



VOTING RIGHTS FOR EX-FELONS

A Module for Democracy/Civic Mission Classrooms

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Voting Rights for Ex-Felons

Overview

In the United States, the right to vote may not be abridged or denied by a state or the federal government because of race, sex, or failure to pay a poll [or head] tax. However, under the Fourteenth Amendment, states *can* deny the right to vote to individuals guilty of "participation in rebellion, or other crime." In 2006, more than four million Americans are denied the right to vote as a result of laws that prohibit voting by felons or ex-felons. Except in Maine and Vermont, prisoners cannot vote, and in 36 states, felons on probation or parole are denied the vote. In 11 states, a felony conviction can result in a lifetime ban long after the completion of a sentence. While each state has developed its own process of restoring voting rights to ex-offenders, these processes are often so cumbersome that few ex-offenders are able to take advantage of them. Under current law, the federal government may not infringe upon a state's authority to grant or rescind voting rights to prison inmates and former felons.

This unit presents positions and arguments on whether ex-felons should be permitted to vote. It provides background on the right to vote in the United States and the history of denying that right to felons and ex-felons. This unit also introduces a model for deliberating this policy question, called "philosophical chairs," for talking about this and other controversial issues.

Focus Questions

- § Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
- § Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

Objectives

- § Increase understanding about the history of voting in the United States and the restrictions placed on persons convicted of felony crimes.
- § Provide a public policy context for the debate about voting rights for ex-felons.
- § Introduce "philosophical chairs," a model for deliberating controversial issues.

Materials

- A: Reading: Voting Rights for Ex-Felons
 - B: Activity: Voting Rights for Ex-Felons: A Human Graph
 - C: Handout: Voting Rights for Ex-Felons: A Human Graph
 - D: Activity: Sorting Out Positions on Voting for Ex-Felons
 - E: Deliberation Strategy: Philosophical Chairs on Voting Rights for Ex-Felons
 - F: Taking a Stand: Position Paper on Voting Rights for Ex-Felons
- Voting Rights for Ex-Felons: Selected Resources

A: Reading: Voting Rights for Ex-Felons

The Declaration of Independence states “that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.” In the United States and other representative governments, elections are seen as the will of the people—an expression of their consent. Governments that do not offer their citizens a chance to vote and to vote freely are viewed as not real democracies by most Americans. Voting is considered the premier example and expression of civic participation in a democratic society.

Under various federal laws and amendments to the Constitution of the United States, the right to vote for persons aged eighteen and older may not be abridged or denied by a state or the federal government because of race, sex, or failure to pay a poll [or head] tax. Yet today the states retain broad powers to regulate voting among their citizens, and each state can make its own rules. While poll taxes and literacy tests are no longer legal, states can restrict voting on the basis of residency (how long a person has lived in one place), although states cannot use such restrictions to deny a person’s right to travel. A majority of states also have statutes that bar voting by people who are determined to be emotionally or cognitively disabled. And all states except North Dakota require citizens to register with the state before casting a vote.

Many states also prohibit prisoners and ex-felons (persons who have served time in a prison for a crime) from voting. Under the Fourteenth Amendment, states can deny the right to vote to individuals guilty of “participation in rebellion, or other crime.” Nationally, over four million Americans are denied the right to vote as a result of laws that prohibit voting by felons or ex-felons. Except in Maine and Vermont, prisoners cannot vote, and in 36 states felons on probation or parole are denied the vote. In 11 states, a felony conviction can result in a lifetime ban long after the completion of a sentence. Under current law, the federal government may not infringe upon a state’s authority to grant or rescind voting rights to prison inmates and former felons.

Some state voting laws were created with specific ideas of who should and should not participate in elections. Others reflect customs and practices from another time and now have unintended consequences. In looking at citizen participation in 21st century America, some people are asking whether the time has come to make voting rights an option for all American adults who are not in the nation’s prisons.

A Brief History of Voting in the United States

For all the connections between voting and democratic government, the Constitution of 1787 refers to what modern Americans consider voting only once: “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 of the most numerous Branch of the State Legislature” (Article 1, Section 2). Nor was voting mentioned in the Bill of Rights. Instead, the rules and procedures that regulated who could vote and under what circumstances were left to the states.

