, including probation.¹²⁷ All other people on probation are eligible to vote effective January 1, 2002.

The Voting Rights Restoration Coalition also launched a comprehensive education program in order to inform ex-offenders not on probation, people on probation who are convicted of a felony, and agencies that deal with ex-offenders, that their voting rights could be restored under current law.¹²⁸ The State Department of Corrections and the Office of Adult Probation cooperated with the education campaign and distributed brochures in English and Spanish to people leaving prison and probation.¹²⁹ Thirty billboards were also placed in Connecticut's five major cities to inform people that their right to vote will be restored.¹³⁰

Application to Minnesota

Like the grassroots movement in Connecticut, any change to the laws in Minnesota will require a deliberate, focused, and massive undertaking to lobby the legislature. This undertaking will involve approaching legislators in Minnesota and assisting their bill through the lobbying efforts of a coalition. Minnesota does have several groups who may join such a coalition, including organizations such as the local chapter of the NAACP, the Minnesota Advocates of Human Rights, and the Youthbuild USA group.

RECOMMENDATIONS

This paper has presented a preliminary analysis Minnesota's disenfranchisement law, its disparate impact on African-Americans, and possible challenges that could be made to change this law. Additional research, including the following, may assist in preparation to change or eliminate Minnesota's criminal disenfranchisement law.

... for a lawsuit challenging Minnesota's procedures

1. Research how each County Auditor updates its voter registration system to determine if the counties are following Minnesota law.
2. Conduct formal interviews with the State Court Administrator and Secretary of State in regard to their reporting duties as they relate to convicted felons and ex-felons.
3. Inquire of the State Court Administrator about what is being done to develop a computer system that would allow data on felons and ex-felons to be accurately relayed between state agencies, specifically county court administrators, State Court Administrator, Secretary of State, and local county auditors.
4. Research how court administrator staff and county auditors are trained in regard to recording who is a convicted felon and when an ex-felon's rights are restored.
5. Research the accuracy of individual counties' lists of eligible and ineligible voters in regard to felons and ex-felons.

... in regard to a legislative amendment

1. Contact civil rights groups that would be supportive to the cause of eliminating or changing Minnesota's felon disenfranchisement law.
2. Obtain information from civil rights groups in Connecticut to assist in developing a strategic plan.
3. Investigate which legislators in Minnesota would support this cause.

... to assist a lawsuit challenging the constitutionality of Minnesota's disenfranchisement law

1. Research voting patterns of African-Americans in Minnesota, particularly in Hennepin and Ramsey Counties.
2. Examine the effects of discrimination against minorities in areas such as education, employment and health, particularly in Hennepin and Ramsey counties.
3. Take a closer look at Hennepin County's past African-American Mayor to determine how she was elected and who voted for her.
4. Determine population data for Minnesota by race and county, and compile other demographic information available by race at the local level.
5. Assess the degree to which African-American and/or minority needs are being addressed by policy makers, including legislators.
6. Survey the number of disenfranchised felons who were registered to vote prior to losing the right, and the number of ex-felons who exercise or would exercise their right to vote once they are notified that their rights have been restored.
7. Research why African-Americans are convicted of felonies at a higher rate than white individuals.
8. Determine if other minority groups are being disenfranchised at the same rate as African-Americans.
9. Attempt to determine if the statistical disparity discussed in the paper is attributable to any specific cause, such as racial discrimination.
10. Research if felon disenfranchisement has any effect on the voting strength of minority groups in counties with a significant African-American population.
11. Conduct additional research on the legislative history of Minnesota's criminal disenfranchisement provisions.

CONCLUSION

Preliminary research conducted for this assessment suggests that there is inconsistent enforcement of Minnesota's felon disenfranchisement laws. When this pattern is coupled with the statistics showing that the felon disenfranchisement laws have a disparate impact on African-Americans, we believe that there is a basis for further investigation.

The preliminary research conducted for this assessment suggests that there is inconsistent enforcement of Minnesota's felon disenfranchisement laws. When this pattern is coupled with the statistics showing that the felon disenfranchisement laws have a disparate impact on African-Americans, we believe that there is a basis for further investigation.

It would be useful to conduct additional research in a variety of areas. One possible way of changing the law would be through a grassroots effort similar to the coalition that was organized in Connecticut. We recommend consultation and discussion with civil rights groups and legislators with regard to their position on such an effort. After such discussions, we would be in a better position to determine the extent to which such a movement could succeed. Our present suggestion is that such an effort be limited to allowing felons on probation and parole to vote, similar to the successful campaign in Connecticut.

What we do know is that approximately 9.43% of the African-American voting age population in Minnesota was disenfranchised in the year 2000, compared to about 1.05% of the non-African-American voting population. Any effort to expand the franchise to include a greater percentage of ex-felons on the voting rolls is a positive step toward a more healthy democracy.

