

118TH CONGRESS
1ST SESSION

S. 1677

To secure the Federal voting rights of persons when released from
incarceration.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mr. CARDIN (for himself, Mr. SCHATZ, Mr. PADILLA, Mr. CASEY, Mrs. FEINSTEIN, Ms. WARREN, Mr. MARKEY, Mr. MENENDEZ, Ms. SMITH, Mr. WELCH, Ms. BALDWIN, Mr. BOOKER, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Mr. SANDERS, Mrs. MURRAY, Mr. WYDEN, Mr. VAN HOLLEN, Ms. HIRONO, Mrs. SHAHEEN, Mr. KAINE, Mr. BROWN, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To secure the Federal voting rights of persons when released
from incarceration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Democracy Restoration
5 Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The right to vote is the most basic constitu-
2 tive act of citizenship. Regaining the right to vote
3 reintegrates individuals with criminal convictions
4 into free society, helping to enhance public safety.

5 (2) Article I, section 4, of the Constitution
6 grants Congress ultimate supervisory power over
7 Federal elections, an authority which has repeatedly
8 been upheld by the United States Supreme Court.

9 (3) Basic constitutional principles of fairness
10 and equal protection require an equal opportunity
11 for citizens of the United States to vote in Federal
12 elections. The right to vote may not be abridged or
13 denied by the United States or by any State on ac-
14 count of race, color, gender, or previous condition of
15 servitude. The 13th, 14th, 15th, 19th, 24th, and
16 26th Amendments to the Constitution empower Con-
17 gress to enact measures to protect the right to vote
18 in Federal elections. The 8th Amendment to the
19 Constitution provides for no excessive bail to be re-
20 quired, nor excessive fines imposed, nor cruel and
21 unusual punishments inflicted.

22 (4) There are 3 areas in which discrepancies in
23 State laws regarding criminal convictions lead to un-
24 fairness in Federal elections—

1 (A) the lack of a uniform standard for vot-
2 ing in Federal elections leads to an unfair dis-
3 parity and unequal participation in Federal
4 elections based solely on where a person lives;

5 (B) laws governing the restoration of vot-
6 ing rights after a criminal conviction vary
7 throughout the country and persons in some
8 States can easily regain their voting rights
9 while in other States persons effectively lose
10 their right to vote permanently; and

11 (C) State disenfranchisement laws dis-
12 proportionately impact racial and ethnic minori-
13 ties.

14 (5) State disenfranchisement laws vary widely.
15 Two States (Maine and Vermont) and the Common-
16 wealth of Puerto Rico do not disenfranchise individ-
17 uals with criminal convictions at all. In 2020, the
18 District of Columbia re-enfranchised its citizens who
19 are under the supervision of the Federal Bureau of
20 Prisons. Twenty-five States disenfranchise certain
21 individuals on felony probation or parole. During
22 2023, lawmakers in Minnesota and New Mexico ex-
23 panded voting rights to citizens on felony probation
24 and parole. In 11 States, a conviction for certain of-
25 fenses can result in lifetime disenfranchisement.

1 (6) Several States deny the right to vote to in-
2 dividuals convicted of certain misdemeanors.

3 (7) In 2022, over 4,600,000 citizens of the
4 United States, or about 1 in 50 adults in the United
5 States, could not vote as a result of a felony convic-
6 tion. Of the 4,600,000 citizens barred from voting
7 then, only 23 percent were in prison or jail. By con-
8 trast, 75 percent of persons disenfranchised then re-
9 sided in their communities while on probation or pa-
10 role or after having completed their sentences. Ap-
11 proximately 2,200,000 citizens who had completed
12 their sentences were disenfranchised due to restric-
13 tive State laws. Over 930,000 Floridians who com-
14 pleted their sentence remain disenfranchised because
15 of a pay-to-vote requirement that was enacted by
16 Florida lawmakers in 2019 to undermine the impact
17 of a 2018 ballot initiative that eliminated the life-
18 time ban for persons with certain felony convictions.
19 In 3 States—Alabama, Mississippi, and Tennessee—
20 more than 8 percent of the total population is
21 disenfranchised.

22 (8) In those States that disenfranchise individ-
23 uals post-sentence, the right to vote can be regained
24 in theory, but in practice this possibility is often
25 granted in a non-uniform and potentially discrimina-

1 tory manner. Disenfranchised individuals sometimes
2 must either obtain a pardon or an order from the
3 Governor or an action by the parole or pardon
4 board, depending on the offense and State. Financial
5 restrictions may also inhibit individuals who have
6 completed their sentences from re-enfranchisement.
7 Individuals convicted of a Federal offense often have
8 additional barriers to regaining voting rights.

