

**EXCERPTS FROM THE PARTISAN POLITICS OF
EX-FELON DISENFRANCHISEMENT LAWS**

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THE SHERMAN-BENNET PRIZE

Jason Belmont Conn received the Sherman-Bennet Prize from the College of Arts and Sciences at Cornell University for this thesis. The Sherman-Bennett Prize is awarded annually for the best essay discussing the principles of free government. Cornell was selected to administer this prize by William Jennings Bryan.

CHAPTER ONE:

EX-FELON DISENFRANCHISEMENT LAWS AND THE POTENTIAL FOR CHANGE AT THE STATE LEVEL

Felon disenfranchisement laws strip felons of their right to vote upon conviction. Currently, there are over four million Americans who are not eligible to vote in elections as a result of these laws. An examination of felon disenfranchisement laws reveals that what many Americans believe to exist, a constitutional right to vote, does not.¹ These laws appear to restrict democratic principles that many Americans take for granted: equal access to the ballot box, “one person, one vote,” and “no taxation without representation.” Felon disenfranchisement laws prevent a significant group of Americans from participating in the most sacred of democratic processes, the election.

Felon Disenfranchisement

Apart from fundamental questions of equality and democracy raised by these laws, felon disenfranchisement laws are having a tangible and significant impact on elections in the United States. The laws disproportionately affect certain segments of the population, and serve to homogenize the voting public. In doing so, they have changed election outcomes, the partisan makeup of our political bodies, and the public policies that our elected officials enact.

Felon disenfranchisement laws have a substantial impact on the makeup of the American electorate. It is estimated that in 2002, the laws disenfranchised 3.9 million

¹ Some have argued that felon disenfranchisement is a poor term to use for the laws, as not all states use a felony as the trigger point for barring citizens from voting. Alaska, Alabama, Georgia, Iowa, Maryland, Mississippi, Tennessee, and Washington all have provisions under which a citizen could lose the right to vote simply by committing a crime, or “infamous crime,” involving “moral turpitude.” In some cases, there may even be a specific list of crimes that may be used to strip the right to vote. Similarly, some scholars oppose the

Americans,² or one in fifty adults.³ Over half a million women have lost the right to vote. Almost three-quarters of the disenfranchised population are no longer in prison, but are on probation, parole, or have completed their sentences. Over 1.4 million of the disenfranchised Americans are ex-felons who have completed their entire sentence and are living among the rest of the population.⁴ The demographic makeup of the disenfranchised Americans largely mirrors the makeup of the prison population. It is estimated that 1.4 million African-American men, or 13 percent of Black men, are disenfranchised by the laws; a rate seven times the national average.⁵ In seven states that do not allow any ex-offenders to vote, one in four Black men is permanently disenfranchised.

There is no sign of change in the near future, as rates of incarceration continue to rise. Estimates show that given the current rate of incarceration, three in ten of the next generation of Black men can expect to be disenfranchised at some point in their lifetime, and certain states may disenfranchise 40% of Black men in the next decade.⁶

An Emerging Body of Literature

Despite the long history of felon disenfranchisement laws, the literature on felon disenfranchisement is still emerging. A number of papers and dissertations have provided a survey of felon disenfranchisement laws, and briefly discuss the laws from a variety of

terminology “ex-felon” because one should not carry the designation of felon after they have completed their debt to society. Essentially, they believe there is no such thing as an ex-felon; an ex-felon is simply a citizen.

² Six States disenfranchise more than four percent of their voting age population: Alabama, Florida, New Mexico, Mississippi, Virginia, and Wyoming.

³ Jamie Fellner and Marc Mauer, "Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States," *Human Rights Watch and The Sentencing Project* (October 1998).

⁴ Texas disenfranchises those sentenced to probation even if they are never sentenced to serve time in prison. Currently, about 250,000 current or former probationers are disenfranchised in Texas.

⁵ “Felony Disenfranchisement Laws In The United States,” *The Sentencing Project*, April 2002, (23 January 2003). <<http://www.sentencingproject.org/news/news.html#voting>>.

⁶ Ibid.

perspectives.⁷ Much of the literature, especially law review articles, discusses the constitutionality of felon disenfranchisement laws.⁸ Some of the literature examines felon disenfranchisement laws within the context of suffrage movements and the civil rights movement.⁹ Felon disenfranchisement is also discussed in the growing literature on prison policy in the United States.

Outside of the academic world, there has been a flurry of articles in the mainstream press about felon disenfranchisement. These articles are part of a dialogue on election laws and procedures that began after the 2000 Presidential election.¹⁰ Most of these articles have focused on individual activist efforts within states. They inform the public about the impact of felon disenfranchisement, but they tend to lack a detailed analysis of the constitutional or political elements of the issue.

Only recently has felon disenfranchisement been examined as a partisan issue from an elections law perspective. Professors Jeff Manza and Christopher Uggen have examined public opinion on felon disenfranchisement, and they have also done extensive analyses of the

⁷ See Elizabeth Simson, "Justice Denied: How Felony Disenfranchisement Laws Undermine American Democracy," *John Kenneth Galbraith Fellow*, (March 2002), 51.

⁸ For examples, see *George P Fletcher*, "Disenfranchisement as Punishment: Reflections on the Racial Issues of Infamia," *UCLA Law Review* 46 (6) (August 1999): 1895-907; Michael J. Gottlieb, "One Person, No Vote: The Laws of Felon Disenfranchisement," *Harvard Law Review* (May 2002); Alice E. Harvey, "Comment: Ex-felon Disenfranchisement and its Influence on the Black Vote: The Need for a Second Look," *University of Pennsylvania Law Review* (January 1994).

⁹ For examples, see Mary Fainsod Katzenstein and Katherine Davison Rubin, "How different? A Comparison of the Movement Challenging Ex-Felon Disenfranchisement with Suffrage Politics of an Earlier Time," paper presented at the annual meeting of the American Political Science Association, Boston, Massachusetts (29 August 2002), provided by authors; Paul Hirschfield, "Losing the Prize? Assessing the Impact of Felon Disenfranchisement Laws on Black Male Participation," paper presented at the 1999 Annual Meeting of the Law and Society Association; Marc Mauer and Meda Chesney-Lind, eds., *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New Press: New York, 2002); Jamie Fellner and Marc Mauer, "Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States," Human Rights Watch and The Sentencing Project, October 1998.

¹⁰ Mary Fainsod Katzenstein and Katherine Davison Rubin, "How different? A Comparison of the Movement Challenging Ex-Felon Disenfranchisement with Suffrage Politics of an Earlier Time," paper presented at the annual meeting of the American Political Science Association, Boston, Massachusetts (29 August 2002), provided by authors.

impact that felon disenfranchisement had on presidential and senatorial elections in the United States in the twentieth century.¹¹

However, there is a wide gap in the literature surrounding the legislative politics of felon disenfranchisement. Despite an acknowledgement of the political and partisan nature of felon disenfranchisement, much of the literature lacks a discussion of the political interests that influence legislators when they make roll call votes on these laws.

Thesis Argument

In this thesis, I will examine state-level disenfranchisement laws. My focus is on the states, because, remarkably enough, the right to vote even in federal elections varies by state. No federal answer to this lack of uniformity has been established in court decisions, or by congressional mandate.

This thesis is an analysis of the motives of legislators when making roll call votes related to felon disenfranchisement. Utilizing a survey of state legislators in connection with the recent literature on the institutionalization of state legislatures, I will present an analysis of the interests that influence legislators. I will argue that partisan and electoral political interests are the most important considerations for legislators as they develop their position on ex-felon disenfranchisement.

¹¹ See Christopher Uggen and Jeff Manza, "Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States," *American Sociological Review* 67 (2002):777-803; Angela Behrens, Christopher Uggen, and Jeff Manza, "Ballot Manipulation and the 'Menace of Negro Domination': Racial Threat and Felon Disenfranchisement in the United States, 1850-2002," (2003); Jeff Manza, Clem Brooks, and Christopher Uggen, "Civil Death or Civil Rights? Public Attitudes Towards Felon Disfranchisement in the United States," (2003); Christopher Uggen and Jeff Manza, "Barriers to Democratic Participation," forthcoming in *Prisoner Reintegration and the Institutions of Civil Society*, eds. Jeremy Travis and Amy Solomon, (Belmont, CA: Wadsworth); Christopher Uggen and Jeff Manza, "*Lost Voices: The Civic and Political Views of Disfranchised Felons*," forthcoming in *The Impact of Incarceration on Families and Communities*, eds. Mary Pattillo, David Weiman, and Bruce Western, (New York: Russell Sage Foundation, 2003); Christopher Uggen, Jeff Manza, and Angela Behrens, "*Less than the Average Citizen: Stigma, Role Transition, and the Civic*

Chapter One Argument

Some legal scholars have written about potential constitutional challenges to ex-felon disenfranchisement laws that could be made in the courts. Some highly visible political action groups have attempted to lobby the United States Congress for a federal bill or constitutional amendment that would create a federal policy with regard to felon voter eligibility. But the Supreme Court has been reluctant to make any sweeping changes to state election law, and attempts to change the laws in Congress have been mired in politics and issues of federal jurisdiction.

This analysis of ex-felon disenfranchisement laws will focus on action in the state legislatures. Because as I argue in this chapter, if there are to be any major changes to felon disenfranchisement laws, they will not be made in the courts or in the U.S. Congress, but in the state legislatures.

Variation at the State Level

There has never been a national policy with regard to felon voting rights.¹² As the Supreme Court is reluctant to meddle in what is largely regarded as a state right, each state has its own complex policy with regard to felon voting rights.¹³ There is a wide spectrum of laws regarding eligibility. In Vermont and Maine, an incarcerated felon may vote, but in eight states, indefinite disenfranchisement is enforced upon conviction of a felony.¹⁴

Reintegration of Convicted Felons,” forthcoming in *After Crime and Punishment: Ex-Offender Reintegration and Desistance from Crime*, eds. Shadd Maruna and Russ Immarigeon, (2003).

¹² In October 1999, a subcommittee on the Constitution in the House of Representatives met to discuss Rep. Conyers’ bill (H.R. 906). The Republicans brought in a number of legal scholars who all argued that any legislation made at the federal level would be unconstitutional. U.S. Congress. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity*, 106th Cong., 1st sess., 21 October 1999, 1.

¹³ In 1890, the Supreme Court validated the exclusion of felons from elections in federal territories in *Davis v. Beason*, according to Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 162.

¹⁴ Alabama, Florida, Iowa, Kentucky, Mississippi, Nevada, Virginia, and Wyoming.

A 1996 report by the Department of Justice stated that the current law was a “national crazy-quilt of disqualification and restoration procedures.”¹⁵ One consequence of the varied laws is that two cellmates, who enter prison in the same state for the same crime, may have different degrees of voter eligibility based on where they choose to live once they leave prison.¹⁶

Today, Maine and Vermont are the only two states that allow inmates to vote.¹⁷ The other 48 states and the District of Columbia all have some form of disenfranchisement law. In 32 states, an offender may not vote while on parole, and 29 states disenfranchise those on probation. But the most controversial laws are those that disenfranchise felons for life. In 13 states, a felony conviction can result in a lifetime ban on voting.¹⁸

Even if a state allows ex-felons to vote once they have completed all of the requirements set forth in their sentence, the process of getting one’s vote back can be cumbersome. The Department of Justice classifies the states into five categories:

First, there are those states in which the vote is never taken away from felons or is restored automatically upon release from prison.¹⁹ Second, there are some states that give felons their right to vote back after a specific period of time has passed from the day their sentence was completed. Third, there are states that allow a felon to vote after an administrative or judicial procedure. Fourth, a few states require that a felon receive a formal pardon before the restoration of voting rights. Finally, eight states permanently

¹⁵ Ewald found this quote in the Office of the Pardon Attorney’s report on “Civil Disabilities of Convicted Felons: A State-by-State Survey.” Alex C. Ewald, “Civil Death’: The Ideological Paradox of Criminal Disenfranchisement Laws in the United States” (Master’s Degree Thesis, University of North Carolina, 2000).

¹⁶ For a detailed discussion of this matter see section on *Johnson v. Bush* later in this Chapter.

¹⁷ Massachusetts was a third state that allowed prisoners to vote, but the law was changed by the legislature in 2000. For a detailed discussion of this action see Chapter Three.

¹⁸ “Felony Disenfranchisement Laws in the United States,” *The Sentencing Project*, April 2002, (23 January 2003). <<http://www.sentencingproject.org/news/news.html#voting>>.

