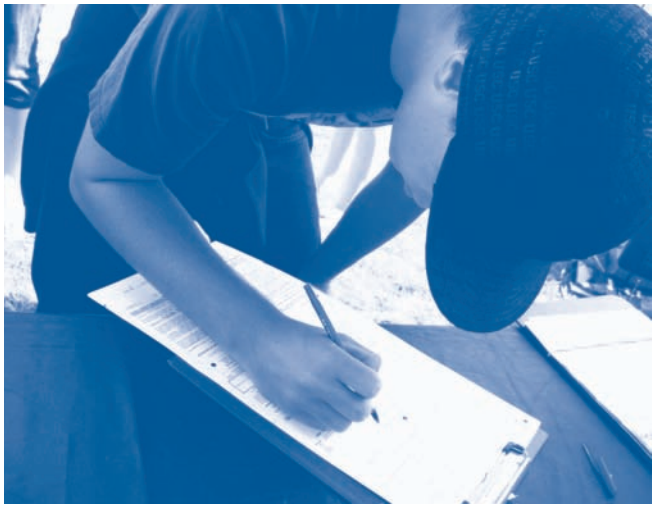
Voting WITH A *Criminal Record*

HOW REGISTRATION FORMS FRUSTRATE DEMOCRACY



OCTOBER 2008

ACLU
AMERICAN CIVIL LIBERTIES UNION

Voting WITH A *Criminal Record*

HOW REGISTRATION FORMS FRUSTRATE DEMOCRACY

Voting With A Criminal Record:
How Registration Forms Frustrate Democracy

Published October 2008

ACLU NATIONAL OFFICE
125 Broad Street, 18th Fl.
New York, NY 10004-2400
(212) 549-2500
www.aclu.org

ACKNOWLEDGMENTS
Nicole Kief, State Strategist with the American Civil Liberties Union's Racial Justice Program, drafted this report. She would like to thank Laleh Ispahani and Rachel Bloom for their guidance throughout the course of this project, and Aron Cobbs and Sarah Hinger for their research assistance.
She is also grateful to Nancy Abudu of the ACLU's Voting Rights Project, Jessica Hewitt of AIGA Design for Democracy, Erika Wood and Lawrence Norden of the Brennan Center for Justice, and Marshall Clement of the Council of State Governments, and Margaret Love of the Law Office of Margaret Love for their advice.

For more information about the ACLU's work to end felony disfranchisement, visit www.aclu.org/righttovote.

Cover Photos: Brande Jackson, Lokahi Outreach (www.lokahioutreach.org)

CONTENTS

Executive Summary 3

Findings 6

I: Inaccurate, Incomplete and Misleading Explanations of Who is Ineligible to Vote and for How Long 6

A: Imprecise Description of Crimes That Disqualify Voters 6

B: Misleading Information Concerning Voting with a Misdemeanor Conviction 7

C: Inaccessible Language Concerning Eligibility to Vote 8

II: Incorrect and Misleading References to How Voting Rights Are Restored 10

III: Confusing and Misleading Presentations of State Disfranchisement Policy 12

IV: No Guidance on Registering to Vote with a Criminal Record 14

Recommendations 15

General Recommendations 15

Principles of Accessible Registration Forms 16

Model Eligibility Language 17

Appendix: Voter Registration Forms 19

Endnotes 21

EXECUTIVE SUMMARY

The right to vote is the cornerstone of American democracy. For many Americans, the primary source of information about voter eligibility is the voter registration form. Consequently, the availability of clear, accurate registration forms is critical to ensuring this fundamental right.

For the 47 million Americans with criminal records,[1] however, it may be risky to rely on voter registration forms to determine whether they may register to vote. The findings that follow reveal that the vast majority of U.S. states—33 plus the District of Columbia—currently use registration forms that provide inaccurate, incomplete or misleading information about whether individuals with criminal records are eligible to vote.

The back-story to this problem is the patchwork of state disfranchisement laws that prevent over 5.3 million Americans with criminal records from voting. In 48 states (all but Maine and Vermont) and in the District of Columbia, citizens lose the right to vote upon conviction of a felony; in at least a handful of states, the right is also lost upon conviction of a misdemeanor. All 48 states (and the District of Columbia) also provide mechanisms by which these citizens may seek to regain their voting rights, though some processes are much more viable than others. These mechanisms range from automatic restoration (upon completion of incarceration or sentence) to restoration only after satisfaction of an extensive, onerous and sometimes costly individual application process.

The variety and complexity of these disfranchisement policies has led to considerable confusion and misapplication of the laws, effectively barring countless *eligible* Americans from the ballot box. Research has shown that many people with past criminal records mistakenly believe they are ineligible to vote,[2] a problem compounded by the prevalence of similar confusion among elections officials, who often dispense incorrect eligibility information to potential voters.[3]

This confusion is exacerbated by voter registration forms that, in too many states, fail to properly communicate state disfranchisement policy. In the absence of clear eligibility guidelines, many Americans, unsure if they are permitted to vote, will choose not to register for fear of registering improperly (itself a crime); others are left vulnerable to improper registration. The result is the practical—or *de facto*—disfranchisement of countless eligible voters, and the possibility that ineligible voters will mistakenly register.

Particularly vulnerable are voters with limited literacy, those who do not speak English as a first language, new voters, and even seasoned voters who rush through registration forms assuming they are already familiar with their content.[4] As such, these problems have the potential to impact a large segment of the voting population: in addition to the 47 million Americans with criminal records,[5] 3.5 million Americans registered to vote for the first time in the first quarter of 2008, and more than 29 million voting-age individuals move annually (and must re-register if they wish to vote).[6]

As a result of the omissions, mistakes and inconsistencies identified in the findings, *eligible* voters may be kept from the polls and *ineligible* voters are vulnerable to registering improperly.[8] Voters *without* criminal records may also be affected by problematic language or formats.

Improved administration of disfranchisement policies, including better registration forms, would ensure that all eligible voters have unfettered access to the polls. Amending the forms at issue is an attainable goal that will benefit untold numbers of voters and strengthen our democracy.

Following this report's findings are a series of concrete recommendations all states can implement to promote greater voter access, including guidelines for amending voter registration forms. Though only some states are discussed in the findings, all states can take similar steps to promote smooth and fair elections.

We also encourage states to statutorily expand voting rights for people with criminal records. The flaws identified in this report are evidence of the difficulty of effectively administering felony and misdemeanor disfranchisement laws, particularly complex ones. Simplifying and streamlining these

laws—in favor of automatic post-incarceration enfranchisement, which is easy to administer and gives people living in our communities the voice they deserve—would greatly reduce confusion about voter eligibility and eliminate the need for complex rights restoration schemes and administrative procedures. Voter participation actually increases public safety, and people who vote are far less likely to be re-arrested than those who do not.[9] Enfranchising people with criminal records is good for our communities and for our democracy.