During the colonial period and immediately after the Revolution, regulations on who was eligible to vote varied from state to state. While most states had a property requirement for male suffrage – a man had to have 40 or 50 English pounds (a unit of money) of wealth or an equal amount of land – this requirement was relatively easy to meet with the open land opportunities of the time. In New Jersey, for example, free blacks and women who met a property requirement were able to vote until 1807. Throughout the pre-Civil War period, white men increasingly came to enjoy the right to vote. By contrast, women and free blacks lost what voting rights they had, and the denial of this right became legalized. With adoption of the state constitution in 1849, for example, the right of suffrage in California was limited to adult, white, male citizens (Schaffer, *California And The Coming Of The Fifteenth Amendment*, 2003). By 1860, white male suffrage was universal in the United States.

With the passage of the Fifteenth Amendment to the Constitution in 1870, the right to vote in the United States began to include more and more groups of people (see table). This expansion had two things in common: voting was limited to U.S. citizens, and citizenship did not automatically include the right to vote.

In *U.S. v. Reese*, 92 U.S. 214 (1876), the Supreme Court of the United States heard a voting rights case of a freed African American who alleged that he was denied the right to vote. In writing for the Court, Chief Justice Waite held that “the Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done.... Now it is not.” (92 U.S. 214, 217) [emphasis added].

Expansion of Voting Rights in the United States

1796	Voting in the United States limited mostly to white men who owned property
1820's	Property requirement and most taxpaying requirements for voting are dropped. Virtually all white men can vote
1860	Every southern state permits white male suffrage
1870	15th Amendment gave the vote to African-American men
1920	19th Amendment gave the vote to women
1924	Congress passed the Indian Citizenship Act granting citizenship to American Indians, making them eligible to vote.
1964	24th Amendment made it illegal for states to demand people pay a poll tax
1965	Congress passed the Voting Rights Act making literacy tests illegal in every state and later added that election materials must be bilingual where many voters speak another language
1971	26th Amendment lowered the minimum voting age from 21 to 18

The Origins of the Laws to Disenfranchise Felons

The decision to deny the vote to convicted felons was neither accidental nor gradual. As Northwestern University researcher Jeff Manza and his colleagues explain:

Ballot restrictions for felons and ex-felons were first adopted in the post-Reconstruction South as part of a larger strategy of disfranchising African Americans which included devices such as literacy tests, poll taxes, grandfather clauses, and “understanding clauses.” Criminal disfranchisement was the most indirect of the various devices adopted to keep blacks from voting, but it is the only one that has survived to the present. (“The Truly Disfranchised: Felon Voting Rights and American Politics,” 2001) [internal citations omitted]

As one historian of the late 19th century described it, “Each state became a laboratory for testing one device or another...the cross-fertilization and coordination between the movements to restrict the suffrage in the Southern states amounted to a public conspiracy” (J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South*, 1974, cited in Manza). From this beginning, the limits on felons voting in the United States spread so that, by 1900, most states prohibited felons and ex-felons from voting.

Whatever the original purposes of these policies, the great increase in felony convictions during the 1980s and 1990s has had the effect of greatly increasing the total number of persons who were denied the right to vote. By one estimate, the state of Florida had more than 600,000 ex-felons who could not vote in the federal elections of 2000 (The Sentencing Project, “Felony Disenfranchisement Laws In The United States,” November 2005).

Voting Procedures Today Across the Nation and in Illinois

Following the controversies in Florida surrounding who was on the voter rolls [registration lists], who was eligible to vote, and how votes were counted during the presidential election in 2000, the Congress of the United States enacted and President George W. Bush signed the “Help America Vote Act of 2002.” Called HAVA for short, this law was designed to

establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

Title II of the Act explains that the “minimum election administration standards” include ways for voters to ensure that their vote was recorded and counted accurately. They also require each state to create and maintain,

in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (Section 303).

For those states which remove felons from their voting rolls, HAVA requires them to “coordinate the computerized list with State agency records on felony status.” States are also forbidden to remove a person from the voting list “solely by reason of a failure to vote.”

Despite these efforts to make voter registration and participation more uniform across the country, HAVA leaves each state responsible for how voting procedures are conducted. “The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State” (Section 305). In short, a state can remove convicted felons from voting rolls or block ex-felons from voting; it simply must do so fairly and consistently.

As a result, there exists today a patchwork set of voting regulations that vary widely from state to state. According to The Sentencing Project, 31 states deny people on probation the right to vote, and 36 deny those on parole (“Felony Disenfranchisement Laws In The United States”). In Alabama, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Virginia, Washington, and Wyoming, an ex-felon must request and gain a pardon or other extraordinary measure before being allowed to vote (“Voting Rights Restoration Process,” National Conference of State Legislatures, January 2002).