¹⁹ 38 states currently fall into this category.

disenfranchise all ex-felons barring reinstatement from the Governor,²⁰ and five states permanently disenfranchise ex-felons who have committed a certain type of crime.²¹

Although disenfranchisement laws have been in place since the founding, they have been under intense scrutiny since the 2000 election. There has been an increase in activism and legislative action at the state level with regard to disenfranchisement laws, and many influential and powerful politicians have spoken on the issue.²²

Change at the State Level

As discussed in the previous section, there is great variation among states on felon disenfranchisement laws. But why have the laws that govern voter eligibility been left up to the states?

Article 1, Section 2 of the United States Constitution provides that “the House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors

²⁰ Alabama, Florida, Iowa, Kentucky, Mississippi, Nevada, Virginia, and Wyoming.

²¹ Arizona, Delaware, Maryland, Tennessee, and Washington.

²² In a *New York Times* editorial that he wrote just ten days before leaving office in honor of Martin Luther King Day, President Bill Clinton wrote that he agreed with W.E.B. Dubois when he said “the problem of the 20th century is the problem of the color line.” (*The New York Times*, Editorials Section, 14 January 2001.) In the editorial, President Clinton outlined what he believed were the greatest civil rights problems that America would face in the 21st century. He discussed drug laws, crime, prison policy, and the death penalty. But the issues that he spent the most space discussing were related to voting rights and election law: “We must do more to ensure that more people vote and that every vote is counted. To that end, I urge the new administration to appoint a nonpartisan presidential commission on electoral reform, headed by distinguished citizens like former presidents Gerald Ford and Jimmy Carter. Such a commission should gather facts and determine the causes -- in every state -- of voting disparities, including those involving race, class and ethnicity. It should make recommendations to Congress about how to achieve fair, inclusive and uniform standards for voting and vote counting. It should also work to prevent voter suppression and intimidation and to increase voter participation. Here are two places to start: We should make Election Day a national holiday. And it is long past time to give back the right to vote to ex-offenders who have paid their debts to society.” Just a few months earlier, voting rights may not have been an issue that President Clinton would have included in his final editorial in *The New York Times* before leaving office, but in the aftermath of the 2000 presidential election, and the controversy that surrounded the upcoming inauguration of President George W. Bush on January 20, 2001, voting rights were a major concern for Americans. It was in this spirit that President Clinton made voting rights the focus of two recommendations he gave to the new administration.

of the most numerous branch of the state legislature.”²³ Since “House of Representatives” has been interpreted to mean all federal offices,²⁴ this clause has been held to grant the power to determine voter qualifications to the states, specifically the state legislatures.²⁵

However, Article 1, Section 2 is constrained by Article 1, Section 4 of Constitution which provides that “the times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.”²⁶ Essentially, the federal government can step in and “alter” the decisions of the state legislature with regard to “times, place and manner of holding elections.”²⁷

With regard to felon disenfranchisement laws, the debate continues as to whether Article 1, Section 4 gives Congress the right to extend voter eligibility to felons, or whether any such measure would be unconstitutional.²⁸ This is a question that I will examine later in this analysis. These two sections of the Constitution provide the legal authority for state legislatures to alter election law and voter eligibility requirements.

The Courts

Throughout American history the courts have been used by advocacy groups to challenge the law, but major decisions have also served to stifle the progress of social movements.²⁹ In the case of felon disenfranchisement laws, the courts have played both roles.

²³ *U.S. Constitution*, art. 1, sec. 4, cla. 1.

²⁴ At the founding, the President and Senators were not elected by the general electorate.

²⁵ Simson, 51.

²⁶ *U.S. Constitution*, art. 1, sec. 4, cla. 1.

²⁷ *Ibid.*, art. 1, sec. 4, cla. 1.

²⁸ Simson, 51.

²⁹ “For some, the federal courts have proven to be trusted allies in furthering the cause of social reform, performing its function of protecting discrete and insular minorities and otherwise policing the political process to keep the channels of representation open. For others, the federal courts have proven themselves either to clumsy agents at producing lasting social change or usurpers of political power rightly lodged in the states or

A number of court cases have examined the constitutionality of felon disenfranchisement laws. Although litigants have been largely unsuccessful in bringing about significant change, a description of some of the decisions will demonstrate why any major change to disenfranchisement laws will likely come from legislation.

Richardson v. Ramirez

Disenfranchisement laws have been upheld as constitutional in many challenges. Most often, the decisions are based on the 1974 Supreme Court decision *Richardson v. Ramirez*.³⁰ In *Richardson v. Ramirez*, convicted felons who had completed their sentences and paroles asked that the Court force election officials to register them as voters in California.³¹ In this decision the Court relied on Section Two of the Fourteenth Amendment which states that in order to ensure equal representation a state must purge those that are disenfranchised by participating in a rebellion or crime from the count of citizens they use to determine their number of representatives.³² Since the Constitution recognizes a state may have to remove the disenfranchised from the list of registrants because they committed a crime, the Court decided this Section implies that a state may disenfranchise a citizen who commits a crime. The plaintiffs, from California, had argued that Section One of the

with Congress and the President,” according to David A. Schultz, *Leveraging the Law: Using the Courts to Achieve Social Change*, (New York: Peter Lang, 1998), 8.

³⁰ *Richardson v. Ramirez*, 418 U.S. 24 (1974)

³¹ When the Court accepted the case, it was argued that the Court’s decision would be moot because the laws in question were not under federal jurisdiction. This is similar to the argument that the campaigns made after the 2000 election to try to stop the Supreme Court from granting certiorari in *Bush v. Gore*.

³² “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male

Amendment made felon disenfranchisement laws unconstitutional because they denied ex-felons an equal vote, therefore denying equal protection under the law.³³ However, the Court rejected this interpretation since the framers of the 14th Amendment wrote Section Two despite the contradiction. In its decision, the Court said, “those who framed and adopted the Fourteenth Amendment could not have intended to prohibit outright in Section One of that Amendment that which was expressly exempted from the lesser sanction of reduced representation imposed by Section Two of the Amendment.”³⁴ Justice Rehnquist wrote that “what legislative history there is indicates that this language was intended by Congress to mean what it says.”³⁵ This six to three decision has served as an impediment to constitutional challenges in a number of states.

Hunter v. Underwood

The Court revisited the issue of ex-felon disenfranchisement ten years later in *Hunter v. Underwood*.³⁶ In *Hunter*, the Court found unconstitutional an Alabama law that disenfranchised felons who had committed certain types of crimes, because it had been created with a racist intent, and therefore violated the Equal Protection Clause.³⁷

Activists for the disenfranchised believed that the Court’s unanimous decision in *Hunter* opened the door for future litigation. Essentially, the Court had decided that the litmus test for whether a disenfranchisement law was constitutional was whether or not it had

citizens twenty-one years of age in such state.” The 26th Amendment made the voting age eighteen. (*Ratified July 9, 1868*) *U.S. Constitution*, amend. 14, sec. 2.

³³ “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” *U.S. Constitution*, amend. 14, sec. 1:

³⁴ *Richardson v. Ramirez*, 418 U.S. 24 (1974)

³⁵ *Ibid.*, 418 U.S. 24 (1974)

³⁶ *Hunter v. Underwood*, 471 U.S. 222 (1985).

³⁷ *Ibid.*, 471 U.S. 222 (1985).

been created with a racially biased intent. Since many of the disenfranchisement laws were enacted during the Reconstruction period with the intent to stop minorities and immigrants from going to the polls, a number of cases were initiated to try and show that state laws had indeed been forged with a racist purpose. However, *Hunter* did not turn out to be the landmark decision for which activists had hoped. Many courts have found that disenfranchising criminals is a rational decision that could be made without the motivation of race. Where the racially biased nature of the law can be proven, but there has not been substantial evidence to prove that a law was enacted based on race, courts have concluded that the result of the law alone, is not enough to establish that the result was intended.³⁸

Baker v. Pataki

There have also been attempts to challenge ex-felon disenfranchisement laws under the Voting Rights Act.³⁹ In *Baker v. Pataki*,⁴⁰ it was held that the Voting Rights Act does not in any way limit the state's power to disenfranchise felons.⁴¹

³⁸ “Courts have refused to scrutinize states’ selection of certain felonies as disqualifying offenses. These decisions cite *Hunter*’s focus on intentional discrimination as evidence that states may disenfranchise felons in any way they desire so long as they do not act on the basis of race,” according to Michael J Gottlieb, “One Person, No Vote: The Laws of Felon Disenfranchisement,” *Harvard Law Review*, Vol. 115, No. 7 (May 2002), 1948.

³⁹ “(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) [regarding membership in a language minority group], 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 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.” *The Voting Rights Act*, Public Law 89-110, title I, sec. 2, Aug. 6, 1965, 79 Stat. 437.

⁴⁰ *Baker v. Pataki*, 85 F.3d 919 (2d Cir. 1996).

⁴¹ See the Majority Opinion of the Court: “Because it is not unmistakably clear that, in amending §1973 in 1982 to incorporate the ‘results’ test, Congress intended that the test be applicable to felon disenfranchisement statutes, we conclude that §1973 does not apply. Accordingly, plaintiffs-appellants have failed to state a claim under the Voting Rights Act.” *Baker v. Pataki*, 85 F.3d 919 (2d Cir. 1996).

The plaintiffs had argued that whether intentional or not, the disenfranchisement laws were discriminatory to certain races that were overrepresented in the prison population.⁴² The dissenting justices agreed with this contention: “While a State may choose to disenfranchise some, all or none of its felons based on legitimate concerns, it may not do so based upon distinctions that have the effect, whether intentional or not, of disenfranchising felons because of their race.”⁴³ But the majority did not.

Johnson v. Bush

The most recent case to receive national attention is *Johnson v. Bush*.⁴⁴ This class action suit was initiated in the state of Florida just before the 2000 election. The plaintiffs contend that the felon disenfranchisement laws in Florida violate the First, Fourteenth, Fifteenth and Twenty-Fourth Amendments of the United States Constitution, and Sections 2 and 10 of the Voting Rights Act of 1965.

The lead plaintiff in the case is Reverend Johnson,⁴⁵ one of the nation’s leading activists on prison policy issues and felon disenfranchisement laws. He runs a non-profit Christian organization in Florida that helps support offenders when they are released from prison. A former college student, he was convicted of a drug-related felony in New York in

⁴² “In 1988, New York State's Chief Judge . . . commissioned a committee titled The New York State Judicial Commission On Minorities . . . to study the presence and effects of racism in the state's courts. In April 1991, the [Commission] reported [in a "Report on Minorities"] that there was evidence of race-based disparity in the State courts' conviction rate and sentence type. . .” *Baker v. Pataki*, 85 F.3d 919 (2d Cir. 1996).

⁴³ *Ibid.*, 85 F.3d 919 (2d Cir. 1996). See dissenting opinion of Circuit Judge Feinberg.

⁴⁴ As of the completion of this thesis, the case has not been decided. See Elizabeth Amon, “Felons Have Allies in Vote-Ban Case” *National Law Journal*, 14 January 2003; Marc Mauer, “State Disfranchises Those Who Have Paid Their Debt,” *Miami Herald*, 28 July 2002; Sasha Abramsky, “Florida Ruling Misses the Point,” *New York Times*, 27 July 2002; Jules Witcover, “Ex-Felons in Florida Fight for Rights,” *Baltimore Sun*, 15 July 2002; Nancy Northup, “Votes That Will Never Be Counted,” *Chicago Tribune*, 12 November 2000; Gillian Metzger, “Cruel and Too Unusual,” *National Law Journal*, 28 June 1999.

⁴⁵ The Brennan Center is representing 600,000 Florida citizens in this class action suit. The Brennan Center has received support from the Lawyers' Committee for Civil Rights Under Law and Florida civil rights attorney James Green.

1992 and was sentenced to eight months in prison. When he moved to Florida in 1996,⁴⁶ he was surprised to find that although he could have voted in New York had he stayed there, he was ineligible to vote under Florida statute. Mr. Johnson spoke at the “National Symposium on Felon Disenfranchisement Laws” in October 2002, and said that he hopes his case will bring national attention to the issue. He has said, “I’m a taxpayer. I help mold this community through my work. The sheriff is a friend of mine. But voting is the power by which you truly shape and mold, and I’m being denied that. I watch my sons see me stay home when my wife goes off to vote. I’m appalled by it.”⁴⁷

U.S. Congress

If the courts will not give a mandate to reduce the effect of felon disenfranchisement laws, in recent years, many activists have hoped that Congress would provide relief through a federal law or Constitutional Amendment. However, this has not occurred. In this section, I will examine the two greatest obstacles to a congressional bill: Constitutionality and Politics.