The right to vote is a core principle of American democracy. The ACLU welcomes the opportunity to partner with state officials to safeguard this fundamental right.

The voter registration forms analyzed in this report suffer from four primary types of flaws with respect to felony and misdemeanor disfranchisement:

(1) *Twenty-two states' and the District of Columbia's registration forms provide inaccurate, incomplete or misleading explanations of who is ineligible to vote and for how long.*

Delaware's registration application, for example, unreasonably requires voters to display familiarity with the state's election code. It instructs potential voters as follows: "You may register to vote if you are…an ex-felon who meets the requirements as specified by law according to 15 Del C. Chapter 61." In the absence of further explanation, it is unreasonable to expect the average person to know this statute's content; as such, these instructions actually obscure, rather than demystify, the state's complicated eligibility laws.

(2) *Eleven states' registration forms contain incorrect or misleading references to how voting rights are restored.*

Virginia—which, along with Kentucky, has the harshest felony disfranchisement law in the nation—poorly communicates its cumbersome and discretionary rights restoration process on the state's voter registration form. The form reads as follows:

Have you ever been convicted of a felony?

☐YES ☐NO

State where convicted _____

If YES, have your voting rights been restored?

☐YES ☐NO

If YES, when restored MM/DD/YYYY _____

The problems with this language are manifold: first, voters whose rights have been restored may not be able to recall the exact day, month and year of their restoration or easily access documentation of such restoration. Second, Virginia residents convicted in states where rights are restored automatically may also be unsure of how to answer the above questions. Unlike Virginia, many states restore voting rights automatically upon release from incarceration or completion of sentence, so people convicted in these states may be unsure whether to check "yes" to certify that their voting rights have "been restored." These individuals will be even less likely to know that they are required to *demonstrate* such restoration; even if they were aware of this requirement, the form gives no indication as to *how* this demonstration can be achieved. Finally, people who check "yes" to indicate that they have been convicted of a felony but "no" to the question about rights restoration are not at that point instructed to stop completing the form, and so could register improperly by mistake.

(3) *Four states' registration forms use confusing or misleading formats to present state disfranchisement policy.*

Tennessee's registration form, for example, employs both a complex sentence structure and a problematic format. The form's instructions contain a lengthy sentence about voting with a criminal record that could be difficult for some voters to follow: "To register to vote…you must not have been

convicted of a felony, or if you have, your full rights of citizenship must have been restored (or you must have received a pardon)."

The voter declaration then requires that applicants check "yes" or "no" in response to the following series of questions:

	Yes	No
1. I am a U.S. citizen.	___	___
2. I am a resident of the State of Tennessee.	___	___
3. I will be at least 18 years old on/or before the next election.	___	___
4. I have been convicted of a felony.	___	___

The final question does not give applicants the opportunity to explain whether, if convicted of felonies, they have had their rights restored. As a result, voters whose rights have been restored may be confused about which box to check (fearing that, if they check "yes," their registrations will be automatically rejected or believing incorrectly that, since their rights have been restored, they should check "no"). Additionally, because all but the last question require an affirmative answer from voters seeking to successfully register, voters *without* felony convictions may accidentally check "yes" to all questions, thereby disqualifying their applications accidentally. These problems are particularly worrisome because research has shown that elections officials in the state often give out incorrect information about voting with a criminal record.[7]

(4) *Four states' registration forms contain no guidance on registering to vote with a criminal record, despite the existence of state disfranchisement policies.*

Colorado's registration form, for example, contains no information at all about registering to vote with a felony conviction, despite the fact that those convicted of felonies and sentenced to incarceration lose the right to vote until they complete their prison sentences and any accompanying terms of parole. (Individuals sentenced only to probation, however, as well as those convicted of misdemeanors, retain the right to vote.) Some eligible voters with past criminal records, as a result of this omission, may incorrectly assume that they are ineligible, and those who are ineligible could register improperly.

FINDINGS*

While states have a variety of opportunities to share information about voter eligibility (e.g. websites, printed materials, and consultation with elections officials), voter registration forms ought to serve as the first and last lines of defense. All would-be voters are required to complete them and, for some voters, these forms are their sole source of eligibility information.

This analysis finds that 33 states plus the District of Columbia currently use registration forms that do not sufficiently convey information about the voter eligibility of the 47 million Americans with criminal records. Some forms contain incomplete, inaccurate or confusing information on the topic, while others contain no information at all. The complete findings are below.

Following these findings is a set of recommendations that we advise state elections authorities to implement in order to ensure that all potential voters have easy access to information about voter eligibility. The ACLU urges states to adopt these recommendations swiftly and comprehensively.

I. *Twenty-two states' and the District of Columbia's registration forms provide inaccurate, incomplete or misleading explanations of who is ineligible to vote and for how long.*

While the vast majority of state voter registration forms *do* include some information about the right to vote with a criminal record, many forms fail to convey these policies clearly and accurately.

A. *Imprecise Description of Crimes That Disqualify Voters*

Imprecise descriptions of voter disqualification in Alabama, Mississippi and Georgia result, in part, from one of disfranchisement's constituent flaws: vague and anachronistic statutory provisions. Per the **Alabama** Constitution, for instance, an individual convicted of "a felony involving moral turpitude" is disqualified from voting, but the universe of felonies that fall within this category remains unclear (the state is the subject of an ACLU lawsuit as a result). Perhaps because the term is ill-defined, the state's voter registration form does not include this language but instead requires the voter to swear that s/he is "not barred from voting by reason of a disqualifying felony conviction." Even if a voter were aware that "disqualifying" felonies are those that involve "moral turpitude," s/he would be unlikely to know what crimes fall under that category. In addition, this language does nothing to let voters know that, even if they are convicted of "disqualifying felonies," they may still be able to regain their voting rights.

Georgia's registration form suffers from a similar flaw. Like the Alabama Constitution, Georgia's Constitution disfranchises until completion of sentence all people convicted of felonies involving "moral turpitude." The state's registration form reproduces the law correctly, requiring voters to swear that they are "not serving a sentence for having been convicted of a felony involving moral turpitude." But because there is no definitive list of such felonies, Georgia's Secretary of State has instructed elections officials to disqualify individuals convicted of *all* felonies. Voters are unlikely to be aware of this interpretation, however, and receive no such guidance from the state's registration form.

In **Mississippi**, only those convicted of certain crimes are prevented from voting in state elections; they retain the right to vote, however, in federal elections. Ten crimes that warrant disfranchisement are listed in the state Constitution. In 2004, the Attorney General unilaterally expanded this list by adding another eleven crimes without constitutional amendment (an action the ACLU believes

*Note: This report analyzes the totality of each state's voter registration form, including any accompanying instructions. The vast majority of the voter registration forms were accessed through state elections websites; links to the forms appear in the appendix. We have assumed, for the purposes of this report, that the online forms are consistent with the paper forms in use in those states. We have not analyzed any instructions that are not included in the same document as the online forms.

violates state law). The problems with the state's voter registration form are thus twofold: first, the form lists all 21 crimes as disfranchising (rather than only the 10 enumerated in the Constitution). Second, the definition of a disfranchising crime aside, the registration form does not allow individuals to register to vote only in federal elections, thereby illegally preventing these voters from exercising their rights (this unlawful prohibition is also the subject of a pending ACLU lawsuit).