In Illinois, anyone who is not incarcerated (in prison), including people on probation, may vote. However, the only explicit information in the voter qualifications about felons is in the negative:

No person who has been legally convicted, in this or another State or in any federal court, of any crime, and is serving a sentence of confinement in any penal institution, or who has been convicted under any section of this Act and is serving a sentence of confinement in any penal institution, shall vote, offer to vote, attempt to vote or be permitted to vote at any election until his release from confinement. (Illinois Compiled Statutes, Chapter 10 “Elections,” part 5/3, “Qualification of Voters”)

As one result, even though they are eligible to vote as soon as they register, there is some confusion among local election officials and former prisoners alike about whether ex-felons indeed have the right to vote (Alec Ewald, “A ‘Crazy-Quilt’ of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” November 2005).

Voting Rights for Ex-Felons: Advocates and Opponents

Today many people believe that the central importance of voting to the democratic experience requires a more uniform and comprehensive system to include as many people as possible. This belief is bi-partisan and finds supporters in many different points on the political spectrum. In February 2002, for example, Senators Harry Reid (Democrat, Nevada) and Arlen Specter (Republican, Pennsylvania) sponsored an amendment to HAVA that would have enabled ex-felons nationwide to regain the right to vote after serving their sentences and completing probation and parole. The amendment was defeated 31-63. Specter and Reid spoke of

supporting the bill in order to “restore fairness” and help ex-felons with their rehabilitation (“U.S. Senate Kills Bill to Restore Voting Rights to Ex-Felons,” *The Razor Wire*, Spring 2002).

Supporters of restoring the right to vote for ex-felons and making the procedures clearly understandable to everyone argue that disenfranchising inmates this way goes against the American tradition of working for the expansion of voting rights for all citizens. They note that, because of racial and economic disparities in the criminal justice system, non-whites and poor people are more dramatically affected when ex-felons cannot vote. Still others note that with the United States fighting to promote electoral democracy in places such as Afghanistan and Iraq, we should also work to expand voting here at home.

Advocates also point to the international community. According to Northwestern University political scientist Brandon Rottinghaus, “The United States has the most restrictive practices” because of the decisions by some states to permanently ban ex-felons from voting. According to his research, only eight countries in the world restrict voting after a prison term is complete, and only three—Armenia, Belgium, and the United States—permanently prohibit certain kinds of ex-felons from voting. “Not many countries reach this level of voting restrictions,” he notes, “but this reflects specific legal and civil society components from each country’s particular history” (“Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform,” 2003). Supporters of voting rights for ex-felons argue that all Americans should enjoy a right that is embraced by the great majority of the world’s countries, democratic and non-democratic alike.

Those who oppose any widespread change to voting rights for ex-felons are quick to point out that the United States is a democratic country that is governed under rule of law. They argue that letting ex-felons participate by voting does not send the right message about democracy. In the words of Roger Clegg of the Center for Equal Opportunity, “people who aren’t willing to follow the law shouldn’t have a voice in making law.” Others argue that ex-felons will vote in ways that harm society and may well influence criminal justice policy for the worse. By prohibiting certain offenders for life—such as convicted murderers or people who have perverted the electoral process through intimidation or fraud—a state can ensure the integrity of the electoral process.

Many people are suspicious about making the process of voting too easy for people, whether or not they are ex-felons. They see voting as a privilege, and they worry about the participation of uninformed people in elections simply because going to vote is “the thing to do.” Since felons forfeited some of their rights, these opponents believe it is only fair that ex-felons might have to make an extra effort to become fully reinstated citizens.

Opponents of voting rights for ex-felons also argue that, in the American federal system of government, each state—not Congress—has the right to decide who will vote in its elections. As Roger Clegg of the Center for Equal Opportunity has testified, “Article I, Section 2, of the Constitution... says that electors for the House of Representatives—and, by extension, for all federal elections—‘shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.’ Thus, it gives authority for determining elector qualifications to the states.” While he notes that Article I, Section 4, gives authority to Congress to “make or alter such [state] Regulations” regarding “[t]he Times, Places and Manner of holding Elections for Senators and Representatives,” it is “not about who votes, which is the express focus of Section 2.” And unless Congress makes an alternative claim that criminals are disenfranchised because of their race, he argues, it cannot exercise its authority under the 14th or 15th Amendment to regulate the states. Therefore, Congress has no authority to pass such national legislation (testimony before the U.S. House Judiciary Committee, October 21, 1999).

The United States, along with other democracies, is committed to the idea that everyone participates and is responsible for the common good. The extent to which voting rights for ex-felons is a necessary component of full participation remains an open question.

B: Activity: Voting Rights for Ex-Felons: A Human Graph

This human graph activity is designed to introduce participants to the different issues raised by the question of whether ex-felons should have their voting rights restored. It is also designed to help participants realize how they feel and where they stand on this issue.