Constitutionality

There is an ongoing debate about which branch of government has the legislative power to change voter eligibility laws, Congress or the state legislatures. Most of the discussions of constitutionality concern the Elections Clause, and the 14th and 15th Amendments.

The Elections Clause

As stated earlier in this chapter, Article 1, Section 4 of the U.S. Constitution grants certain powers to the federal government to regulate procedures and qualifications for voting

⁴⁶ According to Johnson, when he arrived in Florida and tried to register to vote, he was told, "Not in the State of Florida... You can never vote here."

⁴⁷ E. Joshua Rosenkranz, “Barred from the Booth: A Response to ‘The Search for New Voting Technology,’” *Boston Review Online*, (8 February 2003). <<http://bostonreview.mit.edu/BR26.5/rosenkranz.html>>.

in elections. However, there is an ongoing debate over whether or not these powers extend to voter eligibility at all, let alone at the state level.

It appears that most legal scholars believe that the federal government does not have the authority to regulate voter eligibility for state elections. Under recent decisions of the United States Supreme Court, any congressional bill can only relate to federal elections.⁴⁸ *Oregon v. Mitchell* dealt with Congress' authority to lower the voting age. In *Oregon* the Court states that Congress' power extends only to voter eligibility in federal elections. Any changes to voter qualifications for state elections must be made through the individual state's procedures.⁴⁹

As Gillian Metzger, Staff Attorney at the Brennan Center for Justice at New York University School of Law, stated in his testimony to the House Judiciary Committee Hearing on H.R. 906, the Civic Participation and Rehabilitation Act of 1999: "Although the Elections Clause refers to regulations affecting the time, place, and manner of holding congressional elections, the Clause has been read expansively. For example, in *Buckley v. Valeo*,⁵⁰ the Supreme Court cited the Elections Clause as the basis for Congress' authority to enact the Federal Election Campaign Act, even though FECA relates to the manner of conducting campaigns for federal office as opposed to the manner of holding elections for federal office."⁵¹

Metzger's argument is supported by the battle over "Motor Voter Registration" in the 1990s.⁵² In 1993, Congress passed the National Voter Registration Act allowing citizens to

⁴⁸ *Oregon v. Mitchell*, 400 U.S. 112 (1970); *Kusper v. Pontikes*, 414 U.S. 51, 57 n. 11 (1973).

⁴⁹ *Oregon v. Mitchell*, 400 U.S. 112 (1970).

⁵⁰ *Buckley v. Valeo*, 424 U.S. 1, 14 n.16 (1976).

⁵¹ U.S. Congress. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Gillian Metzger*, 106th Cong., 1st sess., 21 October 1999, 1.

⁵² Special thanks to Prof. Walter Mebane for suggesting that I explore Motor Voter Laws as a possible area of comparison with felon disenfranchisement laws.

register to vote when they had an interaction with the Department of Motor Vehicles in their state.⁵³ The goal was to raise American participation in the electoral process by providing an easy and convenient way for citizens to register to vote. As more Americans drive than vote, it seemed like an obvious way to increase voter registration numbers, and it was very successful in raising voter registration.⁵⁴ The National Voter Registration Act of 1993 exemplifies the role that Congress can play in changing election law, and election procedures.

However, the necessity of state laws to allow Motor Voter registration to apply to state elections, demonstrates the restraints on congressional power. After the legislation was passed in Congress, the states had to pass legislation within their state legislatures in order to allow the Motor Voter registrants to vote in state elections. Many states quickly passed a law allowing Motor Voter registration in order to avoid the costs of having two separate registrations and voting processes. However, there was resistance in some states, causing confusion for voters who thought they were registered for both state and federal elections.⁵⁵

Although this thesis does not examine Motor Voter laws, the court decisions upholding these laws provide a powerful legal precedent for the proposition that Congress may change the procedures for registration in federal elections, even if it cannot change the registration procedures for state elections.

⁵³ "Motor Voter," *Voting Information*, (22 February 2003).

<<http://www.elections.state.il.us/VoteInfo/pages/MotorVoter.htm>>

⁵⁴ "In the first quarter of 1995, two million new voters were registered nationwide. This rate of registration is unprecedented. Georgia, for example, registered 183,086 voters in three months, as compared with 85,000 in all of last year. According to Secretary of State Max Cleland, Georgia is on track to register one million new voters by the 1996 presidential election. In Florida, 408,240 people registered in the first quarter. If these initial results are any indication, motor voter is a resounding success."

Rebeckah Evenson, "Approaching the Goal of Universal Enfranchisement," *Motor Voter in the States*, 1995, (22 February 2003). <<http://www.fairvote.org/reports/1995/chp6/evenson.html>>

⁵⁵ Rebeckah Evenson, "Approaching the Goal of Universal Enfranchisement," *Motor Voter in the States*, 1995, (22 February 2003). <<http://www.fairvote.org/reports/1995/chp6/evenson.html>>

But does this precedent apply to felon disenfranchisement laws? It could be argued that Motor Voter registration only had to do with how people registered, not *who* could register. Some legal scholars believe there is no precedent that clearly gives the power to change registration qualifications in federal elections to Congress.⁵⁶ Motor Voter Registration Laws fall more clearly under the “Times, Places, and Manner of elections” than ex-felon disenfranchisement laws do.

In his testimony to the House Judiciary Committee on a proposed bill to enfranchise ex-felons, Roger Clegg, Vice President and General Counsel for the Center for Equal Opportunity, argued strongly against Congress’ authority to change federal election qualifications based on Article 1, Section 4. He said: “In *The Federalist* No. 60, Alexander Hamilton said of Article I, Section 4, that the national government’s ‘authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose or may be chosen ... are defined and fixed in the constitution; and are unalterable by any legislature.’ (Emphasis in original.) In *The Federalist* No. 52, James Madison had written of Article I, Section 2: ‘To have left it [that is, ‘[t]he definition of the right of suffrage’] open for the occasional regulation of Congress, would have been improper’ Hamilton and Madison believed that generally the state constitutions would determine who voted; Congress, in any event, would not.”⁵⁷ Clegg’s interpretation of Article 1, Section 4 has been used by conservative congressmen to discourage the passage of a federal ex-felon enfranchisement law.

⁵⁶ Three conservative legal scholars (Roger Clegg, VP and General Counsel to the Center for Opportunity, Viet D. Dinh, Associate Professor of Law at Georgetown University Law Center, and Todd F. Ganziano, Senior Fellow in Legal Studies at The Heritage Foundation) spoke at the 1999 Judiciary Committee Hearings and all argued that voting qualifications could not fall under “Times, Places, and Manner.”

⁵⁷ U.S. Congress. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity*, 106th Cong., 1st sess., 21 October 1999, 1.

Furthermore, Clegg disagrees with the relevance of *Oregon v. Mitchell*, stating that only one of the justices in the majority, Hugo Black, relied on Article 1, Section 4 when making his decision.⁵⁸ If Clegg's interpretation of *Oregon v. Mitchell* and the lack of power granted to Congress by Article 1, Section 4 is correct, then Congress does not have the right to alter eligibility in state or federal elections.⁵⁹

The debate over Congress' rights as defined by Article 1 will most likely continue as changes to voter eligibility are proposed. It appears though, that any change Congress makes would at best extend only to federal regulations.

14th and 15th Amendments

Another point of contention between the legal scholars who spoke at the 1999 Judiciary Committee Hearings on the constitutionality of H.R. 906, was whether Congress could enact legislation to ban ex-felon disenfranchisement laws under the first sections of the 14th or 15th Amendments.⁶⁰

The 14th Amendment states that a citizen cannot be denied "equal protection under the law,"⁶¹ and the 15th Amendment states that a citizen's rights cannot be "denied or abridged by the United States or by any state on account of race, color, or previous condition of

⁵⁸ Ibid. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity*, 106th Cong., 1st sess., 21 October 1999, 1.

⁵⁹ Clegg stated that the federal government needs clear authority: "The Supreme Court recently reaffirmed in *United States v. Lopez*, 115 S. Ct. 1624, 1626 (1995), what is obvious from the text of the Constitution: 'The Constitution creates a Federal Government of enumerated powers.' Accordingly, Congress must point to some font of authority in the Constitution for passing H.R. 906."

⁶⁰ *U.S. Constitution*, amend. 14, sec.1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within is jurisdiction the equal protection of the laws."

U.S. Constitution, amend. 15, sec. 1. "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."

⁶¹ *U.S. Constitution*, amend. 14, sec.1.

servitude.”⁶² Since the 14th and 15th Amendments end by stating that “the Congress shall have power to enforce, by appropriate legislation, the provisions of this article,”⁶³ and ex-felon disenfranchisement laws deny ex-felons’ rights, a group disproportionately of one race, it could be argued that Congress has the legal power to enact federal ex-felon voter eligibility legislation.

However, Section 2 of the 14th Amendment makes the intent of the 15th Amendment unclear.⁶⁴ It states that a citizen’s rights cannot be abridged, except in cases of “participation in rebellion, or other crime.”⁶⁵ Essentially, when it comes to ex-felon disenfranchisement laws, the 14th and 15th Amendments contradict each other.

Legal scholars have argued that the disparate impact that ex-felon disenfranchisement laws are having on certain races, specifically African-Americans, makes Congressional action constitutional under the 15th Amendment.⁶⁶ But this argument is open to question. As three conservative legal scholars argued in the aforementioned Judiciary Hearings, it is unclear whether the ex-felon disenfranchisement laws were intended to be discriminatory and whether the disparate impact of the laws can be considered discriminatory in itself.⁶⁷ Furthermore, they argue that if the laws were intentionally discriminatory, they would have all been struck

⁶² *Ibid.*, amend. 15, sec.1.

⁶³ *Ibid.*, amend. 14, sec. 5; *U.S. Constitution*, amend. 15, sec. 2.

⁶⁴ *Ibid.*, amend. 14, sec. 2. “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.”

⁶⁵ *Ibid.*, amend. 14, sec. 2.

⁶⁶ U.S. Congress. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Gillian Metzger*, 106th Cong., 1st sess., 21 October 1999, 1.

⁶⁷ U.S. Congress. House of Representatives. Judiciary Committee Subcommittee on the Constitution, *Testimony of Roger Clegg, VP and General Counsel to the Center for Opportunity*, Viet D. Dinh, Associate Professor of

down using the standard set in *Hunter v. Underwood*.⁶⁸ Since this precedent was ruled not to apply to all ex-felon disenfranchisement laws, it appears that an argument based solely on the 15th Amendment is not robust enough to establish the constitutionality of a congressional bill.⁶⁹

Politics

Even if legal scholars could come to a consensus that federal legislation on felon disenfranchisement laws does not impede on state jurisdiction, it does not appear that the current partisan climate in Congress is conducive to passing such legislation. Since the 103rd Congress in 1994, Rep. Conyers (D-MI) has introduced some form of the “Civic Participation and Rehabilitation Act” in each session.⁷⁰ Over the years, the bill has received support from liberal and minority activist organizations like the NAACP, ACLU, and Human Rights Watch, but it has never reached the floor for a vote.⁷¹ The closest it came was in 1999, when it reached a hearing in the Subcommittee on the Constitution of the House Judiciary Committee. Rep. Conyers viewed the hearing as a major success,⁷² but Republicans presented conservative legal experts to question the constitutionality of the Act, and it was killed in committee, never reaching the House floor.⁷³ It is worth noting that in 1999, the Bill had 37 co-sponsors, all of whom were Democrats.⁷⁴

Law at Georgetown University Law Center, and Todd F. Ganziano, Senior Fellow in Legal Studies at The Heritage Foundation, 106th Cong., 1st sess., 21 October 1999, 1.

⁶⁸ *Hunter v. Underwood*, 471 U.S. 222 (1985)

⁶⁹ For a more detailed discussion of the Court’s precedent set in *Hunter v. Underwood*, see *City of Mobile v. Bolden*, 466 U.S. 55 (1980).

⁷⁰ Simson, 47.

⁷¹ *Ibid.*, 48.