Connecticut disfranchises all people convicted of felonies and sentenced to incarceration (those sentenced only to felony probation do not lose the right to vote). Individuals convicted of felony election law violations, regardless of whether they are incarcerated, are also disfranchised. The state's registration form, however, requires applicants to swear that they "have not been convicted of a *disfranchising* felony" (italics added). This language is misleading, since it implies that only certain felonies lead to disfranchisement, obscuring the fact that all those whose felony sentences include incarceration (or who are convicted of election law violations) lose the right to vote.

Washington's registration form suffers from a similar problem of imprecision. The form requires registrants to swear that they are "not presently denied [their] civil rights as a result of being convicted of a felony," but it is unclear from this explanation whether some or all felonies result in the "deni[al of] civil rights." In the state, *all* people convicted of felonies who have not obtained certificates of discharge remain ineligible to vote, a statutory requirement that could be stated much more clearly.

In **Maryland**, only those people convicted of felonies and sentenced to incarceration lose the right to vote (rights are restored upon completion of sentence, including probation and/or parole). Applicants for voter registration, however, are required to swear: "I have never been convicted of a felony, or if I have, I have completed serving a court-ordered sentence of imprisonment, including any term of parole or probation for the conviction." This affirmation does not sufficiently highlight the fact that people never sentenced to incarceration (such as those sentenced only to felony probation) may vote at all times, and so may improperly disfranchise those voters.

Utah's voter declaration reads as follows: "I am not a convicted felon currently incarcerated for commission of a felony." The use of the word "commission" here is imprecise and thus unnecessarily confusing, since it is at the point of *conviction*, rather than at the point of *commission*, that voting rights are revoked. Substituting the word "conviction" would clarify that the voting ban applies to *all* individuals incarcerated for felony convictions—including, for example, those who pleaded "not guilty."

Kansas's voter registration application also contains imprecise eligibility language with the potential for misinterpretation. In the instructions, the form states: "[t]o register to vote you must…have received final discharge from imprisonment, parole, or conditional release if convicted of a felony." This explanation could be misinterpreted to mean that "To register" voters must "have received final discharge from imprisonment" OR "have received…parole" OR "have received…conditional release," rather than that voters under *any* of these forms of felony supervision are disfranchised.

B. *Misleading Information Concerning Voting with a Misdemeanor Conviction*

Many voter registration applications provide inaccurate or misleading information about voting with felony versus misdemeanor convictions.

In **Missouri**, voters must swear:

> If I have been convicted of a felony or a misdemeanor connected with the right of suffrage, I have had the voting disabilities resulting from such conviction removed pursuant to law.

Though this affirmation should reflect the fact that all people with felony convictions are disfranchised until completion of sentence, it could easily be interpreted (incorrectly) to mean that only those convicted of felonies "connected with the right of suffrage" lose the right to vote. In addition, this language does not mention that individuals incarcerated for misdemeanor convictions are disfranchised until their release from incarceration.

In **Iowa**, voters must swear:

> I have not been convicted of a felony (or have received a restoration of rights).

The registration form does not mention that the state's disfranchisement law also disfranchises people convicted of aggravated misdemeanors until they complete their sentences.

If Iowa's form is too narrow, **Indiana**'s form is too broad. The state's registration application requires applicants to swear:

> I am not currently in prison after being convicted of a crime.

By using the term "crime" instead of "felony," the application incorrectly implies that disfranchisement extends to misdemeanor convictions.

In **South Carolina**, individuals convicted of both misdemeanors and felonies who are currently incarcerated (whether in prison or jail) may not vote. The state's registration application requires applicants to swear:

> I am not confined in any public prison resulting from a conviction of a crime.

This language does not sufficiently reflect the law, since it makes no reference to those in jail. In addition, since most states do not disfranchise people with misdemeanor convictions, the registration form should specify this aspect of state law to ensure maximum clarity, particularly in light of recent research showing confusion among many elections officials about state disfranchisement policy.[10] (The application goes on to correctly reflect the continued disfranchisement of people with felony and election law convictions until completion of sentence.)

New York, **Illinois** and the **District of Columbia** do poor jobs of reflecting their respective disfranchisement laws by using the overly narrow word "jail" instead of the broader term "incarceration" to explain who may not vote. In **New York**, potential voters may be thrown off by the registration requirement that they must "not be *in jail* or on parole for a felony conviction" (italics added), since jails (as opposed to prisons) are generally reserved for the confinement of people with misdemeanor convictions and of those awaiting trial (who *are* permitted to vote in New York). **Illinois** applicants may be similarly confused by the stated eligibility requirement that they "not be convicted and in jail." In the state, people incarcerated following both felony *and* misdemeanor convictions are disfranchised, regardless of where they are confined. And in the **District of Columbia**, applicants do not receive clear instructions when they are required to swear that they are "not in jail on a felony conviction." Not only do these instructions inadequately reflect the fact that individuals incarcerated following felony convictions are disfranchised regardless of where they are confined; they also completely fail to mention that individuals incarcerated for certain election-related misdemeanors are also prohibited from voting until release.

C. *Inaccessible Language Concerning Eligibility to Vote*

The disfranchisement language appearing on registration forms in several states, while not necessarily inaccurate, may be unnecessarily difficult for the average voter to understand.

Louisiana includes the following affirmation in its registration application:

> I do hereby solemnly swear or affirm…that I am not currently under an order of imprisonment for conviction of a felony.

Although this affirmation reflects the state's statutory language, it is unreasonable to expect the average person to know that "under an order of imprisonment for conviction of a felony" refers not only to incarceration, but also to parole, probation, and suspended sentences following felony convictions. Furthermore, the registration application makes no mention of the fact that voters with past felony convictions must provide proof—in the form of release papers—that they are no longer "under an order of imprisonment" before their registrations will be processed.

Nevada's affirmation is similarly obscure:

> I swear or affirm...I am not laboring under any felony conviction or other loss of civil rights that would make it unlawful for me to vote.

It is unlikely that individuals will know which "felony conviction[s] or other loss of civil rights…make it unlawful for [them] to vote," particularly given the state's complicated disfranchisement law. Under state statutes, people convicted of first-time, non-violent felonies have their rights automatically restored upon completion of sentence; those with multiple felonies or more serious convictions must seek a restoration of rights from the court in which they were convicted. In addition, all individuals who completed their sentences prior to July 1, 2003 had their rights restored by legislation enacted in 2003. None of this detail is reflected on the registration application, nor does the form reflect the fact that individuals must provide documentary proof that they have completed their sentences and/or have had their rights restored when registering to vote.