9 (9) Many felony disenfranchisement laws today
10 derive directly from post-Civil War efforts to stifle
11 the Fourteenth and Fifteenth Amendments. Between
12 1865 and 1880, at least 14 States—Alabama, Ar-
13 kansas, Colorado, Florida, Georgia, Illinois, Mis-
14 sissippi, Missouri, Nebraska, New York, North Caro-
15 lina, South Carolina, Tennessee, and Texas—en-
16 acted or expanded their felony disenfranchisement
17 laws. One of the primary goals of these laws was to
18 prevent African Americans from voting. Of the
19 States that enacted or expanded their felony dis-
20 enfranchisement laws during this post-Civil War pe-
21 riod, at least 11 continue to preclude persons on fel-
22 ony probation or parole from voting.

23 (10) State disenfranchisement laws dispropor-
24 tionately impact racial and ethnic minorities. In re-
25 cent years, African Americans have been imprisoned

1 at over 5 times the rate of Whites. More than 6 per-
2 cent of the voting-age African-American population,
3 or 1,800,000 African Americans, are disenfranchised
4 due to a felony conviction. In 9 States—Alabama
5 (16 percent), Arizona (13 percent), Florida (15 per-
6 cent), Kentucky (15 percent), Mississippi (16 per-
7 cent), South Dakota (14 percent), Tennessee (21
8 percent), Virginia (16 percent), and Wyoming (36
9 percent)—more than 1 in 8 African Americans are
10 unable to vote because of a felony conviction, twice
11 the national average for African Americans.

12 (11) Latino citizens are also disproportionately
13 disenfranchised based upon their disproportionate
14 representation in the criminal justice system. Al-
15 though data on ethnicity in correctional populations
16 are unevenly reported and undercounted in some
17 States, a conservative estimate is that at least
18 506,000 Latino Americans or 1.7 percent of the vot-
19 ing-age population are disenfranchised. More than 2
20 percent of the voting-age Latino population, or
21 560,000 Latinos, are disenfranchised due to a felony
22 conviction. In 31 States Latinos are disenfranchised
23 at a higher rate than the general population. In Ari-
24 zona and Tennessee over 6 percent of Latino voters
25 are disenfranchised due to a felony conviction.

1 (12) Women have been significantly impacted
2 by mass incarceration since the early 1980s. Ap-
3 proximately 1,000,000 women were disenfranchised
4 in 2022, comprising over 20 percent of the total
5 disenfranchised population.

6 (13) Disenfranchising citizens who have been
7 convicted of a criminal offense and who are living
8 and working in the community serves no compelling
9 State interest and hinders their rehabilitation and
10 reintegration into society. Models of successful re-
11 entry for persons convicted of a crime emphasize the
12 importance of community ties, feeling vested and in-
13 tegrated, and prosocial attitudes. Individuals with
14 criminal convictions who succeed in avoiding recidi-
15 vism are typically more likely to see themselves as
16 law-abiding members of the community. Restoration
17 of voting rights builds those qualities and facilitates
18 reintegration into the community. That is why allow-
19 ing citizens with criminal convictions who are living
20 in a community to vote is correlated with a lower
21 likelihood of recidivism. Restoration of voting rights
22 thus reduces violence and protects public safety.

23 (14) State disenfranchisement laws can sup-
24 press electoral participation among eligible voters by
25 discouraging voting among family and community

1 members of disenfranchised persons. Future elec-
2 toral participation by the children of disenfranchised
3 parents may be impacted as well.

4 (15) The United States is one of the only West-
5 ern democracies that permits the permanent denial
6 of voting rights for individuals with felony convic-
7 tions.

8 (16) The Eighth Amendment’s prohibition on
9 cruel and unusual punishments “guarantees individ-
10 uals the right not to be subjected to excessive sanc-
11 tions.” (*Roper v. Simmons*, 543 U.S. 551, 560
12 (2005)). That right stems from the basic precept of
13 justice “that punishment for crime should be grad-
14 uated and proportioned to [the] offense.” *Id.*
15 (quoting *Weems v. United States*, 217 U.S. 349,
16 367 (1910)). As the Supreme Court has long recog-
17 nized, “[t]he concept of proportionality is central to
18 the Eighth Amendment.” (*Graham v. Florida*, 560
19 U.S. 48, 59 (2010)). Many State disenfranchisement
20 laws are grossly disproportional to the offenses that
21 lead to disenfranchisement and thus violate the bar
22 on cruel and unusual punishments. For example, a
23 number of States mandate lifetime disenfranchise-
24 ment for a single felony conviction or just two felony
25 convictions, even where the convictions were for non-

1 violent offenses. In numerous other States, dis-
2 enfranchisement can last years or even decades while
3 individuals remain on probation or parole, often only
4 because a person cannot pay their legal financial ob-
5 ligations. These kinds of extreme voting bans run
6 afoul of the Eighth Amendment.