Procedures

- § Explain the purpose of this activity. Then create a line – either by pointing from one end of the room to the other or by drawing one on the board. One end of the line is “Agree Very Much,” the mid-point is “Not Sure/Undecided,” and the other end of the line is “Disagree Very Much.”
- § Ask for five volunteers from the group. Tell them that they will serve as a “human graph.” Explain that you will ask them a series of statements and that they will react to each statement by standing in front of the part of the graph that corresponds to their opinion.
- § Instruct the class that the members of the human graph are not allowed to speak; therefore, the class will have to interpret their thoughts for them.
- § Select a few statements on Handout C, “Voting Rights for Ex-Felons: A Human Graph.” After each statement, allow time for the “human graph” to understand the statement and react by physically moving to a position on the line. Then ask the rest of the group to explain why they think the participants in the human graph are standing where they are. You may choose to let the human graph students explain their position after all of the students have commented.
- § The human graph students should feel free to move about on the line, changing their opinion if an argument seems persuasive to them. Continue with this process until all statements have been evaluated and discussed. Select additional groups of five for other questions.
- § *Note:* This activity can also be done with the entire group along the line. When the whole class is the graph, ask questions of different members about why they chose to stand where they stood.

Follow-Up Questions

After the graph has finished representing the questions, put students into pairs. Have one student in each pair identify the three strongest statements in favor of voting rights for ex-felons; the other student should identify the three strongest statements against voting rights for ex-felons. Allow three minutes for each side to share their ideas.

Debrief as a large group using the following questions:

- § In your pair, what were the three strongest statements in favor of voting rights for ex-felons? The three strongest statements against?
- § What surprised you about the human graph? How did the participants in the graph shape your thinking about voting rights for ex-felons?

C: Handout: Voting Rights for Ex-Felons: A Human Graph

Statements for a Human Graph

- § Voting is an essential activity in a democratic society.
- § People who aren't willing to follow the laws should not be allowed to help make the laws.
- § People who vote are more likely to feel they have a stake in society.
- § Prohibiting ex-felons from voting for life protects the integrity of the electoral process.
- § Ex-felons have already paid their debt to society and should be allowed to vote.
- § Voting should be a privilege only for law-abiding citizens.

D: Activity: Sorting Out Positions on Voting Rights for Ex-Felons

Together with a partner, review the list of statements below. For each statement, decide whether each argument is for the voting rights for ex-felons (For), against voting rights for ex-felons (Against), supports both sides (Both), or neither side (Neither). Fill in the blank with your response.

	Under the Fourteenth Amendment, states can deny the right to vote to individuals guilty of "participation in rebellion, or other crime."
	Voting is a fundamental activity in a democracy. Permitting ex-felons to vote is one way to bring them back into the democratic process.
	Voting was never mentioned in the Bill of Rights. The rules and procedures that regulated who could vote and under what circumstances were left to the states.
	Ex-felons have already paid their debt to society. Denying them the right to vote just punishes them further.
	Current voting rates among low-income and minority citizens are significantly lower than among other groups. Denying the vote to ex-felons, who are disproportionately low-income and non-white, makes a bad situation worse.
	Whether convicted persons are "overrepresented" in some groups and "underrepresented" is a law enforcement and prevention problem, not a political problem.
	Prohibiting former felons from voting for life ensures the integrity of the electoral process. There is reason to believe that persons convicted of crimes are less likely to be good and trustworthy citizens.
	Keeping ex-felons from voting doesn't rehabilitate or deter crime.
	Voting means participating in vital decisions about society, not just showing up.
	People who aren't willing to follow the law shouldn't have a voice in making law.
	Ex-felons have special insights about crime and punishment. Like veterans voting on whether to go to war, ex-felons bring unique insights to criminal justice issues.
	Voting is a privilege to be enjoyed by law-abiding citizens. Permitting convicted murderers, perjurers, or tax cheats to vote makes a mockery of democracy.

- § After sorting the statements, select three which you and your partner find most compelling. These statements may be in favor, in opposition, or a combination.
- § Working in a quartet (you, your partner, and another pair), reach consensus on which statement you feel is the most persuasive in favor of each position.
- § Share your choices with the rest of the class. Be ready to explain your reasoning.

E: Deliberation Strategy: Philosophical Chairs on Voting Rights for Ex-Felons

- o Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
- o Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

“Philosophical Chairs” is a deliberation strategy that emphasizes careful listening and mastery of diverse points of view. Discuss one or both of the policy questions above using these rules for “Philosophical Chairs.”