Arkansas asks voters to check "yes" or "no" in response to the following question:

> Have you ever pleaded guilty or nolo contendere to, or found guilty of a felony without your sentence having been discharged or pardoned?

Registrants could easily be thrown off by phrases like "nolo contendere" (the Latin for "no contest") and by the lengthy and multi-clausal sentence structure. They may also not know what it means to have their sentences "discharged," and so may be unsure if they are eligible to vote.

Oklahoma's affirmation is also confusing:

> If I have been convicted of a felony, a period of time equal to the original sentence has expired, or I have been pardoned.

This language insufficiently explains complex statutory requirements. In the state, individuals with felony convictions must wait until the length of their original sentences have expired before voting, whether or not they actually serve the entire sentences. (As a result, those released early may not register to vote until their original sentences expire.)

South Dakota's registration application also contains a confusing declaration:

> I am not currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system.

Although technically correct, this language is an inaccessible communication of state law, which disfranchises people whose felony convictions include incarceration in a penitentiary, even if the incarceration is suspended. Those whose felony sentences include incarceration in jail, however, as well as those sentenced only to felony probation are permitted to vote. Voting rights are not restored until the length of the original sentence has expired; if the sentence is extended by the court, the voter remains disfranchised until the end of the court-ordered sentence.

Similarly inaccessible is **Minnesota**'s voter affidavit:

> I certify that I…have the right to vote because, if I have been convicted of a felony, my felony sentence has expired (been completed) or I have been discharged from my sentence.

This overly complex sentence structure and excess of words ("has expired" and "been completed," for instance) is more confusing than it is clarifying.

North Dakota is the only state in the nation without voter registration. If an election board member challenges a potential voter's eligibility, the voter must certify his/her eligibility by completing a voter affidavit. That affidavit contains the following two pieces of information about voters with felony convictions:

> • Pursuant to Section 2 of Article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to Chapter 12.1-33…
>
> • No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.

It is unreasonable to expect the average voter to have a sufficient command of the state Constitution to know what is contained in Chapter 12.1-33, and so many voters may be

discouraged from registering for fear that they do not meet the requirements contained therein. Furthermore, as explained in Section II, the second bullet provides a misleading and inadequate summary of the Constitution's disfranchisement provision, and so is not sufficiently clarifying.

Like that of North Dakota, **Delaware**'s registration application oddly and unreasonably requires applicants to have a command of the state's election code. It instructs potential voters as follows: "You may register to vote if you are…an ex-felon who meets the requirements as specified by law according to 15 Del C. Chapter 61." It is unreasonable to expect the average person to know this statute's (complex) content; as such, this language does little to provide any useful information about voter eligibility.

II. *Eleven states' registration forms contain incorrect or misleading references to how voting rights are restored.*

In some states, individuals completing their terms of incarceration or the entirety of their sentences (depending on state law) automatically regain the right to vote. In other states, however, individuals seeking to vote again must go through onerous, time-consuming and sometimes costly individual application processes before they are eligible.

Eleven states fail to accurately represent their voter restoration policies on their registration forms: some imply restoration is not automatic when it is, while others present misleading information about the rights restoration process.

In **Missouri**, for instance, applicants with felony and certain misdemeanor convictions must swear that they have "had the voting disabilities resulting from such conviction removed pursuant to law," despite the fact that rights are restored automatically upon completion of sentence (for those with felonies) or release from incarceration (for those with misdemeanors). (Only those who are convicted of election-related crimes must receive a pardon.) Similarly, **Connecticut** voters with felony convictions—whose rights are restored automatically upon completion of sentence and payment of any fines—must swear that, if they have been convicted of a "disfranchising felony," their "voting rights have been restored." Voters with felony convictions in **North Dakota** are restored to the vote upon release from incarceration, a provision that is inadequately explained on the state's voter affidavit, which states that "No person convicted of a felony shall be qualified to vote until his or her civil rights are restored." This language implies that voting rights are not automatically restored, and may lead eligible voters with criminal records to assume they must go through a process before they can register to vote.

Idaho's registration form contains the following instructions: "You cannot register to vote in Idaho if: / you have been convicted of a felony and have not had your civil rights restored / Persons convicted of a felony in Idaho have their rights automatically restored upon completion of sentencing including probation or parole." This structure is unnecessarily complicated, and could easily be simplified by eliminating the irrelevant references to rights restoration, since it is automatic in the state. The form later introduces another ill-defined and unnecessarily confusing term when it asks registrants to check a box indicating whether they "have any legal disqualifications."

Kansas's registration form also incorrectly implies that rights restoration is not automatic, a problem magnified by the form's seemingly contradictory explanations of state disfranchisement policy. The form's instructions state the following: "To register to vote you must…have received final discharge from imprisonment, parole, or conditional release if convicted of a felony." In addition to presenting state disfranchisement policy in a potentially misleading manner (as explained in Section I), this explanation is inconsistent with that in the voter affidavit, which says: "I swear or affirm…that if convicted of a felony, I have had my civil rights restored." According to state law, rights are restored upon completion of sentence, but voters could easily be misled by the conflicting messages presented in the instructions and the affidavit.

States with complex rights restoration schemes are particularly susceptible to including unclear or misleading eligibility information on their voter registration forms. This is not surprising, since it is difficult to explain complex restrictive laws in the small space allotted on most forms.

Arizona maintains an especially complex policy: those with first-time, single-count felonies have their eligibility restored automatically upon completion of sentence and

payment of any fines and fees. People with multiple felony convictions, in contrast, must submit to an extensive process to regain their voting rights. But the state's voter registration form fails to distinguish between these two distinct processes: it simply requires all applicants to swear that they are "NOT a convicted FELON or [their] civil rights are restored." This lack of distinction could lead those with single felonies to incorrectly believe they are required to take action to have their voting rights restored. Any resulting confusion is only compounded by new research showing that individuals who inquire about the rights restoration process can expect to receive *inaccurate* information from state elections officials.[11]

Wyoming also fails to adequately explain its multi-tiered rights restoration system on its voter registration application. In the state, people convicted of first-time, non-violent felonies can apply to the Board of Parole five years after completion of sentence for a certificate restoring their voting rights. People with multiple and/or violent felony convictions, however, must apply for a pardon or a restoration of rights from the Governor. The state's registration application incompletely conveys this information, requiring applicants to simply swear: "I have not been convicted of a felony, or if I have been convicted of a felony, I have had my civil or voting rights restored by a competent authority." While not incorrect, the term "competent authority" is too vague to communicate that, for different types of convictions, restoration must be obtained from different government entities.

Iowa restores the voting rights of all disfranchised individuals upon completion of sentence. Individuals who completed their sentences before the policy went into effect had their rights automatically restored retroactively. Those completing their sentences afterwards, however, receive an executive order from the Governor restoring their rights approximately three months after completion of sentence. Individuals wishing to register need not have the order in hand when registering, but must have ascertained beforehand that their orders have been signed. This complex policy is ill-reflected in the state's voter registration form, which requires registrants to swear: "I have not been convicted of a felony (or have received a restoration of rights)." As a result, eligible voters who have not technically "received" this rights restoration documentation may mistakenly believe that they cannot register.