7 (17) The Twenty-Fourth Amendment provides
8 that the right to vote “shall not be denied or
9 abridged by the United States or any State by rea-
10 son of failure to pay any poll tax or other tax.” Sec-
11 tion 2 of the Twenty-Fourth Amendment gives Con-
12 gress the power to enforce this article by appropriate
13 legislation. Court fines and fees that individuals
14 must pay to have their voting rights restored con-
15 stitute an “other tax” for purposes of the Twenty-
16 Fourth Amendment. At least five States explicitly
17 require the payment of fines and fees before individ-
18 uals with felony convictions can have their voting
19 rights restored. More than 20 other States effec-
20 tively tie the right to vote to the payment of fines
21 and fees, by requiring that individuals complete their
22 probation or parole before their rights are restored.
23 In these States, the non-payment of fines and fees
24 is a basis on which probation or parole can be ex-
25 tended. Moreover, these States sometimes do not

1 record the basis on which an individual's probation
2 or parole was extended, making it impossible to de-
3 termine from the State's records whether non-pay-
4 ment of fines and fees is the reason that an indi-
5 vidual remains on probation or parole. For these
6 reasons, the only way to ensure that States do not
7 deny the right to vote based solely on non-payment
8 of fines and fees is to prevent States from condi-
9 tioning voting rights on the completion of probation
10 or parole.

11 **SEC. 3. RIGHTS OF CITIZENS.**

12 The right of an individual who is a citizen of the
13 United States to vote in any election for Federal office
14 shall not be denied or abridged because that individual has
15 been convicted of a criminal offense unless such individual
16 is serving a felony sentence in a correctional institution
17 or facility at the time of the election.

18 **SEC. 4. ENFORCEMENT.**

19 (a) ATTORNEY GENERAL.—The Attorney General
20 may, in a civil action, obtain such declaratory or injunctive
21 relief as is necessary to remedy a violation of this Act.

22 (b) PRIVATE RIGHT OF ACTION.—

23 (1) IN GENERAL.—A person who is aggrieved
24 by a violation of this Act may provide written notice

1 of the violation to the chief election official of the
2 State involved.

3 (2) RELIEF.—Except as provided in paragraph
4 (3), if the violation is not corrected within 90 days
5 after receipt of a notice under paragraph (1), or
6 within 20 days after receipt of the notice if the viola-
7 tion occurred within 120 days before the date of an
8 election for Federal office, the aggrieved person
9 may, in a civil action, obtain declaratory or injunc-
10 tive relief with respect to the violation.

11 (3) EXCEPTION.—If the violation occurred
12 within 30 days before the date of an election for
13 Federal office, the aggrieved person need not provide
14 notice to the chief election official of the State under
15 paragraph (1) before bringing a civil action to obtain
16 declaratory or injunctive relief with respect to the
17 violation.

18 **SEC. 5. NOTIFICATION OF RESTORATION OF VOTING**
19 **RIGHTS.**

20 (a) STATE NOTIFICATION.—

21 (1) NOTIFICATION.—On the date determined
22 under paragraph (2), each State shall notify in writ-
23 ing any individual who has been convicted of a
24 criminal offense under the law of that State that
25 such individual has the right to vote in an election

1 for Federal office pursuant to the Democracy Res-
2 toration Act of 2023 and may register to vote in any
3 such election and provide such individuals with any
4 materials that are necessary to register to vote in
5 any such election.

6 (2) DATE OF NOTIFICATION.—

7 (A) FELONY CONVICTION.—In the case of
8 such an individual who has been convicted of a
9 felony, the notification required under para-
10 graph (1) shall be given on the date on which
11 the individual—

12 (i) is sentenced to serve only a term
13 of probation; or

14 (ii) is released from the custody of
15 that State (other than to the custody of
16 another State or the Federal Government
17 to serve a term of imprisonment for a fel-
18 ony conviction).

19 (B) MISDEMEANOR CONVICTION.—In the
20 case of such an individual who has been con-
21 victed of a misdemeanor, the notification re-
22 quired under paragraph (1) shall be given on
23 the date on which such individual is sentenced
24 by a State court.