⁷² “Voting Rights,” *Official Web Site of the U.S. House of Representatives, the Honorable John Conyers, Jr.*, 6 March 2003, (7 March 2003). <http://www.house.gov/conyers/news_major_issues.htm>.

⁷³ “Declares that the right of a U.S. citizen to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense, unless the individual is serving a felony sentence in a correctional institution or facility at the time of the election. Authorizes the Attorney General, in a civil action, to obtain such declaratory or injunctive relief as is necessary to remedy a violation of

When legislation has been introduced in the House and Senate, conservative Republicans have used “tough on crime” rhetoric to defeat the potential bill. Even Democrats have been reluctant to support such legislation for fear of being painted as extreme liberals, losing political clout, and thus compromising their greater legislative and political agenda.⁷⁵ In fact, it was revealed in a Ford/Carter Commission hearing on voting rights that “many of our elected officials do not believe that voting should be a right bestowed to all Americans, but that voting should be a privilege bestowed only upon those who have proven themselves worthy.”⁷⁶

Although I will discuss, in later chapters, the electoral impact that enfranchising ex-felons could have, it is important to note that Republicans have been particularly afraid of extending voting rights to ex-felons. Ex-felons would most likely overwhelmingly support Democratic candidates for office.⁷⁷ Many Republicans who are already in safe electoral positions fear that opening up elections to new groups of voters could create a more difficult challenge for them.

Although many activists believed that the problems with minority voting rights that were highlighted during the 2000 election would make Congress more likely to consider legislation,⁷⁸ I would argue that the opposite response has occurred. Rep. Conyers recently suggested on the floor of the House of Representatives that it is important that the Civic

this Act. Creates a private right of action, subject to specified requirements.” Congress. House. *Civic Participation and Rehabilitation Act of 1999*, 106th Cong., 1st sess., H.R. 906, Representative Conyers, sponsor.

⁷⁴ Congress. House. *Civic Participation and Rehabilitation Act of 1999*, 106th Cong., 1st sess., H.R. 906, Representative Conyers, sponsor.

⁷⁵ Simson, 49.

⁷⁶ *Ibid.*, 50.

⁷⁷ For a more detailed discussion of this matter see Chapter 3.

⁷⁸ A Gallup Poll Analysis from December 22, 2000 reveals that most Americans had been paying close attention to the situation in Florida and were concerned about the legitimacy of a Bush Presidency. 16% of Americans said that they would not accept Bush as President. 67% of Americans believed that election procedures should be made the same in all States and that the States should not be able to create their own rules and procedures.

Participation and Rehabilitation Act of 2003 pass after “we look back at the 2000 election in Florida. In that election 400,000 ex-felons were denied their right to vote. In an election where it came down to 537 voters, this is a decisive number.”⁷⁹ Democrats may look at that number and think that Al Gore could have won. While Congressional Republicans may have had ex-felon disenfranchisement laws to thank for disenfranchising the “decisive number” that could have cost them the presidency, and all the electoral benefits that came with it in the 2002 midterm elections.

It is unlikely that the politics of the U.S. Congress will be put aside in favor of passing legislation to give voting rights to ex-felons. As will be discussed further in Chapter Three, felon disenfranchisement laws have very tangible effects on elections in the United States. It is unlikely that politicians will expand the electorate to include potentially unsupportive constituencies.

Despite these political challenges, Representatives Danny Davis (D-IL), Earl Hilliard (D-AL), and Maxine Waters (D-CA) have proposed bills in the House of Representatives, and Senators Christopher Dodd (D-CT) and Harry Reid (D-NV) have proposed bills in the Senate.⁸⁰ They have had little success, and have found only meager support. Many congressional leaders in the fight for the reform of ex-felon disenfranchisement laws have all but given up on the possibility for change through federal legislation, and they have focused on helping activists at the state level.⁸¹

68% of Blacks felt that Bush had “cheated” in the 2000 election. Only 37% believed that we should keep the same voting system for the 2004 presidential election.

⁷⁹ Congress. House. Hon. John Conyers, Jr. of Michigan in the House of Representatives, *Congressional Record*, daily ed. (8 January 2003) : E40.

⁸⁰ Simson, 49.

⁸¹ *Ibid.*, 55.

A Potential Strategy

Rep. Jesse Jackson, Jr. (D-IL) developed a potential strategy to overcome the constitutional and political barriers in Congress. Jackson introduced a joint resolution to propose an amendment to the United States Constitution on the right to vote.⁸² A constitutional amendment would make it impossible for states to enact contrary law.⁸³

Representative Jackson wanted the amendment to simply provide that all Americans over the age of 18 have a right to vote that cannot be taken away.⁸⁴ No specific mention of ex-felons would be made. This would help to overcome some of the political obstacles that held up other attempts at legislative change. Members of Congress that supported the resolution would not necessarily be painted as being “weak on criminals” if criminals were not explicitly mentioned in the amendment.

Despite this “creative” strategy,⁸⁵ the proposed amendment received little attention in the mainstream press, and was buried in the Judiciary Committee. It appears that a change to the Constitution, with far-reaching political implications and the potential to upset a balance of power between the states and federal government, was too politically risky for Congress.⁸⁶

⁸² Ibid., 49.

⁸³ A constitutional amendment requires the approval of two-thirds majorities in both houses of Congress and then of the legislatures of three-quarters of the states.

⁸⁴ Simson, 49.

⁸⁵ The term “creative” is borrowed from Simson, 49.

⁸⁶ Had the Amendment been passed by Congress, given the current status of felon disenfranchisement laws in many states, it is unlikely that it would have been ratified by the necessary three-quarters of the states.

CHAPTER TWO:

THE PARTISAN NATURE OF EX-FELON DISENFRANCHISEMENT LAWS

The development of ex-felon disenfranchisement laws can be understood only through an examination of state politics in the 21st century. As stated in Chapter One, any changes to ex-offender voter eligibility will most likely originate at the state level. Therefore the institutionalization, ideological differences, and partisanship that I demonstrated are evident in state government today, play a significant role in determining whether an ex-offender can vote in a certain state and how laws determining voter eligibility are adopted.

The Partisan Nature of Ex-felon Disenfranchisement Laws

The debate at the state level over ex-felon disenfranchisement laws has been partisan for four reasons: First, allowing ex-felons to vote will change the partisan makeup of the electorate in ways that will aid Democrats. Second, criminal justice policy and being viewed as “tough on crime” have become a central part of many legislative campaigns. Third, the partisan politics of ex-felon disenfranchisement at the federal level has trickled down to the state level. Finally, the organizations that lobby on each side of the debate over felon disenfranchisement laws have clear ties to the political parties.

Changing the Makeup of the Electorate

It is estimated by Demos, a political action group working to restore felon voter eligibility, 4,653,587 Americans were disenfranchised by felon disenfranchisement laws in 2000. It estimates that about 1,609,710 of the disenfranchised are ex-felons who have

completed their sentences and are in their respective communities.¹ However, because the laws vary between states, certain states have a larger number of the disenfranchised population. For example, Texas accounts for 525,967, and Georgia accounts for 286,277, whereas Maine and Vermont have no disenfranchised felons.² For this reason, state politicians consider the number of people that will enter the electoral process in their states should the laws change. Politically, they assess how those ex-offenders will vote in the next election, or if they will vote at all.

Because voters in state elections tend to vote strictly based on party, the party registration of the potential electorate is a significant factor that party leadership must consider when developing a party position.³ Uggen and Manza examined the likely voting decisions that ex-offenders would make were they given the opportunity to vote.⁴ They used National Election Studies (N.E.S.) data to pair the demographic characteristics of the felon population with matching demographic groups in the general population. Uggen and Manza found that ex-felons would overwhelmingly support Democratic candidates and register as Democrats if given the option. This seems obvious when one considers that three social groups that have traditionally supported the Democrats are over represented in the prison population: African Americans, those without a high school degree, and low income earners.⁵ Therefore, Democrats can gain a significant number of potential voters at the state level by passing legislation that enfranchises ex-felons.

¹ Demos, "Restoring Voting Rights to Citizens with Felony Convictions," *Demos: Tools for Advocates*, Summer 2002 (12 November 2002). <http://www.demos-usa.org/Democracy_Reform/v_r_toolkit/v_rcolor.pdf>

² Ibid.

³ For a more detailed discussion of the considerations of party leadership see Chapter Two.

⁴ Jeff Manza and Christopher Uggen, "Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States," *American Sociological Review* 67 (2002): 777-803.

⁵ African Americans, 90% supported Gore in 2000; those without a high school degree, 58% supported Gore in 2000; and low income earners, 57% supported Gore in 2000; See Christopher Uggen, "Public Attitudes

Data suggest that had felons been allowed to vote in the 2000 election, the makeup of the United States Senate would be different and President George W. Bush would have lost to Vice President Al Gore in Florida by a 60,000 vote margin.⁶ In addition, the control of entire state legislatures in certain states would be different had felons or ex-felons had the right to vote.⁷ The political stakes are high.

Party Platforms and Issue Framing

In Chapter Two, I examined the development of state legislatures. However, equally pertinent is the development of party positions on issues relating to ex-felon disenfranchisement laws. Politically, ex-felon disenfranchisement laws are often discussed today within the context of two issues: Civil rights policy and “tough on crime” policy. Democrats are often associated with policies related to civil rights and Republicans have often touted being the “tough on crime” party. Democrats and Republicans have let these traditional political stances guide their votes on ex-felon disenfranchisement legislation. This has helped to create a partisan divide on this issue.

Democrats: Civil Rights

Ex-felon disenfranchisement is often discussed in terms of civil rights.⁸ The right to vote for the representative of one’s choice is believed to be a basic civil right. As the modern Democratic Party has consistently been associated with policies that broaden and expand civil

Towards Felon Disenfranchisement in the United States,” presentation at the National Symposium on Felon Disenfranchisement Laws, Washington, D.C. (30 September 2002), Slide #7.

⁶ It is worth noting that even Manza and Uggen suggest that 60,000 may be too high a number. But they point out that even if their estimates are off by half, Gore still would have won by a comfortable 30,000 vote margin. In fact, even if they were off by 59,000 votes, the result would still be the same. Manza and Uggen, “Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States,” 792.

⁷ Christopher Uggen and Jeff Manza, “Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States,” *American Sociological Review* 67 (2002):777-803.

⁸ “In both legal and historical terms, felony disenfranchisement is perhaps most compelling as an issue of civil rights...In literature and press releases, the civil rights and voting rights struggles are commonly invoked by civil rights groups in decrying the effects of felony disenfranchisement laws,” according to Elizabeth Simson, “Justice

rights, supporting ex-felon voting rights is consistent with the Democratic agenda over the last decade.

Mary Alice Nye examined the two parties' platforms with regard to civil rights issues and found that in the United States Congress, Democrats supported civil rights legislation 30 percent more often than Republicans.⁹ Congressional Democrats consistently supported expanding civil rights, whereas Republicans often were unsupportive as a whole, or made decisions individually based on their background. Over the last 30 years, party has been a greater influence on roll call votes related to civil rights than region, personal income, or education.¹⁰

Republicans: "Tough on Crime"

In today's political atmosphere, being viewed as "tough on crime" is electorally beneficial. Studies have shown that voters want politicians who will crack down on crime, and punish criminals severely. In a recent poll, when voters were asked about their top priorities for the Bush Administration, 53% said that reducing crime was a "top priority," and another 39% classified it as "important."¹¹ A politician can benefit from being viewed as someone who will make stopping crime a main concern of his term. This is reflected in the number of elected officials who support the death penalty, and the strong support for cutting funding to educational programs in prisons.

Many politicians believe that by voting and speaking against voter eligibility for ex-felons they can be viewed as "tough on crime." Republicans have had success campaigning

Denied: How Felony Disenfranchisement Laws Undermine American Democracy," *John Kenneth Galbraith Fellow*, (March 2002), 51.

⁹ Mary Alice Nye, "The U. S. Senate and Civil Rights Roll-Call Votes," *The Western Political Quarterly*, Vol. 44, No. 4. (1991): 984.

¹⁰ Nye, 984.

as “tough on crime” candidates, and have used the strategy of painting their Democratic opposition as sympathetic to criminals to win elections.

One fear that politicians, especially Republicans, have of coming out in favor of ex-felon voter eligibility is demonstrated in the way that politicians frame their positions. Republicans who have supported enfranchising legislation feel the need to preface their positions by assuring voters that they are still supportive of being tough on criminals.