Tennessee's complicated rights restoration procedure is also poorly communicated on the state's voter registration application. The state permits many (but not all) people convicted after 1981 who have completed their sentences, have paid all court-ordered restitution and are current on any child support obligations to apply for and obtain a Certificate of Restoration and then register to vote. Those convicted of certain crimes within certain time periods, however, are permanently disfranchised. The instructions above the application incompletely explain the regulation, simply stating that "[t]o register to vote…you must not have been convicted of a felony, or if you have, your full rights of citizenship must have been restored (or you must have received a pardon)."

This insufficient explanation speaks to the need not only to amend voter registration applications, but also to simplify disfranchisement policies, which—if they are as complex as Tennessee's—cannot adequately be explained in the limited space of a voter registration form.

Virginia—along with Kentucky—has the most restrictive felony disfranchisement law in the nation. To regain their voting rights, people with in-state felony convictions must apply for and receive individual pardons or restorations of rights from the Governor. The process restores the franchise to such a miniscule number of citizens that the state is considered to permanently disfranchise residents with criminal records.[12] Those with out-of-state convictions fare slightly better, since they are permitted to vote in Virginia if they can demonstrate that they have had their rights restored in their state of conviction.

Virginia's registration form reads as follows:

Have you ever been convicted of a felony?

☐YES ☐NO

State where convicted _____

If YES, have your voting rights been restored?

☐YES ☐NO

If YES, when restored MM/DD/YYYY _____

The problems with this language are manifold: first, voters whose rights have been restored may not be able to recall the exact day, month and year of their restoration or easily access documentation of such restoration. Second, Virginia residents convicted in states where rights are restored automatically may also be unsure of how to answer the above questions. Many states restore voting rights automatically upon release from incarceration or completion of sentence, so people convicted in these states may be unsure whether to check "yes" to certify that their voting rights have "been restored." These individuals will be even less likely to know that they are required to *demonstrate* such restoration; even if they were aware of this requirement, the form gives no indication as to *how* this demonstration can be achieved. Finally, people who check "yes" to indicate that they have been convicted of a felony but "no" to the question about rights restoration are not at that point instructed to stop completing the form, and so could mistakenly register improperly.

Kentucky's registration form contains an interesting quirk that may call into question the validity of the voter affidavit. The form requires voters to "swear or affirm" the following: "I am not a convicted felon, or if I have been convicted of a felony, my civil rights must have been restored by executive pardon." While an accurate explanation of disfranchisement policy—Kentucky is one of only two states where rights restoration is so severely limited—this grammatical structure only requires voters to affirm state law, rather than to affirm that they are eligible. In other words, it requires voters to swear that their "civil rights *must* have been restored by executive pardon" but not that their civil rights *have* been so restored. As a result, the affirmation does not adequately establish the eligibility of the individual registrant.

III. *Four states' registration forms use confusing or misleading formats to present state disfranchisement policy.*

In addition to presenting misleading or inaccurate information about eligibility, some states maintain voter registration forms with formats that are generally confusing or inaccessible.

Tennessee's registration form includes both a confusing sentence structure and a potentially problematic presentation format that may result in incorrect voter disqualification or improper registration. After the instructions explain, "To register to vote…you must not have been convicted of a felony, or if you have, your full rights of citizenship must have been restored (or you must have received a pardon)," the voter declaration requires that applicants check "yes" or "no" in response to a series of questions, as follows:

	Yes	No
5. I am a U.S. citizen.	___	___
6. I am a resident of the State of Tennessee.	___	___
7. I will be at least 18 years old on/or before the next election.	___	___
8. I have been convicted of a felony.	___	___

The final question, which asks applicants whether they have ever "been convicted of a felony," is problematic because it does not give applicants the opportunity to explain whether they have had their rights restored or not. As a result, people with felony convictions may be wary of registering at all, since they will be required to check "yes" in response to the fourth question and may worry this will result in the automatic rejection of their applications. In addition, since the instructions above indicate that only those who have had their rights restored can register, people with felony convictions who *have* had their rights restored may improperly check "no" in response to this question. Finally, because all but the last question—pertaining to felony disfranchisement—require an affirmative answer from voters seeking to successfully register, voters *without* felony convictions may unintentionally check "yes" to all questions, thereby accidentally disqualifying their applications.

Arkansas's registration form also employs both a confusing format and inaccessible language. In addition to using unfamiliar phrases like "nolo contendere" and "discharged [sentence]," the form presents the felony disfranchisement pro-

vision as one of a series of yes/no questions that could even trip up experienced voters:

(A) Are you a citizen of the United States of America and an Arkansas resident?

☐YES ☐NO

(B) Will you be eighteen (18) years of age or older on or before election day?

☐YES ☐NO

(C) Are you presently adjudged mentally incompetent by a court of competent jurisdiction?

☐YES ☐NO

(D) *Have you ever pleaded guilty or nolo contendere to, or found guilty of a felony without your sentence having been discharged or pardoned?*

☐YES ☐NO

(E) Do you claim the right to vote in another county or state?

☐YES ☐NO

If you checked **No** in response to either questions A or B, do not complete this form.

If you checked **Yes** in response to one or more of questions C, D or E, do not complete this form (italics added).

The wording of the felony disfranchisement section is particularly hard to understand, since both individuals who have *never* been convicted of felonies AND those who *have* been convicted but have completed their sentences must check "no." Perhaps most affected will be people *without* felony convictions who may be confused about how to respond and wary of checking a box incorrectly when it relates to having a criminal record.

In addition, the question's placement among four other questions is equally problematic. A qualified voter would have to check "yes" to the first two questions and "no" to the final three questions in order to successful register. As a result, applicants may get confused and accidentally check "yes" all the way down the line, thereby disqualifying their applications inadvertently. Experienced voters who think they know how the form works and so don't read carefully could also be particularly impacted by this misleading format.

As discussed in Section II, **Virginia**'s registration form employs a format likely to discourage eligible voters with both in-state and out-of-state felony convictions. In addition to facilitating confusion about rights restoration, the structure fails to link the eligibility instructions above—which specify that "to register to vote in Virginia, you must…Have had your voting rights restored if you have ever been convicted of a felony"—to the yes/no questions below. In other words, people who check "yes" to indicate that they have been convicted of a felony but "no" to the question about rights restoration are not at that point instructed to stop completing the form, and so could, by accident, register improperly.

West Virginia also fails to clearly present the state's felony disfranchisement provision. The state's voter declaration appears on the registration application as follows:

Voter Declaration – I swear or affirm that:

READ AND CHECK ALL BOXES THAT APPLY:

☐ I am **NOT** currently under conviction, probation or parole for a felony, treason or election bribery;
☐ I have **NOT** been judged mentally incompetent in a court of competent jurisdiction;
☐ **YES** I live in West Virginia at the above address;
☐ **YES** I am a United States citizen; and
☐ **YES** I am at least 18 years old or am 17 years old and will be 18 years old on or before the next general election.