ENDNOTES

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- ¹ *Bush v. Tahash*, 161 N.W.2d 326, 328 (Minn. 1968) (emphasis added).
- ² Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the U.S.*, Human Rights Watch and The Sentencing Project (1998).
- ³ *Id.* at 2.
- ⁴ *Id.*
- ⁵
- ⁶ *Id.*
- ⁷ Dr. Christopher Uggen, Melissa Thompson, and Jane Cheney, "Report on Felon Disenfranchisement in Minnesota," Draft, Oct. 22, 2001. Authors of this paper received permission from Dr. Uggen to cite the study.
- ⁸ *Id.*
- ⁹ *Assoc. of Comm. Org. for Reform Now v. Miller*, 129 F.3d 833, 834 (6th Cir. 1997).
- ¹⁰ U.S. Const. Amend. XV ("The right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any state on account of race, color or previous servitude.").
- ¹¹ *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 535, 11 L.Ed.2d. 481 (1964).
- ¹² *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (upholding Voting Rights Act, including its prohibition of literacy tests); *Harman v. Forssenius*, 380 U.S. 528, 540-54 (1965) (prohibiting poll tax as a prerequisite to voting in a Federal election); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (prohibiting poll tax as a prerequisite to voting in a State election); *Lang v. Wilson*, 307 U.S. 268 (1939) (invalidated grandfather clauses).
- ¹³ Andrew L. Shapiro, Note, Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy, 103 Yale L.J. 537, 540 (1993).
- ¹⁴ Federal Sentences Reporter, Volume 12, Number 5 March/April. 2000. *Felon Voting Disenfranchise: A Growing Collateral Consequence of Incarceration*.
- ¹⁵ Minnesota Constitutional Study Commission, Final Report, Constitutional Study Commission (1973).
- ¹⁶ *Id.* at 24.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ Minn. Stat. § 609.02, subd. 2 (2000).
- ²¹ *Id.*
- ²² *Id.*
- ²³ Uggen, Thompson & Cheney, *supra* note 6 at 1.
- ²⁴ *Id.*
- ²⁵ Uggen, Thompson & Cheney, *supra* note 6, Table 1.
- ²⁶ *Id.*
- ²⁷ 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974).
- ²⁸ 471 U.S. 222, 165 S.Ct. 1916, 85 L.Ed.2d 222 (1985).
- ²⁹ *Ramirez*, at 2655.
- ³⁰ *Id.* at 2656.
- ³¹ *Id.* at 2671.
- ³² *Id.*
- ³³ U.S. CONST. Amend. XIV, § 2.
- ³⁴ *Ramirez*, 94 S.Ct. at 2671.
- ³⁵ *Underwood*, 471 U.S. at 233.
- ³⁶ *Id.* at 1919.
- ³⁷ *Id.* at 1920.
- ³⁸ *Id.* at 1922.
- ³⁹ *Id.*
- ⁴⁰ Shapiro, *supra* note 14, at 548.

⁴¹ In *Tahash v. Bush*, the Minnesota Supreme Court considered whether there was discrimination against persons of the Indian race that tainted the jury selection system. 161 N.W.2d 326, 281 Minn. 244 (1968). The court considered the selection of jurors from the pool of qualified voters and noted that “the disqualification as a voter of any person convicted of a felony . . . [within the state of Minnesota] applies equally to everyone.” 161 N.W.2d at 328.

⁴² See generally, Steven B. Snyder, Note, *Let My People Run: The Rights of Voters and Candidates Under State Laws Barring Felons From Holding Elective Office*, 4 J.L. & Pol. 543 (1988).

⁴³ *Farrakhan v. Locke*, 987 F.Supp. 1304, 1314 (E.D. Wash. 1997).

⁴⁴ *Trop v. Dulles*, 78 S.Ct. 590, 596 (1958) (plurality opinion).

⁴⁵ *Fincher v. Scott*, 352 F.Supp. 117, 119-20 (M.D.N.C. 1972) (citing *Green*, 380 F.2d at 449-50).

⁴⁶ *Theiss*, 387 F.Supp. at 1042.

⁴⁷ Robert D. Butler, *Disenfranchising Former Felons is Unconstitutional: H. 3159 Must be Defeated*.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 479, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997) (quoting S.Rep. No. 97-417, at 28 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 205). The Act “prohibits all forms of voting discrimination.” *Thornburg v. Gingles*, 478 U.S. 30, 45 n. 10, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) (citing S.Rep. No. 97-417 at 30, reprinted in 1982 U.S.C.C.A.N. at 207-08).

⁵¹ Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (1982).

⁵² 42 U.S.C. § 1973(a), (b).

⁵³ *Gingles*, 478 U.S. at 44, 106 S.Ct. 2752 (quoting S.Rep. No. 97-417 at 27, reprinted in 1982 U.S.C.C.A.N. at 205):

The Senate Report that accompanied the 1982 amendment set forth typical factors that may be indicative of violation of section 2 under this test. These factors include: (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 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; 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”; and (7) the extent to which members of the minority group have been elected to public office in the jurisdiction. Additional factors that in some cases have had probative value as part of plaintiffs’ evidence to establish a violation are: whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; 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.