For example, at his press conference on election law on February 15, 2002, U.S. Senator Arlen Specter, senior Republican from Pennsylvania, said: “I believe that once a convicted felon has paid his or her debt to society that that person ought to be reintegrated into society and ought to have the right to vote. Now most of my professional career, a good part of it was as a prosecuting attorney, I was D.A. of Philadelphia, prosecuted some 30,000 cases a year, 500 homicides, had 165 assistants. And I believe in tough sentences for tough criminals. But once a person has paid their debt to society, I believe we ought to bring them back to society as law abiding citizens. I have been an advocate of life sentences for career criminals, throw away the book. But once they get out of jail, I believe in realistic rehabilitation, job training, literacy training, and I believe that recognition of the right to vote and the responsibilities of citizenship are a part of that.”¹²

Senator Specter was responding to questions about his position on ex-felon voter eligibility after he was one of only three Republicans to support Senate Amendment 2879 to Senate Bill 565, the “Martin Luther King, Jr. Equal Protection of Voting Rights Act of 2002,”

¹¹ Pew Research Center, “Top Priorities of the Bush Administration,” *The National Journal: Polltrack*, 17 January 2001, (10 February 2003). <<http://nationaljournal.com/members/polltrack/2001/>> (Survey was conducted 1/9-13/01, it included 1,201 adults; margin of error +/-3.5%)

¹² Arlen Specter, “News Center,” *Official Web Site of Senator Arlen Specter*, 15 February 2002, (4 March 2003). <<http://www.senate.gov/~specter/index.cfm?FuseAction=AudioVideo.Home>> Note: This quote was transcribed by the author from an .MP3 file of a press conference downloaded from Senator Specter’s web site.

which was to “secure the Federal voting rights of certain qualified persons who have served their sentences.”¹³ Although he was only asked to explain why he supported the measure, in his response, it is clear that Senator Specter felt the need to provide substantial evidence of his support of “tough on crime” policies. The desire of Democrats to turn felon disenfranchisement laws into a civil rights issue, and the ability of Republicans to make it a “tough on crime” issue has helped intensify the partisan debate.

Trickle Down Politics

Whereas neither party has been able to gain a strong hold on the U.S. Congress, they have had success at winning control of state governments. The partisan clashes that occur at the federal level have made the political parties aggressive at the state level, as they try to push through policy and gain control of the legislature: “At the state level, anywhere from two to four out of every five districts is relatively safe for an incumbent of one party or the other, but races in the remaining districts decide which party will control the senate or house in the states. Of the 98 legislative chambers (excluding non-partisan Nebraska) in the 50 states, almost 60 percent are competitive. That is, each party has won control during the past 20 years and/or the margin is close enough so that each has a chance to win control in the period ahead.”¹⁴

In general, policy battles often move from the federal level to the state level and vice versa. While America has been divided between the two major political parties, and there has been a close split and small majority in Congress over the last ten years, it has been hard for very liberal or very conservative policies to pass through Congress. Proponents of these more

¹³ Congress, Senate, *Amendment to Senate Bill 565*, 107th Cong., 2nd sess., S.Amdt. 2879, *Congressional Record*, S798, daily ed. (14 February 2002): S865-866.

¹⁴ Alan Rosenthal, “Is the Party Over? Trends in State Legislative Parties,” *Spectrum: The Journal of State Government* (Fall 2002), 6.

extreme policies move to the states, where political parties can win small battles, while they wait to gain enough seats in Congress to win “the war.”

Just as the electoral gap between the two major parties at the federal level has been closing, a survey of party control of state legislatures reported in the table below, shows how closely divided the control of state legislatures has become.

Table 3.1 - Party Control of State Legislatures by Number of States 1982-2000¹⁵

Year	Democrat	Republican	Split¹⁶
1982	34	10	5
1984	26	11	12
1986	28	9	12
1988	29	8	12
1990	30	6	13
1992	25	8	16
1994	18	19	12
1996	20	18	11
1998	19	17	13
2000	18	17	14

The parties compete, now more than ever, for control of legislatures, and state legislatures have become inundated with partisan politics. Furthermore, as described in Chapter One, members of Congress who have supported felon voter eligibility laws at the federal level have pushed state legislators to introduce such measures at the state level. The

¹⁵ Rosenthal, “Is the Party Over? Trends in State Legislative Parties,” 6.

¹⁶ Ties are counted as “Split Control.”

partisan political battle at the federal level has simply moved to the state level, with Democrats in Congress influencing Democrats at the state level, and Republicans in Congress influencing the decisions of Republicans at the state level.

Lobbyists and Activists

The final reason why ex-felon disenfranchisement laws have become such a partisan issue is the influence of the interest groups that support either side of the debate. Traditionally liberal, and thus Democratic, organizations tend to support enfranchising ex-felons. More conservative organizations have supported disenfranchisement.

I interviewed Marvin L. “Doc” Cheatham, Sr., an activist in Maryland who helped organize the movement to enfranchise Maryland’s ex-felons. He noted that many civil rights and voting rights organizations had lobbied legislators on legislation related to ex-felon disenfranchisement.¹⁷ These organizations have strong ties to the Democratic Party. The NAACP, ACLU, AFL-CIO, People for the American Way, Puerto Rican Legal Defense and Education Fund, Lawyer's Committee for Civil Rights Under Law, and National Organization for Rehabilitative Offenders, are just some of the organizations making lobbying efforts in Maryland and around the country on behalf of ex-felons.¹⁸ Whereas most ex-felons cannot afford to contribute to campaigns, and do not have experience lobbying legislative bodies, these political interest groups can contribute substantial funds to candidates and parties.

For example, in Delaware, the AFL-CIO was a powerful organizing force.¹⁹ As Janet Leban of the Delaware Center for Justice noted, because labor unions are influential in the state, support for ex-felon voting rights by the labor unions was an important component of

¹⁷ Marvin L. “Doc” Cheatham, Sr., interview by author, via telephone, 15 November 2002.

¹⁸ “Congressional Black Caucus Hearings: Election Reform,” *Official Web Site of Congresswoman Eddie Bernice Johnson*, 4 April 2001, (20 January 2002). <<http://www.house.gov/ejohnson/1streform1.htm>>

¹⁹ Janet Leban, interview by author, via telephone, 26 March 2003.

the movement for enfranchisement in Delaware. The unions helped educate their members, and this helped build support for legislative change.

Democratic legislators have felt lobbying pressure from powerful organizations. Although there are no significant national organizations lobbying against ex-felon disenfranchisement laws at the state level, corrections officers, police officers, and prosecuting attorneys tend to be against giving the right to vote to ex-felons. All three of these groups traditionally hold significant political weight in the Republican Party; these groups are politically connected and have the ability to make influential public statements.

Furthermore, since many organizations that are traditionally associated with the Democratic Party have vocally supported ex-felon voter eligibility, Republicans have less of an incentive to support legislative changes. Some Republicans may even oppose the changes because their opposition's supporters are lobbying for them.

The States

Much of the evidence I have provided thus far has been based on general party analysis and political trends. A more concentrated examination of the politics of ex-felon disenfranchisement laws at the state level shows that partisanship is not simply theoretical.

The remainder of this chapter will examine the political developments that led to changes to the laws governing ex-felon voter eligibility in five states that changed their laws between 2000 and 2002. I will argue that these five cases clearly show that partisan politics are playing a major role in legislative changes to these laws.²⁰

²⁰ A discussion of the Virginia case was not included in Chapter Three. Virginia made some minor changes to its eligibility laws during the 2000 legislative session. I had decided to use it in my study because a number of

The first three states that I will examine, Connecticut, Maryland, and New Mexico, made their felon disenfranchisement laws less restrictive, thus allowing more ex-felons to vote. In all three cases, the changes were made through legislative action, and the votes and debate on the legislation were divided along partisan lines.

The last two states that I will examine, Massachusetts and Delaware, each have their own unique story. Each fits into my overall argument that partisanship is driving legislative changes in professionalized legislatures. Although the Massachusetts General Court is controlled by Democrats, Massachusetts was the only state during the time period that I examined, which strayed from the national trend and made its laws more restrictive. I will explain how this makes my overall argument about Democrats more complex. Delaware was the least professionalized legislature that I examined, providing a clear example of politics within a less-modern political structure. I believe that the five cases provide a clear picture of the way that partisan politics influence legislative changes to ex-felon disenfranchisement laws.

Partisan Changes: Connecticut, Maryland, and New Mexico

Connecticut

On May 4, 2001, Republican Governor John Rowland signed House Bill 5042 into law, making it Public Act 01-11: “To restore voting rights to individuals who have been

sources, including a high-ranking legislative aide, had told me that a vote on changes to Virginia’s ex-felon disenfranchisement laws could be expected early in 2003. No such vote occurred before this thesis was written, thus limiting the extent to which I could analyze the state’s political processes.

convicted of a felony and are on probation.”²¹ House Bill 5042 had passed the House of Representatives on April 11, 2001, by a margin of 80 to 63. It had passed the Senate 22 to 14 on April 25, 2001.

Background

In modern times, Connecticut has been a moderate state in terms of ex-felon voting rights. Connecticut has allowed ex-felons to vote for 25 years, but has disenfranchised those felons on probation, parole, and those in prison. In 1999, Democratic State Representative Kenneth P. Green, a former chair of Connecticut’s Legislative Black and Puerto Rican Caucus, attempted to introduce a bill that would grant voting rights to those felons on probation. His attempts were blocked by the House leadership, so Rep. Green attached a voting rights bill to a public financing bill.²² Although the measure failed, Rep. Green succeeded in bringing the issue to the floor of the House for the first time. He said, “When you have people in the community, working, paying taxes, they should have the right to vote. You’re talking about taxation without representation. This is just as important in opening up the political process as other bills to empower our citizens.”²³ With the attention he received

²¹ “Summary: With one exception, this act enables felons on probation to vote and run for public office. It does so by limiting a person’s disenfranchisement to the period during which he is committed to (1) the Department of Correction (DOC) 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. A person who is released from prison after serving time for an elections-related felony conviction cannot get his rights back until he is discharged from parole or probation. The act requires the DOC commissioner, instead of the Judicial Department, to send the secretary of the state lists of felons whose voting rights should be forfeited and those eligible to have their rights restored. It establishes a new procedure for restoring the voting rights of felons who were confined to the commissioner’s custody. It requires the Office of Adult Probation to use available appropriations to inform people on probation on January 1, 2002 of their right to become voters and of the new restoration procedures.” Connecticut General Assembly, House of Representatives, *An Act Restoring Voting Rights Of Convicted Felons Who Are On Probation*, 2001 sess., H.B. 5042, (22 February 2001): 2001HB-05042-R00-CBS.

²² Michael Coyle, *State-based Advocacy on Felony Disenfranchisement*, (Washington: The Sentencing Project, 2003) [briefing paper online]; available from The Sentencing Project, #5083.

²³ Coyle, 4.

from his attempts in 1999, Rep. Green was able to form a coalition to prepare for legislative action in 2000.

In April 2000, Rep. Green introduced HB 5701, to reinstate voting rights to those felons on probation.²⁴ Working as the voice for the newly established Connecticut Voting Rights Restoration Coalition (CVRRC),²⁵ Rep. Green was able to garner significant support for the bill. The CVRRC is headed by DemocracyWorks, and is made up of over 40 organizations, including the ACLU, NAACP, Connecticut Citizen Action Group, Common Cause, church groups, and social service agencies.²⁶ Capitalizing on the political clout of coalition members, HB 5701 eventually passed in the House, but failed in the Senate.²⁷

A year later, after concentrating on lobbying legislators, a statewide media campaign, and public education and outreach, Rep. Green and the CVRRC had enough support to have the legislation pass through the House and Senate. In April 2001, the HB 5042 passed, and on January 1, 2002, over 37,000 convicted felons on probation regained their right to vote.²⁸

Partisan Politics

Although the DemocracyWorks web site states that HB 5042 was passed with bipartisan support, this is probably just an attempt by the organization to appear non-partisan

²⁴ Connecticut General Assembly, House of Representatives, *An Act Concerning The Forfeiture Of Electoral Rights And Privileges*, 2000 sess., H.B. 5701, (5 April 2000): 2000HB-05701-R00-CBS.