☐ **YES** I would like to be a pollworker.

In addition to the fact that voters may not know what it means to be "under conviction," voters with *and* without felony convictions may have a hard time knowing whether to check the box because of the confusing sentence structure. All eligible voters should check the box (effectively saying "yes, I am not currently under conviction," an awkward and confusing affirmation), but many may worry about affirmatively checking a box that relates to having a criminal record. Furthermore, the form does nothing to instruct voters who *cannot* check any of the boxes to refrain from completing the application. (To make matters even more confusing, all boxes must be checked for a voter to be eligible, with the exception of the small box asking voters if they want to be poll workers.) As a result, the form simply

identifies, rather than *disqualifies*, voters with felony convictions currently serving sentences.

IV. *Four states' registration forms contain no guidance on registering to vote with a criminal record, despite the existence of state disfranchisement policies.*[13]

In **Colorado**, those convicted of felonies and sentenced to incarceration lose the right to vote until completion of prison sentences and parole terms. Individuals sentenced only to probation, and those convicted of misdemeanors, retain the right to vote. Despite the existence of these provisions, Colorado's voter registration form contains no information at all about registering to vote with a felony conviction. It is unclear, in light of this omission, whether and how voters with criminal records receive accurate information about their eligibility. Recent litigation in the state over the eligibility of people on parole makes this omission particularly problematic. As a result, some individuals are likely discouraged from registering even if they are eligible, and those who are ineligible are vulnerable to registering improperly. This confusion and likely de facto disfranchisement are compounded by the fact that, according to new research, many county clerks are unaware of the state law and do not know the distinction between probation and parole.[14]

In **New Hampshire**, **Oregon** and **Pennsylvania**, individuals with felony convictions can vote upon release from incarceration; as such, people on probation and parole, as well as those who have completed their sentences, are permitted to vote. None of these states, however, makes this information known on their voter registration forms.

Conclusion

The variety of problems that plague voter registration forms across the country speak to the difficulty of effectively administering complex and varied state felony and misdemeanor disfranchisement policies. Following the report's general recommendations, we outline the principles states should follow when amending their registration forms to promote maximum clarity. This will help to ensure that fewer eligible voters are disfranchised, a critical goal for our democracy.

RECOMMENDATIONS

All states interested in promoting the full and unfettered democratic participation of their citizens ought to maintain clear, accurate and accessible eligibility information on their registration forms, which serve as key and often sole sources of information about voter eligibility. As such, it is critical that voter registration forms accurately represent state felony and misdemeanor disfranchisement policies.

Amending voter registration forms is a viable step states can take to strengthen our democracy. In North Carolina, for example, the state registration form was recently amended when pro-democracy advocates alerted elections officials to the fact that eligible voters, including those *without* criminal records, were having their registrations rejected as a result of confusing disfranchisement language.

This section is broken into three parts: the first provides a series of general recommendations outlining a variety of measures states can implement —including amending voter registration forms—to improve the administration of disfranchisement laws and ensure maximum voter access; the second outlines the principles states should observe when amending their registration forms; and the third provides two examples of model eligibility language.

General Recommendations

As a result of the problems identified in this report, we recommend that state elections officials and policymakers consider and undertake the following:

1. *Amend state voter registration forms to accurately reflect the eligibility of individuals with criminal records as well as rights restoration processes, if any.* Eligibility information should be clear, comprehensive and accessible. We are aware that the process by which registration forms can be amended varies from state to state; some states require legislative action and/or Department of Justice preclearance, while others require different forms of approval. The ACLU is committed to working with states to develop effective language and navigate the required amendment processes.

2. *Immediately make available information about the eligibility of voters with criminal records on state elections websites and phone recordings and through elections staff.* State elections officials should ensure that their websites and phone recordings contain accurate and complete eligibility information, and that their staffs are fully knowledgeable about state law. These recommendations are particularly important for states with complicated disfranchisement laws, since there is usually more confusion about eligibility among officials and voters in those states.

3. *Educate elections staff about voter eligibility laws as they pertain to citizens with criminal records.* Elections staff in all states should receive regular trainings on eligibility laws, including the eligibility of citizens with criminal records, with particular attention to the issues raised in this report. This training is especially urgent now, with the November elections quickly approaching and voter registration still open in many states. States with complicated laws and where research has revealed a lack of knowledge among elections officials should make a particular effort to implement such trainings.[15]

4. *Educate people with criminal records about their voting rights when they leave correctional supervision.* Departments of corrections should educate people being discharged from incarceration, probation and parole about when and how they regain their voting rights. Where appropriate, they should also provide these individuals with voter registration forms and assist them in filling them out. Regaining the right to vote is an important part of the reentry process and so should be an integral part of corrections departments' discharge protocols.

5. *Take affirmative steps to ensure maximum voter access on Election Day.* Chief state elections officials should ensure that staffs are briefed on the issues identified in this report, and are prepared to answer questions from voters who may have had their registrations improper-

ly rejected. Because the recommendations outlined here cannot all be implemented before Election Day, states should plan to have an adequate number of provisional ballots on hand and should instruct poll workers to make them available to all voters not appearing on the rolls who believe they are eligible to vote.

6. *Amend state disfranchisement laws to maximize voter participation, minimize error by officials, and reduce bureaucracy.* Voting is a core democratic principle, and all Americans should be encouraged to exercise this fundamental right. Felony or misdemeanor disfranchisement is not a criminal sanction and serves no public safety function; indeed, research has shown that people who vote are less likely to be rearrested.[16] As such, an individual's criminal record should have no bearing on his or her right to vote.

Complex rights restoration schemes—which often involve burdensome application processes and layers of bureaucracy—are easy to misapply. We recommend that these schemes, which often disfranchise eligible voters, be abandoned in favor of automatic, paperwork-free rights restoration upon release from incarceration. Streamlined disfranchisement laws would also allow for simplified voter eligibility instructions and maximum voter participation.

Automatic post-incarceration enfranchisement is the easiest form of re-enfranchisement for the voting public to understand and for elections officials to administer. Barring the elimination of felony and misdemeanor disfranchisement policies altogether, this is the most pragmatic policy for states with more restrictive laws to adopt.

Principles of Accessible Registration Forms

Below is a list of general principles that we encourage states to observe when amending their registration forms. Since each state maintains a different registration form and disfranchisement laws vary so widely across the country, we recommend that amendments be made on a case-by-case basis and with attention to the totality of the registration form. The ACLU welcomes the opportunity to work with elections officials to develop registration forms that best fit the needs and laws of their respective states.

