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110TH CONGRESS
2D SESSION

S. 3640

To secure the Federal voting rights of persons who have been released from incarceration.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Mr. FEINGOLD (for himself, Mr. WHITEHOUSE, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To secure the Federal voting rights of persons who have been released from incarceration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Democracy Restoration Act of 2008''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The right to vote is the most basic constitutive act of citizenship. Regaining the right to vote

reintegrates offenders into free society, helping to enhance public safety.

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

(3) Basic constitutional principles of fairness and equal protection require an equal opportunity for Americans to vote in Federal elections. The right to vote may not be abridged or denied by the United States or by any State on account of race, color, gender or previous condition of servitude. The 14th and 15th Amendments to the Constitution empower Congress to enact measures to protect the right to vote in Federal elections.

(4) There are three areas where discrepancies in State laws regarding felony convictions lead to unfairness in Federal elections: (A) there is no uniform standard for voting in Federal elections which leads to an unfair disparity and unequal participation in Federal elections based solely on where a person lives; (B) laws governing the restoration of voting rights after a felony conviction are unequal throughout the country and persons in some States

can easily regain their voting rights while in other States persons effectively lose their right to vote permanently; and (C) State disenfranchisement laws disproportionately impact racial ethnic minorities.

(5) Disenfranchisement results from varying State laws that restrict voting while under some form of criminal justice supervision or after the completion of a felony sentence in some States. Two States do not disenfranchise felons at all (Maine and Vermont). Forty-eight States and the District of Columbia have disenfranchisement laws that deprive convicted offenders of the right to vote while they are in prison. In thirty-five States, convicted offenders may not vote while they are on parole and thirty of these States disenfranchise felony probationers as well. In ten States, a conviction can result in lifetime disenfranchisement.

(6) An estimated 5,300,000 Americans, or about one in forty-one adults, currently cannot vote as a result of a felony conviction. Nearly 4,000,000 (74 percent) of the 5,300,000 disqualified voters are not in prison, but are on probation or parole, or are ex-offenders. Approximately 2,000,000 of those individuals are individuals who have completed their en-

tire sentence, including probation and parole, yet remain disenfranchised.

(7) In those States that disenfranchise ex-offenders, the right to vote can be regained in theory, but in practice this possibility is often illusory. Offenders must either obtain a pardon or order from the Governor or action by the parole or pardon board, depending on the offense and State. Offenders convicted of a Federal offense often have additional barriers to regaining voting rights.

(8) In at least 16 States, Federal offenders cannot use the State procedure for restoring their civil rights. The only method provided by Federal law for restoring voting rights to ex-offenders is a Presidential pardon. Few persons who seek to have their right to vote restored have the financial and political resources needed to succeed.

(9) State disenfranchisement laws disproportionately impact ethnic minorities. Thirteen percent of the African-American adult male population, or 1,400,000 African-American men, are disenfranchised. Given current rates of incarceration, three in ten of the next generation of black men will be disenfranchised at some point during their lifetime. Hispanic citizens are also dispropor-

tionately disenfranchised since they are disproportionately represented in the criminal justice system.

(10) Disenfranchising citizens who have been convicted of a felony offense and who are living and working in the community serves no compelling State interest and hinders their rehabilitation and reintegration into society.

(11) State disenfranchisement laws suppress electoral participation among eligible voters and damage the integrity of the electoral process. State disenfranchisement laws significantly impact the rate of electoral participation among the children of disenfranchised parents.

(12) The United States in the only Western democracy that permits the permanent denial of voting rights to individuals with felony convictions.

SEC. 3. RIGHTS OF CITIZENS.

The right of an individual who is a citizen of the United States 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 such individual is serving a felony sentence in a correctional institution or facility at the time of the election.

SEC. 4. ENFORCEMENT.

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

(b) PRIVATE RIGHT OF ACTION.—

(1) A person who is aggrieved by a violation of this Act may provide written notice of the violation to the chief election official of the State involved.

(2) Except as provided in paragraph (3), if the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may, in a civil action obtain declaratory or injunctive relief with respect to the violation.

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

SEC. 5. NOTIFICATION OF RESTORATION OF VOTING RIGHTS.

(a) STATE NOTIFICATION.—

(1) NOTIFICATION.—On the date determined under paragraph (2), each State shall notify in writing any individual who has been convicted of a criminal offense under the law of that State that such individual has the right to vote in an election for Federal office pursuant to the Democracy Restoration Act and may register to vote in any such election.

(2) DATE OF NOTIFICATION.—

(A) FELONY CONVICTION.—In the case of such an individual who has been convicted of a felony, the notification required under paragraph (1) shall be given on the date on which the individual—

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

(ii) is released from the custody of that State (other than to the custody of another State or the Federal Government to serve a term of imprisonment for a felony conviction).

(B) MISDEMEANOR CONVICTION.—In the case of such an individual who has been convicted of a misdemeanor, the notification required under paragraph (1) shall be given on

the date on which such individual is sentenced by a State court.

(b) FEDERAL NOTIFICATION.—

(1) NOTIFICATION.—On the date determined under paragraph (2), the Director of the Bureau of Prisons shall notify in writing any individual who has been convicted of a criminal offense under Federal law that such individual has the right to vote in an election for Federal office pursuant to the Democracy Restoration Act and may register to vote in any such election.

(2) DATE OF NOTIFICATION.—

(A) FELONY CONVICTION.—In the case of such an individual who has been convicted of a felony, the notification required under paragraph (1) shall be given on the date on which the individual—

(i) is sentenced to serve only a term of probation by a court established by an Act of Congress; or

(ii) is released from the custody of the Bureau of Prisons (other than to the custody of a State to serve a term of imprisonment for a felony conviction).

(B) MISDEMEANOR CONVICTION.—In the case of such an individual who has been convicted of a misdemeanor, the notification required under paragraph (1) shall be given on the date on which such individual is sentenced by a State court.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) CORRECTIONAL INSTITUTION OR FACILITY.—The term ''correctional institution or facility'' means any prison, penitentiary, jail, or other institution or facility for the confinement of individuals convicted of criminal offenses, whether publicly or privately operated, except that such term does not include any residential community treatment center (or similar public or private facility).

(2) ELECTION.—The term ''election'' means—

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

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

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; or

(D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.

(3) FEDERAL OFFICE.—The term ''Federal office'' means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(4) PROBATION.—The term ''probation'' means probation, imposed by a Federal, State, or local court, with or without a condition on the individual involved concerning—

(A) the individual's freedom of movement;

(B) the payment of damages by the individual;

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

(D) supervision of the individual by an officer of the court.

SEC. 7. RELATION TO OTHER LAWS.

(a) STATE LAWS RELATING TO VOTING RIGHTS.—Nothing in this Act shall be construed to prohibit the States enacting any State law which affords the right to vote in any election for Federal office on terms less restrictive than those established by this Act.

(b) CERTAIN FEDERAL ACTS.—The rights and remedies established by this Act are in addition to all other rights and remedies provided by law, and neither rights and remedies established by this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) or the National Voter Registration Act (42 U.S.C. 1973–gg).

SEC. 8. FEDERAL PRISON FUNDS.

No State, unit of local government, or other person may receive or use, to construct or otherwise improve a prison, jail, or other place of incarceration, any Federal grant amounts unless that person has in effect a program under which each individual incarcerated in that person's jurisdiction who is a citizen of the United States is notified, upon release from such incarceration, of that individual's rights under section 3.

SEC. 9. EFFECTIVE DATE.

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

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