²⁵ “The CT Voting Rights Coalition is interested in working on an issue that is central to making our democracy in Connecticut work in a way that includes everyone in the process. The issue concerns how people who have been convicted of felonies get their voting rights restored in a way that brings them back into the process, rather than disenfranchising them for a long time, sometimes permanently.”

Kenneth Green, “Description of the Voting Rights Restoration Coalition,” *DemocracyWorks*, (22 March 2003). <<http://www.democracyworksct.org/vrrc.shtml>>

²⁶ Coyle, 4. For a more complete list of coalition members, see Kenneth Green, “Description of the Voting Rights Restoration Coalition,” *DemocracyWorks*, (22 March 2003).

<<http://www.democracyworksct.org/vrrc.shtml>>

²⁷ Connecticut General Assembly, House of Representatives, *An Act Concerning The Forfeiture Of Electoral Rights And Privileges*, 2000 sess., H.B. 5701, (5 April 2000): 2000HB-05701-R00-CBS.

²⁸ Gregory B. Hladky, “Senate OKs Bill on Felons’ Voting Rights.” *New Haven Register*, 26 April 2001.

as it continues to pursue legislative changes in Connecticut.²⁹ A closer examination of the politics that led to the restoration of voting rights to probationers reveals a partisan battle, with a roll call vote that was anything but bipartisan.

In 2001, Connecticut had a Republican Governor, John Rowland, but the Democratic Party dominated the House. The Democratic caucus in the Senate held a small majority. In all of the roll call votes between 1999 and 2001, the Republicans overwhelmingly opposed granting probationers the right to vote. Many Republicans believed that by granting voting rights to probationers the punishment was being diminished. Republican Senator John McKinney opposed the bill in 2001, stating “we’re not just giving back voting rights, but also lessening the punishment.”³⁰ Republican leadership also made the caucus position clear, as Senate Minority Leader Louis C. Deluca opposed the bill in the press, and then attempted to push through an amendment that would have added additional exemptions for certain crimes, thus altering the purpose of HB 5042.

Table 3.2: Connecticut State General Assembly 2001-02³¹

	Total Members	Democrat	Republican
House	151	100	51
Senate	36	21	15

Senate Democrats feared looking “soft on crime” and many supported the amendment: “the GOP proposal appeared to have been approved when Sen. Eileen M. Daily, D-Westbrook, voted in support of the Republican amendment. That resulted in an 18-18 tie.

²⁹ For more information on CVRRC, one may want to view their web site: <www.democracyworksct.org>

³⁰ Gregory B. Hladky, “Senate OKs Bill on Felons’ Voting Rights.” *New Haven Register*, 26 April 2001.

Under the Senate rules, Republican Lt. Gov. M. Jodi Rell used her power as presiding officer to break the tie, voting in support of the GOP plan.”³² In a fascinating political development, Democratic leaders convinced Senator Daily to change her vote on the amendment before time expired, thus defeating the amendment.³³ Senator Daily chose to go along with party interests, even if it was not her first reaction to do so.

House Bill 5042, without the Republican amendment, passed the House and Senate. All of the sponsors of the bill were Democrats. Legislators chose to vote their prescribed party position over 86% of the time, evidencing a strong connection between party and position on the legislation.

Table 3.3: sHB 5042 by Party³⁴

	Yes	No	No Vote/ Excused	Democrat Yes	Democrat No	Republican Yes	Republican No
House	80	63	8	72	22	8	41
Senate	22	14	0	19	2	3	12

Maryland

On May 6, 2002, Democratic Governor Parris Glendening signed House Bill 535 into law, lifting Maryland’s lifetime ban on felon voter eligibility.³⁵ House Bill 535 passed the House of Delegates on April 5, 2002, by a margin of 84 to 49.³⁶ The Senate’s sibling bill, Senate Bill 184, passed by a margin of 26 to 20 on April 2, 2002.

³¹ “Connecticut Election Profile,” National Conference of State Legislatures, 14 August 2002, (3 February 2003). <<http://www.ncsl.org/ncsl/db/elect98/profile.cfm?year=2000&state=CT>>

³² Gregory B. Hladky, “Senate OKs Bill on Felons’ Voting Rights.” *New Haven Register*, 26 April 2001.

³³ *Ibid.*

³⁴ Because the number was the same in both chambers, but introduced in the House, the designation “sHB” precedes the bill number.

³⁵ At the time, Maryland was one of 13 states to have a lifetime ban on felon voting rights.

³⁶ “This bill restores the voting rights of an individual who has been convicted more than once of theft, or other infamous crimes, provided that three years have elapsed since the completion of a court-ordered sentence

Background

Maryland has a history of conservatism, especially when it comes to voting rights. Activists point to the fact that the 15th Amendment, which guaranteed that the right to vote would not be denied or abridged on account of race, color, or previous condition of servitude,³⁷ was ratified by the U.S. Congress in 1870, but it was not ratified by Maryland until 1973.³⁸ Maryland did not ratify the 19th Amendment, “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,” until 1941, twenty years after the U.S. Congress.³⁹

Despite this conservative history, activists hoped at the end of the 20th century the strength of the Democratic Party in Maryland would provide an opportunity to make legislative change. In the late 1990s there were numerous attempts to change the laws governing ex-felon disenfranchisement, but all of these attempts failed.⁴⁰ There was no single organization pushing for ex-felon voting rights that had enough political power within the state to win in the legislature.

The process that led to legislative changes in Maryland mirrors the process that I described in the section on Connecticut. This should not come as a surprise. When I spoke

imposed for conviction including probation, parole, community service, restitution, and fines. An individual convicted of a second or subsequent violent crime is permanently disqualified from registering to vote. The bill is effective January 1, 2003.” Maryland General Assembly, Senate, *An Act Concerning Election Law, Voting Rights, Felons*, 2002 sess., S.B. 184, (1 April 2002): 2lr0844.

³⁷ “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.” *U.S. Constitution*, amend. 10, sec. 1.

³⁸ Marvin L. “Doc” Cheatham, Sr., interview by author, via telephone, 15 November 2002.

³⁹ *U.S. Constitution*, amend. 19.

⁴⁰ “Prior Introductions: SB 83, introduced in the 2001 session was nearly identical, and was unfavorably reported from the Senate Economic and Environmental Affairs Committee. HB 438 of the 2000 session would have allowed felons to register to vote upon completion of a five-year period after serving a sentence for an infamous crime beyond the first offense. Also, HB 25 in the 1999 session would have allowed felons to vote after completing probation, with no five-year waiting period. Both HB 438 and HB 25 received an unfavorable

with activists from Maryland, I was told that the coalition in Maryland modeled its campaign after the ongoing campaign in Connecticut, right down to its name.

In October 2001, under the leadership of Marvin L. “Doc” Cheatham, Sr., the president of the Baltimore City Board of Elections, a coalition of organizations supporting the restoration of voting rights to ex-felons was convened.⁴¹ Mr. Cheatham believed that there needed to be a large coalition that had the political clout to press legislators. The Maryland Voting Rights Restoration Coalition (MVRRC) was formed with support from over fifty organizations from across Maryland and the nation. Most notably, it included the NAACP, ACLU, and League of Women Voters. The coalition eventually succeeded, but not without a significant political battle.

The coalition’s first success came at the end of 2001. In response to inquiries by state legislators working with the MVRRC, Chapter 481 (HB 495) was enacted “to establish a Task Force to study repealing the disenfranchisement of convicted felons in Maryland.”⁴² Although the task force’s report did not contain any specific recommendations, the release of the report was the first time that many voters in Maryland, and even legislators, became aware that Maryland had among the most stringent voter eligibility laws in the nation.⁴³

Almost immediately after the release of the task force’s report, two matching bills were introduced to eliminate Maryland’s ex-felon disenfranchisement laws: Democratic Delegate Kerry Hill introduced HB 535, and Democratic Senator Delores Kelly introduced SB 184.⁴⁴ There was a significant amount of lobbying by the MVRCC that included using

report from the Commerce and Government Matters Committee.” Maryland General Assembly, Senate, *An Act Concerning Election Law, Voting Rights, Felons*, 2002 sess., S.B. 184, (1 April 2002): 2lr0844.

⁴¹ Coyle, 9.

⁴² Maryland General Assembly, Senate, *An Act Concerning Election Law, Voting Rights, Felons*, 2002 sess., S.B. 184, (1 April 2002): 2lr0844.

⁴³ Marvin L. “Doc” Cheatham, Sr., interview by author, via telephone, 15 November 2002.

⁴⁴ Coyle, 9.

ex-felons as lobbyists. In addition, in an attempt to ensure the passage of the legislation, a compromise was made with Republicans. A three-year waiting period was put into the legislation.

The bills eventually both passed. The legislation went into effect on January 1, 2003,⁴⁵ and is expected to enfranchise 60,000 ex-offenders this year.⁴⁶

According to a recent report released by The Sentencing Project, Mr. Cheatham views “the success of the coalition as due to its organization and the efforts that went into realizing all aspects of the campaign: rallies, posters, mailings, flyers, and other media.”⁴⁷ Although there is no doubt that MVRCC’s grassroots efforts served as the catalyst for the passage of HB 535 and SB 184, a political analysis reveals that partisan forces, in combination with Democratic control of the legislature, determined the fate of the bills in the legislature.

Partisan Politics

Both the Senate and House were controlled by the Democrats in Maryland during the 2001-02 session, and its Governor, Parris Glendening, was also a Democrat. Earlier in the Chapter I argued that Democrats would be more likely to support enfranchising legislation than would Republicans. This is exactly what occurred in Maryland.

Table 3.4: Maryland State Legislature 2001-02⁴⁸

	Total Members	Democrat	Republican
House	141	106	35
Senate	47	34	13

⁴⁵ Margie Hyslop, “Special Report: Right to Vote?” *The Washington Times*, 14 July 2002, sec. A, p. 1.

⁴⁶ Maryland disenfranchises all of its prisoners. Despite the progress in Maryland, it is estimated that Maryland will still have over 100,000 disenfranchised citizens at the end of 2003.

⁴⁷ Coyle, 10.

Democrats in Maryland strongly supported the legislative changes, but Republicans were publicly opposed.⁴⁹ Senator Timothy R. Ferguson, a Maryland Republican, argued that “certain people should never stop paying for their sins, even if between them and their Maker the slate is clean.”⁵⁰ Most Maryland Democrats did not share this viewpoint: “Senator Ulysses Currie, Prince George’s County Democrat said...‘There are 50,000 kids whose fathers and mothers are in [Maryland] institutions...if any of those guys come out, you’d want them to assume responsibilities for their lives and their kids. Voting is part of that responsibility.’”⁵¹ In my interview with Mr. Cheatham, he noted that only one Republican Senator had publicly supported SB 184, and she was a moderate who came from a district with a particularly high Democratic registration.⁵²

Although the MVRCC targeted Republican support for the legislation, Republicans were aware of the potential harm that ex-felons could have on their electoral chances.⁵³ Many Republicans attribute the electoral success of former Mayor Marion Barry of nearby Washington D.C. to his courting of the ex-felon vote after his misdemeanor cocaine-possession conviction.⁵⁴ In addition, ex-felon voting rights would increase the political power of Baltimore, a Democratic stronghold. Maryland Secretary of State John Willis declared at a rally for ex-felon voting rights: “We’re talking about another 50,000 to 60,000 people in the city [of Baltimore] that could help hold on to the city’s political power.”⁵⁵ In Maryland, it

⁴⁸ “Maryland Election Profile,” National Conference of State Legislatures, 14 August 2002, (3 February 2003). <<http://www.ncsl.org/ncsl/db/elect98/profile.cfm?year=2000&state=MD>>

⁴⁹ Coyle, 10.

⁵⁰ Margie Hyslop, “Special Report: Right to Vote?” *The Washington Times*, 14 July 2002, sec. A, p. 1.

⁵¹ *Ibid.*

⁵² Marvin L. “Doc” Cheatham, Sr., interview by author, via telephone, 15 November 2002.

⁵³ Margie Hyslop, “Special Report: Right to Vote?” *The Washington Times*, 14 July 2002, sec. A, p. 1

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

was generally recognized that the political impact of ex-offender’s votes could further entrench Democrats in power.