- *Voter eligibility information should be written in short sentences and in language that is easy to understand.*[17] Organizations including the U.S. Election Assistance Commission recommend that voting-related information be as simple and straightforward as possible, thereby increasing accuracy and accessibility for all voters.[18] Complex, multi-clausal sentence structures and yes/no formats pertaining to felony and misdemeanor disfranchisement can be confusing to voters and should be avoided.

- *Information about voting with a criminal record should appear in the instructions sections of voter registration forms, alongside other information about voter eligibility.* That way there is sufficient space to explain often complex disfranchisement and restoration policies and procedures, and people will know up front if they are elegible to register. States whose registration forms are not accompanied by eligibility instructions should develop such instructions and ensure that they are always included with voter registration forms.

- *Information about the eligibility of voters with criminal records should be affirmatively, not only restrictively, stated.* In addition to explaining which individuals are *ineligible* to vote as a result of state disfranchisement laws, registration instructions should also clarify which individuals are *eligible* to vote. Many Americans—including those with misdemeanor convictions or in pre-trial detention—may mistakenly believe that they have been disfranchised, so their right to vote should be stated affirmatively. Elections officials often evidence similar misconceptions, so affirmative language will be instructive for them as well.

- *States should avoid placing detailed information about felony and misdemeanor disfranchisement in the voter declarations.* There is insufficient space to fully explain disfranchisement policies in the declarations, and voters may be—rightly—wary of signing declarations they do not fully understand. Instead, voter declarations should contain limited references to voting with a criminal record and reference the eligibility criteria explained in the instructions.

• *Language used to describe disfranchisement policy should be consistent across the registration form.* In instances where disfranchisement-related information appears in the voter declaration or elsewhere in the body of the registration form, the language used should be consistent with the instructions section.

Model Eligibility Language

The below examples demonstrate how the principles outlined above can be applied to voter registration forms to provide clear and comprehensive information about registering with a criminal record. The ACLU looks forward to working with state officials to develop eligibility information that best reflects their state laws.

Sample Registration Form: South Carolina

Existing Language:

"VOTER DECLARATION...I am not confined in any public prison resulting from a conviction of a crime / I have never been convicted of a felony or offense against the election laws OR if previously convicted, I have served my entire sentence, including probation or parole, or I have received a pardon for the conviction."

1. *Problem:* The registration form does not have an eligibility section that outlines all of the state's eligibility criteria. As a result, voters with criminal records must wait until they get to the voter declaration to find out if they are eligible to register.

Recommendation: Develop an eligibility section of the registration form and include in it information about voting with a criminal record.

2. *Problem:* Individuals convicted of both misdemeanors *and* felonies who are currently incarcerated in prison *or* jail may not vote. Individuals incarcerated for misdemeanor convictions regain the right to vote upon release from incarceration. Those with felony convictions and those with election-related felony *and* misdemeanor convictions cannot vote again until they fully complete their sentences. This language does not sufficiently reflect these disfranchisement provisions.

Recommendation: Include the following language in the eligibility section:

To register you must:
- Be a citizen of the United States of America.
- Be 18 years of age on or before election day.
- Not currently be incarcerated for a felony or misdemeanor conviction.
- Not currently be on parole or probation for a felony conviction or an election law offense.

If you have a criminal record:
*You **may not vote** if:*
- You are incarcerated for a felony conviction.
- You are incarcerated for a misdemeanor conviction.
- You are on parole or probation for a felony conviction.
- You are on parole or probation for an election law offense (felony or misdemeanor).

*You **may vote** if:*
- You were convicted of a felony or an election law offense and you have fully completed your sentence.
- You were convicted of a misdemeanor (other than an election law offense) and you have been released from incarceration.
- You were convicted of a misdemeanor (other than an election law offense) and you are on parole or probation.
- You are in prison awaiting trial (use an absentee ballot).

3. *Problem:* There is insufficient space to explain the state's complex disfranchisement law in the voter declaration.

Recommendation: Replace the language in the voter declaration with the following:

I swear or affirm that:
- I am not currently incarcerated for a felony or misdemeanor conviction.
- I am not currently on parole or probation for a felony or an election law offense.

4. *Problem:* Most South Carolina counties require individuals with felony or election offense convictions to provide proof of completion of sentence with their voter registration forms. This requirement is not reflected on the registration form, however.

Recommendation: Eliminate this practice, which places an undue burden on many potential voters. Barring elimination, include the following language on the voter registration form: "If you were convicted of a felony or an election offense, you may be required to provide proof that you have completed your sentence. Before submitting this application, check with your county voter registration board to determine if this documentation is required. Such documentation is not required by law, but some South Carolina counties require it nonetheless."

5. *Problem:* The registration form asks for the applicant's race, but does not explain that this information is optional.

Recommendation: Next to "RACE," insert "(optional)."

Sample Registration Form: Arizona

Existing Language:

- Instructions:
  "You Cannot Register To Vote In Arizona If: / You have been convicted of a felony and have not yet had your civil rights restored."
- Voter Declaration:
  "By signing below, I swear or affirm that the above information is true...I am NOT a convicted FELON or my civil rights are restored."

1. *Problem:* This language does not sufficiently explain the state's rights restoration policy. Specifically, it does not indicate that people convicted of first-time felonies have their voting rights restored automatically upon full completion of sentence, while those with multiple felony convictions must apply to have their voting rights restored.

Problem: This language does not clarify that people incarcerated for misdemeanor convictions and those held in pre-trial detention *are* eligible to vote.

Recommendation: Amend the registration instructions to say:

You Cannot Register to Vote in Arizona If:
- You have been convicted of a felony and your voting rights have not been restored.

If you have a criminal record:
*You **may not** vote if:*
- You are currently serving a sentence for a *first-time felony*. Your right to vote is restored automatically when you fully complete your sentence. This includes completion of incarceration and probation. It also includes payment of fines, fees, and restitution.
- You have *multiple felony convictions* and have not applied for and received a restoration of voting rights.

*You **may vote** if:*
- You have been convicted of a felony and your voting rights have been restored.
- You are in prison for a misdemeanor conviction (use an absentee ballot).
- You are on probation for a misdemeanor conviction.
- You are in prison awaiting trial (use an absentee ballot).

2. *Problem:* There is insufficient space to explain the state's complex disfranchisement law in the voter declaration.

Recommendation: Amend the voter declaration to say:

"By signing below, I swear or affirm that the above information is true…If I have been convicted of a felony, I am eligible to vote as explained above."

APPENDIX: VOTER REGISTRATION FORMS

Alabama
Registration form available at www.sos.state.al.us/downloads/election/vr/nvra-2.pdf; accessed 7/23/08.

Arizona
Registration form available at www.azsos.gov/election/Forms/voterregistrationform.pdf; accessed 7/23/08.

Arkansas
Registration form available at www.sos.arkansas.gov/elections/elections_pdfs/voter/voter_reg_ap_ar.pdf; accessed 8/26/08.