25 (b) FEDERAL NOTIFICATION.—

1 (1) NOTIFICATION.—Any individual who has
2 been convicted of a criminal offense under Federal
3 law shall be notified in accordance with paragraph
4 (2) that such individual has the right to vote in an
5 election for Federal office pursuant to the Democ-
6 racy Restoration Act of 2023 and may register to
7 vote in any such election.

8 (2) DATE OF NOTIFICATION.—

9 (A) FELONY CONVICTION.—In the case of
10 such an individual who has been convicted of a
11 felony, the notification required under para-
12 graph (1) shall be given—

13 (i) in the case of an individual who is
14 sentenced to serve only a term of proba-
15 tion, by the Assistant Director for the Of-
16 fice of Probation and Pretrial Services of
17 the Administrative Office of the United
18 States Courts on the date on which the in-
19 dividual is sentenced; or

20 (ii) in the case of any individual com-
21 mitted to the custody of the Bureau of
22 Prisons, by the Director of the Bureau of
23 Prisons, during the period beginning on
24 the date that is 6 months before such indi-
25 vidual is released and ending on the date

1 such individual is released from the cus-
2 tody of the Bureau of Prisons.

3 (B) MISDEMEANOR CONVICTION.—In the
4 case of such an individual who has been con-
5 victed of a misdemeanor, the notification re-
6 quired under paragraph (1) shall be given on
7 the date on which such individual is sentenced
8 by a court established by an Act of Congress.

9 **SEC. 6. DEFINITIONS.**

10 For purposes of this Act:

11 (1) CORRECTIONAL INSTITUTION OR FACIL-
12 ITY.—The term “correctional institution or facility”
13 means any prison, penitentiary, jail, or other institu-
14 tion or facility for the confinement of individuals
15 convicted of criminal offenses, whether publicly or
16 privately operated, except that such term does not
17 include any residential community treatment center
18 (or similar public or private facility).

19 (2) ELECTION.—The term “election” means—

20 (A) a general, special, primary, or runoff
21 election;

22 (B) a convention or caucus of a political
23 party held to nominate a candidate;

1 (C) a primary election held for the selec-
2 tion of delegates to a national nominating con-
3 vention of a political party; or

4 (D) a primary election held for the expres-
5 sion of a preference for the nomination of per-
6 sons for election to the office of President.

7 (3) FEDERAL OFFICE.—The term “Federal of-
8 fice” means the office of President or Vice President
9 of the United States, or of Senator or Representa-
10 tive in, or Delegate or Resident Commissioner to,
11 the Congress of the United States.

12 (4) PROBATION.—The term “probation” means
13 probation, imposed by a Federal, State, or local
14 court, with or without a condition on the individual
15 involved concerning—

16 (A) the individual’s freedom of movement;

17 (B) the payment of damages by the indi-
18 vidual;

19 (C) periodic reporting by the individual to
20 an officer of the court; or

21 (D) supervision of the individual by an of-
22 ficer of the court.

23 **SEC. 7. RELATION TO OTHER LAWS.**

24 (a) STATE LAWS RELATING TO VOTING RIGHTS.—

25 Nothing in this Act shall be construed to prohibit any

1 State from enacting any State law which affords the right
2 to vote in any election for Federal office on terms less
3 restrictive than those established by this Act.

4 (b) CERTAIN FEDERAL ACTS.—The rights and rem-
5 edies established by this Act are in addition to all other
6 rights and remedies provided by law, and neither rights
7 and remedies established by this Act shall supersede, re-
8 strict, or limit the application of the Voting Rights Act
9 of 1965 (52 U.S.C. 10301 et seq.), the National Voter
10 Registration Act (52 U.S.C. 20501), or the Help America
11 Vote Act of 2002 (52 U.S.C. 20901 et seq.).

12 **SEC. 8. FEDERAL PRISON FUNDS.**

13 No State, unit of local government, or other person
14 may receive or use, to construct or otherwise improve a
15 prison, jail, or other place of incarceration, any Federal
16 funds unless that State, unit of local government, or per-
17 son—

18 (1) is in compliance with section 3; and

19 (2) has in effect a program under which each
20 individual incarcerated in that person's jurisdiction
21 who is a citizen of the United States is notified,
22 upon release from such incarceration, of that indi-
23 vidual's rights under section 3.

1 **SEC. 9. EFFECTIVE DATE.**

2 This Act shall apply to citizens of the United States
3 voting in any election for Federal office held on or after
4 the date of the enactment of this Act.

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