The MVRCC found some opposition among Democrats. Despite the evident electoral gains that the legislation would bring Democrats, some feared that they would be painted as “soft on crime” in the upcoming election.⁵⁶ The coalition’s greatest successes probably came from convincing Senate Democrats to vote for SB 184. Powerful interest groups launched a groundswell of lobbying for the legislation, and eventually Democrats that were “on the fence” decided to support the legislation.⁵⁷

When the bills were voted on in April 2002, the legislation passed overwhelmingly in the House and squeaked through in the Senate. As Table 3.5 shows, the votes were almost strictly partisan. Over 87% of the legislators voted their prescribed party position. It is also worth noting that the sponsors and co-sponsors of the legislation were Democrats.

Table 3.5: HB 535 and SB 184 by Party

	Yes	No	No Vote/ Excused	Democrat Yes	Democrat No	Republican Yes	Republican No
House Bill 535	84	49	8	84	14	0	35
Senate Bill 184	26	20	1	25	8	1	12

Maryland shows a clear example of the partisan nature of ex-felon disenfranchisement legislation. In 2003, the MVRCC hopes to return to the legislature to try to remove the requirement that ex-felons stay out of prison for three years before their voting rights are

⁵⁶ Coyle, 10.

⁵⁷ Ibid.

restored. With the Democrats still in control of the legislature, its leaders are confident it can succeed.⁵⁸

New Mexico

On March 15, 2001, Republican Governor Gary Johnson signed Senate Bill 204 into law, “restoring the right to vote to a person convicted of a felony who has satisfied all conditions of a sentence.”⁵⁹ Senate Bill 204 passed the Senate on March 2, 2001, 25 to 17. It passed the House of Representatives on March 10, 2001, by a margin of 39 to 20.

Background

Senate Bill 204 was the first change to New Mexico’s felon disenfranchisement laws since 1911, and New Mexico was among the states with the most restrictive laws throughout the 20th century.⁶⁰

Senate Bill 204 was introduced by Senate President Richard Romero, a Democrat from Albuquerque.⁶¹ The legislative process in New Mexico was much less complex than it was in Connecticut or Maryland. Although some national organizations lobbied for changes to the disenfranchisement laws, the action in New Mexico was largely a reaction to the 2000 election and actions on felon disenfranchisement laws taking place elsewhere in the country.

In the aftermath of the 2000 election, it is easy to forget that the vote between Gore and Bush in New Mexico was just as close as it was in Florida.⁶² When the final count was done, and all of the challenges were exhausted, Gore won New Mexico by less than 400

⁵⁸ Marvin L. “Doc” Cheatham, Sr., interview by author, via telephone, 15 November 2002.

⁵⁹ New Mexico State Legislature, Senate, *Title: Restore Voting Rights*, 2001 regular sess., S.B. 204, (1 July 2001): [49]SGND(Mar.15)Ch.46.

⁶⁰ Angela Behrens, Christopher Uggen, and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002,” forthcoming in *American Journal of Sociology* [under review], 2003.

⁶¹ Donovan Kabalka, “Felons Might Be Able To Vote Again,” *Albuquerque Tribune (New Mexico)*, 29 June 2001.

votes.⁶³ Although Florida became the focus of the election because of its role in deciding the Electoral College, and thus the presidency, New Mexico was equally plagued with issues of election administration. Senator Romero capitalized on the attention being given to election reform. As a result, New Mexico’s legislature began examining its election laws, including ex-felon disenfranchisement laws.

Table 3.6: New Mexico State Legislature 2001-02⁶⁴

	Total Members	Democrat	Republican
House	70	42	28
Senate	42	24	18

Like Connecticut and Maryland, the New Mexico legislature was also dominated by Democrats. In addition, Republican Governor Gary Johnson is known as a progressive Republican, and often supports policies traditionally associated with the Democratic platform. In 1999, he even called for the end of the “War on Drugs,” a “War” that has traditionally been a major part of the Republican platform. All in all, the political pieces were in place for SB 204.

Partisan Politics

The votes on Senate Bill 204 in New Mexico show the strength of the support for reform within the Democratic Party. Not a single Democrat voted against SB 204 in the House or Senate.

⁶² Douglas Kellner, *Grand Theft 2000: Media Spectacle and Stolen Election* (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2001), 47.

⁶³ Federal Election Commission, *Federal Elections 2000: Election Results for the U.S. President, the U.S. Senate and the U.S. House of Representatives* (Washington, D.C.: GPO, 2001).

⁶⁴ “New Mexico Election Profile,” National Conference of State Legislatures, 14 August 2002, (3 February 2003). <<http://www.ncsl.org/ncslldb/elect98/profile.cfm?year=2000&state=Nm>>

Table 3.7: SB 204 by Party

	Yes	No	No Vote/ Excused	Democrat Yes	Democrat No	Republican Yes	Republican No
House	39	20	9	36	0	8	18
Senate	25	17	0	24	0	1	16

Many New Mexico Republicans recognized that the enfranchisement of New Mexico’s ex-felon population would increase the number of Democrats in the state. In an interview with the Albuquerque Tribune, State Republican Party Chairman John Dendahl noted that “he worried those eligible under the bill would register with the Democratic Party.”⁶⁵ However, Dendahl later decided that he would follow Governor Johnson’s lead and support the legislation: “When people have served their time, all of it, it’s very hard for me intellectually to say that person should not be restored to full citizenship. So, I supported it.”⁶⁶ Although some Republican leaders like Dendahl and Governor Johnson supported the legislation, most Republicans opposed the measure in the roll call vote.

New Mexico Republicans were particularly concerned with the ethnic makeup of the ex-felon population. Hispanics, a group that strongly identifies with Democratic candidates, make up over 60% of the prison population.⁶⁷ The prominence of these two groups in the ex-felon population gave Democrats an electoral incentive to support the legislation.

All in all, most legislators ended up voting along party lines. An astounding 92% of legislators who voted on the bill, voted with their party’s prescribed position, providing more evidence of partisan influence on felon disenfranchisement legislation.

⁶⁵ Donovan Kabalka, “Felons Might Be Able To Vote Again,” *Albuquerque Tribune (New Mexico)*, 29 June 2001.

⁶⁶ Ibid.

⁶⁷ “Voting Rights Update,” *The Center for Voting and Democracy*, 23 March 2001, (10 March 2003). <<http://www.fairvote.org/>>

Expanding the Argument: Massachusetts and Delaware

Massachusetts: The Democratic Threshold

On June 28, 2000, legislators from the House and Senate in Massachusetts had a joint session to hold a constitutional convention.⁶⁸ At the convention, the General Court voted 155 to 45 to put a Legislative Constitutional Amendment on the 2000 election ballot in Massachusetts,⁶⁹ to take away the right to vote from all imprisoned felons.⁷⁰ On November 7, 2000, the Amendment, or Question 2 on the 2000 ballot, passed.⁷¹ Massachusetts' voters voted overwhelmingly to pass the Amendment, 1,648,447 (60.3%) to 926,737 (33.9%).⁷²

Background

In 1997, Republican Governor Paul Cellucci publicly advocated repealing voting rights from felons who were imprisoned in Massachusetts.⁷³ In reaction to Governor Cellucci's statements, prisoners in Massachusetts began organizing a political action committee. Governor Cellucci shot back by issuing an executive order that stopped the prisoners from organizing.⁷⁴ The legislature began discussing felon disenfranchisement in an attempt to resolve the issue in a more democratic and permanent fashion.

⁶⁸ Michael Crowley, "Lawmakers Favor Ban of Felons' Voting Rights," *The Boston Globe*, 29 June 2000, p. B3.

⁶⁹ A "Legislative Constitutional Amendment" requires that a "majority of ballots cast on the question must be affirmative."

⁷⁰ Maine and Vermont are the only two states that still allow prisoners to vote. It is worth noting that neither state has a significant minority population in the general public, or in the prison population. Further study of this connection is warranted.

⁷¹ According to the Elections Division of Massachusetts, Legislative Constitutional Amendments have historically passed at a high rate. A total of 51 of 59 have passed in Massachusetts history, a success rate of 86.44%.

⁷² Over 94% of those that voted in the 2000 election chose to vote on Question 2, only 158,647 left this question blank, suggesting a low number of undecided voters.

⁷³ Margie Hyslop, "Special Report: Right to Vote?" *The Washington Times*, 14 July 2002, sec. A, p. 1.

⁷⁴ *Ibid.*

The constitutional change received a great deal of support from the public and from political organizations. Although it is estimated that less than 5% of the Massachusetts prison population voted on a regular basis, legislators hoping to look “tough on crime” rallied behind the legislation.⁷⁵ Governor Cellucci remained the most supportive advocate of the amendment.

Even supporters of felon voting rights found little to rally behind. Democratic Representative Patricia D. Jehlen, who opposed the amendment, noted that only four inmates from the Somerville prison had voted in the presidential primaries. The Criminal Justice Policy Coalition in Boston mounted the strongest opposition to the amendment, but many of the arguments commonly used in the battle for ex-felon voting rights, such as “ex-felons are rehabilitated” and “it helps with reintegration,” were not applicable in the battle for voting rights for imprisoned felons.⁷⁶ One of the Criminal Justice Policy Coalition’s strongest arguments in opposition to the amendment was essentially, “if it ain’t broke, don’t fix it.” Stephen T. Saloom, director of the Criminal Justice Policy Coalition said, “unless there’s a threat to our democracy or the social fabric we shouldn’t amend it. This sets a dangerous precedent for fiddling with the constitution.”⁷⁷ Ultimately, this argument would prove not to persuade Massachusetts’ voters.

In November 2000, the electorate made the first restrictive change to Massachusetts’ voting rights laws in the history of the state.

Politics

Massachusetts’ General Court is dominated by the Democratic Party, which is why at first glance the overwhelming support for the Amendment in the legislature seems surprising.

⁷⁵ Michael Crowley, “Lawmakers Favor Ban of Felons’ Voting Rights,” *The Boston Globe*, 29 June 2000, p. B3.

⁷⁶ *Ibid.*

A majority of Democrats supported taking away prisoners’ right to vote. This is in sharp contrast to the actions in nearby Connecticut and appears to contradict the arguments presented earlier in this Chapter.

Table 3.8: Massachusetts State Legislature 2000⁷⁸

	Total Members	Democrat	Republican	Independent
House	160	132	27	1
Senate	40	33	7	0

It is true that the amendment was fiercely supported by Republicans. Republican Representative and House Minority Leader Francis Marini was one of the leading proponents of the amendment: “The right to vote is the foundation of our democracy and that foundation needs to be protected and honored.”⁷⁹ Of course, he did not feel that protection extends to a felon’s right to vote. Marini’s spokesman responded at a press conference, “This was not designed to limit the impact that prisoners have on law-abiding society—but why should they have an impact?”⁸⁰ Republicans were well aware that had felons voted during the previous gubernatorial election, Governor Cellucci might have lost the election.⁸¹

Democrats did not use their majority to stop the amendment, and in a state dominated by Democrats, the voting public approved of the bill. I would argue that Democrats, although more liberal than Republicans, are still to the political right of a position supporting prisoner voting. This argument was confirmed in my interview with Mr. Cheatham about his experiences in Maryland. Mr. Cheatham told me that the Maryland effort had focused on ex-

⁷⁷ Jack Sullivan, “Choices 2000; Answers to Questions,” *The Boston Herald*, 5 November 2000, p. E07.

⁷⁸ “Massachusetts Pre-Election Profile,” National Conference of State Legislatures, 14 August 2002, (3 February 2003). <<http://www.ncsl.org/ncsl/db/elect98/profile.cfm?year=2000&state=MA>>

⁷⁹ Jack Sullivan, “Choices 2000; Answers to Questions,” *The Boston Herald*, 5 November 2000, p. E07.

felons because many Democrats were not ready to discuss voting rights for prisoners. Maryland activists feared that by including prisoners' voting rights in their fight for ex-felon voting rights they would jeopardize the entire movement.

Similarly, when I interviewed former Attorney General Janet Reno, she said that she was not sure what her position on prisoner voting rights was. She said that she believed that most Democrats were not ready to embrace prisoner voting rights.⁸²

It appears that for Massachusetts Democrats the political risk of voting for imprisoned convicts' voting rights was great. That being said, Democrats in Massachusetts were also not vocally supportive of the amendment. I could not find a single instance of a Democrat voicing support for the amendment in either *The Boston Globe* or *The Boston Herald*.

The politics of Massachusetts with regard to prisoners' voting rights mirrored the politics of a similar Utah bill two years earlier. When the Utah legislature voted to ban prisoner voter eligibility in 1998, most Democrats were silent on the bill. In fact, the roll call vote in the Senate was unanimous, and in the House only five legislators did not support the ban.