Colorado
Registration form available at www.elections.colorado.gov/WWW/default/Clerks%20Corner/SOS%20Approved%20Forms/2008_forms/approved_registration_form_37_combo_VR_application_english_color_07.02.08.pdf; accessed 7/23/08.

Connecticut
Registration form available at www.ct.gov/sots/LIB/sots/ElectionServices/ElectForms/electforms/ed671.pdf; accessed 7/23/08.

Delaware
Voter registration form not available online; hard copy received from the Department of Elections 9/8/08.

District of Columbia
Registration form available at www.dcboee.org/pdf_files/Mail_VRForm_HAVA2003.pdf; accessed 9/24/08.

Georgia
Registration form available at sos.georgia.gov/elections/voter_registration/GA%20VOTER%20REGISTRATION%20%20APP(Fill_2007).pdf; accessed 7/23/08.

Idaho
Registration form available at www.idahovotes.gov/VoterReg/vtr_reg_form.pdf; accessed 7/23/08.

Illinois
Registration form available at www.elections.state.il.us/Downloads/VotingInformation/PDF/R-19.pdf; accessed 8/26/08.

Indiana
Registration form available at www.in.gov/sos/elections/pdfs/50504.pdf; accessed 7/23/08.

Iowa
Registration form available at www.sos.state.ia.us/pdfs/elections/voteapp.pdf; accessed 7/23/08.

Kansas
Registration form available at www.kssos.org/forms/elections/voterregistration.pdf; accessed 8/26/08.

Kentucky
Registration form available at www.elect.ky.gov/NR/rdonlyres/BF1B9783-92F9-4753-9AEA2B6A3EE883C2/152422/registrationCard_08_update.pdf; accessed 8/26/08.

Louisiana
Registration form available at www.sos.louisiana.gov/Portals/0/elections/forms/form_0110_ver-011106.pdf; accessed 7/23/08.

Maryland
Registration form available at www.elections.state.md.us/pdf/2007_English_InternetVRA.pdf; accessed 8/26/08.

Minnesota
Registration form available at www.sos.state.mn.us/docs/english_voter_registration_application_with_return_address.pdf; accessed 8/26/08.

Mississippi
Registration form available at http://www.sos.state.ms.us/elections/VoterRegistration/UpdatedVoterReg.pdf; accessed 9/24/08.

Missouri
Registration form available at www.sos.mo.gov/elections/register2vote/Wright.pdf; accessed 7/23/08.

Nevada
Registration form not available online; hard copy received from the Secretary of State 9/2/08.

New Hampshire
Registration form available on p. 166 of the state's election procedure manual, available at www.sos.nh.gov/FINAL%20EPM%208-30-2006.pdf; accessed 8/21/08.

New York
Registration form available at www.elections.state.ny.us/NYSBOE/download/voting/voteform.pdf; accessed 7/23/08.

North Dakota
ND does not have voter registration; voter affidavit available at www.nd.gov/eforms/Doc/sfn17343.pdf; accessed 8/26/08.

Oklahoma
Registration form available at www.ok.gov/~elections/vrform.pdf; accessed 7/23/08.

Oregon
Registration form available at www.sos.state.or.us/elections/votreg/sel500.pdf; accessed 7/23/08.

Pennsylvania
Registration form available at www.dos.state.pa.us/voting/lib/voting/02_voter_registration_applications/onlinevoterregformblank.pdf; accessed 7/23/08.

South Carolina
Registration form available at www.scvotes.org/files/VR_Blank_Form.pdf; accessed 7/23/08.

South Dakota
Registration form available at www.sdsos.gov/electionsvoteregistration/electvoterpdfs/votregformlongbweffective20080908.pdf; accessed 9/29/08.

Tennessee
Registration form available at www.state.tn.us/sos/election/forms/ss-3010.pdf; accessed 7/23/08.

Utah
Registration form available at elections.utah.gov/VoterRegistrationForm.pdf; accessed 8/26/08.

Virginia
Registration form available at www.sbe.virginia.gov/cms/documents/VoterRegistration/sbe_voter_app_DOJ-Printed.pdf; accessed 8/26/08.

Washington
Registration form available at www.secstate.wa.gov/elections/pdf/2007/MI-VRCard.pdf; accessed 8/26/08.

West Virginia
Registration form available at www.wvsos.com/forms/elections/wvvoterregistration.pdf; accessed 8/26/08.

Wyoming
Registration form available at soswy.state.wy.us/Forms/Elections/General/vrapp.pdf; accessed 9/4/08.

ENDNOTES

1 Bureau of Justice Statistics. *Use and Management of Criminal History Record Information: A Comprehensive Report*. 1993. Prepared by SEARCH.

2 Barreras, Ricardo, and Ernest Drucker. *Studies of Voting Behavior and Felony Disenfranchisement among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio.* Washington, DC: The Sentencing Project, 2005.

3 *De facto Disenfranchisement*, a new report by the ACLU and the Brennan Center, reveals the alarming frequency with which voters receive inaccurate information from elections officials about the eligibility of individuals with criminal records.

4 Chin, Margaret, et al. *Better Ballots* (46). New York: Brennan Center for Justice, 2008.

5 Bureau of Justice Statistics. *Use and Management of Criminal History Record Information: A Comprehensive Report*. 1993. Prepared by SEARCH.

6 *Better Ballots* (10).

7 Research forthcoming from the ACLU of Tennessee.

8 It is important to note that research has shown that voter fraud is an insignificant threat to the integrity of U.S. elections. *See* Levitt, Justin. *The Truth About Voter Fraud*. New York: Brennan Center for Justice, 2007; *See also* Callahan, David, and Lori Minnite. *Securing the Vote: An Analysis on Election Fraud*. New York: Demos, 2003.

9 Manza, Jeff, and Christopher Uggen. *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample.* Columbia Human Rights Law Review 36 (2004-2005):193.

10 *South Carolina County Election Board Survey on Felony & Misdemeanor Disfranchisement*. New York: ACLU, 2008.

11 Research forthcoming from the ACLU of Arizona.

12 Between 1982 and 2004, the state of Virginia restored rights to only 5,043 of the 243,902 disfranchised Virginians. *See* Kansal, Tushar, and Marc Mauer. *Barred For Life: Voting Rights Restoration in Permanent Disenfranchisement States* (6). Washington, DC: The Sentencing Project, 2005.

13 Some states—Delaware, Hawaii, Illinois, Michigan and Ohio—provide eligibility information in the instructions section but not the body of the registration form. As long as the instructions are clear and always accompany the registration form, this practice is for the purposes of this report, an acceptable means of informing voters about their eligibility.

14 Research forthcoming from the ACLU of Colorado.

15 *De facto Disenfranchisement*.

16 Manza, Jeff, and Christopher Uggen. *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample.* Columbia Human Rights Law Review 36 (2004-2005).

17 *Better Ballots* (16).

18 U.S. Election Assistance Commission. *Effective Designs for the Administration of Federal Elections* (2.3). June 2007.