⁵⁴ *Gingles*, 478 U.S. at 45.

⁵⁵ *Id.* at 30.

⁵⁶ *Id.* at 50.

⁵⁷ *Johnson v. De Grandy*, 512 U.S. 997, 1013, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

⁵⁸ *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986).

⁵⁹ *Id.* at 261-62.

⁶⁰ *Baker v. Cuomo*, 58 F.3d 814 (2d Cir. 1995).

⁶¹ *Id.* at 823-24.

⁶² *Farrakhan v. Locke*, 987 F.Supp. 1304 (E.D. Wash. 1997). In *Farrakhan*, convicted felons filed suit challenging Washington’s felon disenfranchisement laws under the Constitution and the Voting Rights Act. The convicted felons alleged that Washington’s felon disenfranchisement law operated to deny access to voting privileges on the basis of race. The felons argued that African, Hispanic and Native Americans were targeted for prosecution of serious crimes and that they were over represented in prison populations, which established a causal connection between the disenfranchisement scheme and the denial of voting rights to racial minorities. The District Court held that although the felons may have alleged sufficient facts to state a claim under vote denial, their remaining vote dilution and constitutional claims were dismissed. The Court reasoned that the felons put forth no specific proof of facts or factors to sustain their claims that Washington used its voting practices or procedures to enhance the opportunity to discriminate against minority groups. The District Court later granted defendants’ motion for summary judgment. *Farrakhan v. Locke*, No. CS-96-76-RHW, Order Granting Summary Judgment (E.D. Wash. Dec. 1, 2000). Plaintiffs appealed that ruling to the United States Court of Appeals for the Ninth Circuit. The Lawyers’ Committee for Civil Rights Under Law and the Brennan Center for Justice submitted an *amicus* brief in support of the plaintiffs, arguing that the District Court improperly applied a “by itself” causation test in analyzing plaintiffs’ Section 2 vote denial claim.

⁶³ *Id.* at 1308-11.

⁶⁴ FLA. STAT. § 944.292, 940.01, 97.041; Fla. R. Exec. Clemency 5, 8, 9.A.

⁶⁵ Fla. R. Exec. Clemency 9.

⁶⁶ The Florida Equal Voting Rights Project, Black State Lawmakers, *ACLU Voting Rights Project Challenge State’s Failure to Help Ex-Offenders with Process of Restoring Voting Rights*, March 14, 2001.

⁶⁷ *Johnson v. Bush*, Case No. 00-CV-3542 (filed S.D. Fla. Sept. 21, 2000).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Florida Conference of Black State Legislators v. Michael Moore*, Case No. 01-659 (filed in Second Judicial Circuit, Leon County, Florida).

⁷⁸ FLA. STAT. § 944.23.

⁷⁹ Fla. R. Exec. Clemency 5, 8, 9.A.

⁸⁰ *Florida Conference of Black State Legislators v. Michael Moore*.

⁸¹ Julie Hauserman, *Rules on Felon’s Rights Eased*, ST. PETERSBURG TIMES, June 15, 2001.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Me. Const., Art. II, § 2.

⁸⁷ *Id.*

⁸⁸ Ronald F. Banks, *Maine Becomes a State*, 156-57 (Wesleyan University Press 1970).

⁸⁹ Marshall J. Tinkle, *The Maine State Constitution*, 56 (Greenwood Press 1992).

⁹⁰ Banks, *supra* note 89, at 157.

⁹¹ *Constitutional Conventions*, 123-25 (Maine Farmer’s Almanac Press 1894).

⁹² *Id.*

⁹³ H-786, 2001 Leg. Record, 120th Sess. (Me. 2001).

94 *Id.*
95 H-789.
96 H-786.
97 *Id.*
98 H-787.
99 *Id.*
100 H-787.
101 *Id.*
102 *Id.*
103 H-787, 788.
104 H-789.
105 *Id.*
106 H-786, 788.
107 H-788.
108 *Id.*
109 *House Rejects Ban on Felon's Voting*, *Kennebec Journal*, May 17, 2001.
110 *Id.*
111 *Id.*
112 CONN GEN. STAT §§ 9-45, 9-46, 9-46a.
113 Miles S. Rapoport, *Restoring the Vote*, *THE AMERICAN PROSPECT*, Aug. 13, 2001, at 13.
114 *Id.*
115 *Id.*
116 *Id.*
117 Gregory B. Hladky, *Senate OKs Bill on Felons' Voting Rights*, *NEW HAVEN REGISTER*,
April 26, 2001.
118 *Id.*
119 *Id.*
120 2001 Conn. Acts 01-11 (Reg. Legis. Sess.). This Act will repeal and replace CONN GEN.
STAT §§ 9-45, 9-46, 9-46a.
121 *Id.*
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.*
126 *Id.*
127 *Id.*
128 Letter from Americo Santiago, Program and Policy Director of Democracy Works and
Minaren S. Bozeman, Project Assistant of Democracy Works (Dec. 4, 2001) (on file with authors).
129 *Id.*
130 *Id.*

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