- n Arrange chairs in a “U” formation.
- n Students sit facing each other across the center of the room. One side will argue in favor of the question, and the other will argue in opposition to the question.
- n Students can sit in the neutral zone at one end of the center area (at the bottom of the “U” formation) so that they can see both sides.
- n Students must address each other by their first names.
- n A student must briefly summarize the previous speaker's points to that speaker's satisfaction before he/she begins his/her own comments.
- n Think before you speak. Organize your thoughts. Give verbal clues to your listeners (“I have three points; first...”).
- n After a student speaks, he/she must wait until two students on his/her side have spoken.
- n One speaker at a time; others are listeners.
- n The teacher can call time-out periodically to clarify, reflect on the process or content, or refocus the discussion.
- n Address the ideas, NOT the person.
- n One student from each opposing side will provide a summary of the viewpoints presented during the discussion by his/her side.
- n Each student in the neutral zone must take notes on both sides of the argument. If her/his position changes, s/he must explain why s/he came to a new conclusion; if s/he remains undecided, s/he must explain why neither side has changed her/his mind.

Adopted from the classroom of Dale B. Fountain, Mount Tahoma High School, Tacoma, Washington, based on a model developed by philosophy professor Zahary Seech. Reprinted from: “The American Jury: Bulwark of Democracy,” <http://www.crfc.org/americanjury/CRFCPhilosophicalChairs.html>.

F: Taking a Stand: Position Paper on Voting Rights for Ex-Felons

Federal Policy

Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?

State Policy

Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

Steps for writing your Position Paper

1. Choose a position for, against, or as an alternative to the policy above.
2. Then team up with classmates who take the same position and as a group, write a persuasive paper arguing the benefits associated with your position on this policy.
3. In your essay, be sure to call on the most convincing arguments and specific evidence and examples from:
 - § the reading
 - § discussion and other classroom activities
 - § people in your community
 - § any other sources available to you
4. Include in your paper the most convincing arguments from the opposing side. List what you think are the best arguments your policy rivals would make. Acknowledge these points, and do your best to refute the importance of these arguments.

Specifications for Your Paper

Length. Your paper should be between 300 and 500 words.

Format. Each paper must have the name of the school in the heading and the policy being addressed in the title. No student names will appear on the position papers.

Sharing Your Views

You can contribute your views on the federal policy by writing to your U.S. Representative in Congress and/or your U.S. Senators.

Voting Rights for Ex-Felons: Selected Resources

Resources

American Civil Liberties Union
Voting Rights: Ex-Offenders
<http://www.aclu.org/votingrights/exoffenders/index.html>

Center for Equal Opportunity
Sterling, VA
<http://www.ceousa.org/>

Illinois State Board of Elections
1020 S. Spring St.
Springfield, IL 62704
217/782-4141
<http://www.elections.state.il.us/VotingInformation/welcome.aspx>

State Election Laws and Procedures
National Conference of State Legislatures
<http://www.ncsl.org/programs/legman/elect/taskfc/data.htm>

The Sentencing Project
Washington, DC
<http://www.sentencingproject.org/>

Documents

Help America Vote Act (HAVA) of 2002, Public Law 107-252, 107th Congress (2002)
http://www.fec.gov/hava/law_ext.txt

Information and Analysis

American Civil Liberties Union. "Purged! How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote," October 19, 2004,
http://www.aclu.org/FilesPDFs/purged%20-voting_report.pdf.

Clegg, Roger. "Testimony of Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity, before the House Judiciary Committee Subcommittee on the Constitution, regarding H.R. 906, a bill "To Secure The Federal Voting Rights Of Persons Who Have Been Released From Incarceration," October 21, 1999, <http://www.ceousa.org/clegg2.html>.

Ewald, Alec. "A 'Crazy-Quilt' of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," November, 2005,
<http://www.sentencingproject.org/pdfs/crazyquilt.pdf>.

Love, Margaret Colgate. "Table # 7 – Felony Disenfranchisement in the United States," in *Relief from the Collateral Consequences of a Criminal Conviction*, January 2006,
http://www.sentencingproject.org/rights_restoration/table7.html.

Manza, Jeff, Christopher Uggen, and Marcus Britton. "The Truly Disfranchised: Felon Voting Rights and American Politics." *American Sociological Review*, December 2002, <http://www.northwestern.edu/ipr/publications/papers/manza.pdf>

National Conference of State Legislatures. "Voting Rights Restoration Process,"
<http://www.ncsl.org/programs/legman/elect/voterights.htm>