Table 3.9: Utah State Legislature 1998⁸³

	Total Members	Democrat	Republican
House	75	20	55
Senate	29	9	20

⁸⁰ Margie Hyslop, "Special Report: Right to Vote?" *The Washington Times*, 14 July 2002, sec. A, p. 1.

⁸¹ Joe Sciacca, "Time to Take Voting Rights from the Cons," *The Boston Herald*, 16 October 2000, p. 004.

⁸² Janet Reno, former Attorney General of the United States, interview by author, Ithaca, NY, 10 February 2003.

⁸³ *1997: Election Results Directory* (Denver: National Conference of State Legislatures, [1997]), 245.

Table 3.10: Utah HB 190 (1998)

	Yes	No	No Vote/ Excused
House	56	5	14
Senate	27	0	2

Felons do not vote at a high rate while in prison.⁸⁴ Accordingly, Democrats do not stand to gain many votes by supporting prisoner voting rights. From a purely political standpoint, Democrats stand to lose their more conservative supporters by voting in favor of inmate voting rights, but they may disappoint their most liberal voting bloc if they are *vocally* supportive of banning prisoner voting.

The Massachusetts case suggests that there is a Democratic threshold when it comes to felon disenfranchisement laws. Democrats will support allowing ex-felons to vote, but are not willing to support allowing prisoners' suffrage. The lack of vocal backing of the amendment on the part of the Democrats who supported it suggests that they either did not feel strongly about their position, or were concerned about the electoral impact of their position. Either way, it appears that in Massachusetts, Democrats and Republicans are both guilty of playing electoral politics when it comes to felon disenfranchisement laws.

The Massachusetts case provides strong evidence of the influence of electoral and partisan politics on the process of changing felon disenfranchisement laws. It also suggests that the rule that Democrats as a caucus will always support enfranchisement, does not extend to prisoners' voting rights.

Delaware: An “Unprofessionalized” Legislature

An Amendment to the Delaware State Constitution must receive a two-thirds majority in the House and Senate in two consecutive General Assemblies. On June 28, 2000 the Delaware State Senate passed House Bill 126, 16 to 5, thus amending the Delaware State Constitution,⁸⁵ and eliminating the lifetime voting ban for felons. The House of Representatives passed House Bill 126 by a margin of 35 to 1 earlier in the session on May 11, 1999. As the amendment had been approved in the previous Assembly, the vote in 2000 was the last “legislative leg” needed to enact the amendment.⁸⁶

Background

Until 2000, Delaware disenfranchised all convicted felons for life.⁸⁷ Delaware had one of the highest general disenfranchisement rates in the country, 5.62%, and the laws disqualified 15.71% of the African-American vote,⁸⁸ or one in five Black men.⁸⁹

In 1990, the Delaware Center for Justice formed an alliance to educate the public about disenfranchisement laws and lobby the General Assembly to change the state constitution.⁹⁰ By not solely making arguments based on race, and by not singling out Democratic organizations, the Delaware Center for Justice was able to create a coalition that included a diverse group of organizations. The alliance for the restoration of ex-offenders’ voting rights included labor unions, evangelical Christians’ churches, Muslim groups, civil rights organizations, and peace groups. By appealing to conservatives and liberals, the

⁸⁴ Joe Sciacca, “Time to Take Voting Rights from the Cons,” *The Boston Herald*, 16 October 2000, p. 004.

⁸⁵ *Delaware State Constitution*, art. 5, sec. 2.

⁸⁶ Phillip Bannowsky, “Delaware: Thousands of Ex-Felons to Vote Again With Landmark Constitutional Amendment,” *Pacem in Terris*, press release, 13 July 2000.

⁸⁷ Michael J Gottlieb, “One Person, No Vote: The Laws of Felon Disenfranchisement,” *Harvard Law Review* vol. 115 no. 7 (May 2002): 1948.

⁸⁸ *Ibid.*

⁸⁹ “Carper Signs Bill Supporting Voting Rights For Most Ex-Felons,” *The Associated Press State & Local Wire*, 14 June 2000, BC Cycle.

alliance was able to reach out to diverse sections of the population, and cater to the interests of legislators from across the political spectrum.⁹¹ According to Janet Leban, executive director of the Delaware Center for Justice, “we did not leave a stone unturned. Anything we felt would be reinforcing, we tried it.”⁹²

Despite significant public support,⁹³ and a broad coalition, the alliance met strong opposition from a Senator who held a key leadership position. Senator James Vaughn, a former corrections commissioner and a Democrat, strongly opposed lifting the ban on ex-felon suffrage. He was chair of the Corrections Committee.⁹⁴ A Senate regulation stipulated that a bill can not be voted on until the chair of the committee authorizes its release.⁹⁵ Despite significant political pressure, Senator Vaughn refused to release the bill.

Finally, a task force met with Senator Vaughn in early 2000. Senator Vaughn had essentially held up the legislation for close to ten years. During the task force, Senator Vaughn stated publicly that his main objection to the legislation was that there was no way to monitor whether or not a felon had paid all of his fines and completed his sentence, and that he would not release the bill from committee until this point of contention was resolved.⁹⁶ Although it is likely that Senator Vaughn had other objections to the legislation, his public declaration was a challenge to activists. The Delaware Center for Justice, the elections commissioner, and other key legislators worked to develop a system to ensure that felons

⁹⁰ Coyle, 7.

⁹¹ “Carper Signs Bill Supporting Voting Rights For Most Ex-Felons,” *The Associated Press State & Local Wire*, 14 June 2000, BC Cycle.

⁹² Coyle, 8.

⁹³ Coyle, 7.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Janet Leban, interview by author, via telephone, 26 March 2003.

would complete their sentences before being cleared to vote.⁹⁷ When Senator Vaughn was presented with the plan, he stuck by his word, and released the bill.⁹⁸

Just prior to the passage of the amendment, Senator Margaret Rose Henry, a Democrat, proposed Senate Bill 350, to create a system to monitor ex-felon registration.⁹⁹ The goal of this bill was to make sure that the system that Senator Vaughn wanted was in place before the Senate voted on the amendment. Senate Bill 350 passed the House and Senate unanimously, and paved the way for the amendment.¹⁰⁰

The bill passed the Senate, and the constitution was amended to state, “any person who is disqualified as a voter because of a [felony] conviction...shall have such disqualification removed upon being pardoned, or five years after the expiration of the sentence, whichever may first occur.”¹⁰¹ The roll call votes were not split down partisan lines.

Table 3.11: HB 126 Vote

	Yes	No	No Vote/ Excused
House	35	1	5
Senate	16	5	0

⁹⁷ It is worth noting that the law excludes murderers, sex offenders, and those convicted of felony bribery.

⁹⁸ Janet Leban, interview by author, via telephone, 26 March 2003.

⁹⁹ “If and when a Constitutional Amendment is passed, restoring voting rights to felons, this Act would provide a procedure to be utilized: 1) to determine whether or not a person applying for voter registration has been convicted of a felony; and 2) if so, whether or not it is a disqualifying felony which would prohibit approval of such person's application; and 3) if the felony is not a disqualifying felony, whether or not the applicant has been discharged of all obligations imposed when the applicant was sentenced.” Delaware General Assembly, State Senate, *An Act To Amend Title 15 Of The Delaware Code Relating To Felon Voting Rights*, Voting Rights, Felons, 140th General Assembly, 2000 sess., S.B. 350, (8 June 2000).

¹⁰⁰ “Carper Signs Bill Supporting Voting Rights For Most Ex-Felons,” *The Associated Press State & Local Wire*, 14 June 2000, BC Cycle.

¹⁰¹ Michael J Gottlieb, “One Person, No Vote: The Laws of Felon Disenfranchisement,” *Harvard Law Review* vol. 115 no. 7 (May 2002): 1948.

Politics

The Delaware case stands in stark contrast to the political process that took place one year later in neighboring Maryland. As described earlier, Maryland’s political process was extremely partisan and complex. I would argue that the reason Delaware’s politics differed from Maryland is because of the differences in professionalization.

The Delaware General Assembly was divided in 2000; Republicans controlled the House and Democrats controlled the Senate. That being said, party affiliation was not an important factor in the legislative politics in Delaware.¹⁰² Delaware’s General Assembly is part-time, especially in comparison to neighboring Pennsylvania and Maryland. The legislature is considered a “citizen’s legislature,” and almost all of the legislators are either retired or hold other jobs.¹⁰³ According to the General Assembly’s web site, the legislature is part-time, and the legislator positions are part-time.

Table 3.12: Delaware General Assembly 2000¹⁰⁴

	Total Members	Democrat	Republican
House	41	15	26
Senate	21	13	8

The Delaware case is an example of the way in which a legislature will deal with ex-felon disenfranchisement legislation when there is not a strong party structure, and when the political stakes are low. The lobbying effort in Delaware was largely grassroots. According to Ms. Leban, if a state legislator receives more than ten phone calls from constituents, it can

¹⁰² Janet Leban, interview by author, via telephone, 26 March 2003.

¹⁰³ Ibid.

¹⁰⁴ “Delaware Election Profile,” National Conference of State Legislatures, 14 August 2002, (3 February 2003). <<http://www.ncsl.org/ncsl/db/elect98/profile.cfm?yearse1=2000&statesel=DE>>

hold serious weight.¹⁰⁵ No professional polling company was employed by the alliance, and activists worked hard to individually educate voters.¹⁰⁶

The party structure is weak in Delaware. The party caucus web pages for the House and Senate consist of nothing more than a simple list of members of each party. Also, there is not the same type of competition between the two parties, as in Maryland. In Maryland and Connecticut, the Republicans attempted to tack additional amendments on to the bill to weaken the Democrats' proposal, but in Delaware, no such attempts were made by Republicans.

Finally, the national political stakes were also low in Delaware. With its one congressional seat and three Electoral College votes, Delaware did not draw the same national attention that Maryland's movement did. Most of the major lobbying groups involved in the Delaware legislation were local to Delaware, and there was never a strong organized effort from those that opposed the changes.

The General Assembly's vote on House Bill 126 was not an aberration in Delaware. In fact, the legislature commonly passes bills with bipartisan support.¹⁰⁷ For example, the Delaware State Senate recently voted unanimously to revamp Delaware's probation system.¹⁰⁸ The bill, Senate Bill 50, had two sponsors, a Democrat and a Republican.¹⁰⁹ A unanimous roll call vote and bipartisan sponsorship would be unlikely to occur in a professionalized legislature. But in Delaware, an unprofessionalized legislature, bipartisan votes are possible, even on bills related to issues as polarizing as criminal justice policies.

¹⁰⁵ Janet Leban, interview by author, via telephone, 26 March 2003.

¹⁰⁶ Ibid.

¹⁰⁷ Joe Rogalsky, "Delaware Senate Approves Probation Overhaul," *Dover Newszap!: Delaware's Online News & Information Service*, 9 April 2003, (10 April 2003). < <http://www.newszap.com/dover/>>

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

The Delaware case shows that when partisan stakes are particularly low, the legislative votes will not be constrained by partisan politics. As is consistent with my argument in Chapter Two, a less professionalized legislature will result in a less politicized and partisan legislative process with regard to ex-felon disenfranchisement laws.

The four explanations of the partisanship of ex-felon disenfranchisement votes mentioned in the first part of this chapter are really an application of the more general partisan characteristics of a professionalized legislature to the issue of ex-felon disenfranchisement.¹¹⁰ The professionalization of many state legislatures has led to politicization and a rise in party competition. But in states like Delaware where this process has not occurred, the influence of partisan politics will not be as significant.

Conclusion

In this chapter, I have continued to argue that changes to ex-felon voter eligibility laws are being made with the influence of partisan and electoral politics. The first half of this chapter focused on the reasons why Democrats will likely support a more enfranchising policy, whereas Republicans will always support more restrictive laws. I examined three states, Connecticut, Maryland, and New Mexico, which demonstrate the partisan nature of roll call votes on felon disenfranchisement legislation, and to exemplify the political battles that occur when these laws are discussed in the legislatures. I also presented two states that appeared to be aberrations from my argument, Massachusetts and Delaware. Massachusetts revealed that although Democrats will always support the more enfranchising policy, they will

¹¹⁰ For a more complete discussion of the connection between professionalization and partisanship see Chapter Two.

not go so far as to support prisoners' voting rights. In Delaware, an unprofessionalized legislature, felon disenfranchisement laws changed in a generally non-partisan way.