



BE THE POWER



**United States' Compliance with the
International Covenant on Civil and Political Rights**

**Joint Submission Authored by
American Civil Liberties Union of Florida¹
Suggested List of Issues to Country Report Task Force on the United States**

**107th Session of the Human Rights Committee, Geneva²
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² Human Rights Committee, *Consideration of reports and country situations in the absence of a report*, <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm> (last visited Dec. 10, 2012).

Permanent Felon Disfranchisement and Obstacles to Rights Restoration in Florida (Article 25 (right to participate in public affairs and the right to vote); Article 26 (equality before the law without discrimination based on race); Article 10 (essential aim of incarceration as reformation and social rehabilitation))¹

I. Issue Summary

Permanent disfranchisement does not meet the requirements of Article 25 and 26 of the ICCPR. The organizations listed above request that the Human Rights Committee include felon disfranchisement on the list of issues for its review of the United States.

Florida permanently disfranchises all citizens with a felony conviction, unless they receive discretionary executive clemency.² Florida's disfranchisement rate remains highest among the 50 states and has a disproportionate impact on racial minorities. As of 2010, Florida has disfranchised 1,541,602 citizens due to a felony conviction, or 10.42% of the voting age population.³ Florida disfranchises African American voters at more than twice the rate of non-African American voters.⁴ One in five African Americans of voting age has been disfranchised.⁵

Once convicted of a felony, executive clemency provides the only avenue for voting rights restoration in Florida. This limited opportunity for restoration does not satisfy the requirement that deprivation of voting rights should be "objective and reasonable" or that suspension of rights should be "proportionate" to the offense and the sentence.⁶

Permanent disfranchisement coupled with Florida's exceedingly restrictive clemency process leaves Floridians susceptible to political manipulation prior to an election. In March 2011, the Board of Executive Clemency, comprised of the Governor and three elected members of the Florida Cabinet, significantly curtailed voting rights simply by amending the Clemency Rules. The 2011 Rules impose a five or seven year waiting period before returning citizens become eligible to apply for restoration.⁷ The Board then has unfettered discretion to grant or deny restoration.

As a result of the extended ineligibility period, rights restoration all but ceased in 2011. Only 52 people had their rights restored in 2011, as compared to 115,000 between April 2007 and June 2008, 24,375 in 2009 and 5,582 in 2010.⁸ The backlog of rights restoration applications – 105,341 in March 2011⁹ – also decreased substantially in 2011 because the amended Rules rendered many applicants ineligible while their application was pending.¹⁰ The ease with which the Board can change eligibility requirements before an election is particularly troubling in light of Florida's significance as a "swing state" and its large number of electoral votes (29) to contribute to a Presidential election.

The system of lifetime felon disfranchisement and discretionary clemency disproportionately impacts African American citizens in Florida. Florida disfranchises the highest proportion of the African American voting age population among the 50 states and disfranchises African American citizens at more than twice the rate of non-African American citizens.¹¹ This voting rights barrier dates back to the Reconstruction Era when newly freed slaves were granted the right to vote. Florida officials responded by enshrining this policy into the state constitution,

leaving African Americans with a limited voice in their government for years to come. When Florida enacted its most recent constitution in 1968, voting-age African Americans were more than twice as likely as non-African Americans to be barred from the vote on account of a prior felony conviction. The disparity is as pronounced today.

II. Concluding Observations from 2006

In response to the U.S. second and third periodic report, the Committee's 2006 concluding observations noted significant concerns regarding the high number of citizens barred from voting due to a felony conviction and the significant racial implications of the ban. "The Committee is of the view that general deprivation of the right to vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of articles 25 of 26 of the Covenant, nor serves the rehabilitation goals of article 10 (3)."¹²

The Committee recommended restoration of voting rights to citizens who have fully served their sentences and those who have been released on parole. The Committee recommended that the U.S. review felon disfranchisement regulations to ensure that they always meet the reasonableness test of article 25 and called on the U.S. to assess the disproportionate minority impact of disfranchisement laws.¹³

III. U.S. Government Report

The U.S. included an extensive discussion of felon disfranchisement in its fourth periodic report.¹⁴ The U.S. noted that the 14th Amendment to the U.S. Constitution allows for criminal disfranchisement, but that most states terminate voting restrictions at the end of an offender's term of incarceration. The U.S. also pointed out that felon disfranchisement is a matter of ongoing debate, criticized for weakening democracy and its disproportionate impact on minorities. The U.S. reported that the right of former felons to vote has been expanded in five states, but that "Florida, however, toughened its laws in March 2011, banning automatic restoration of voting rights for all convicted felons."¹⁵

IV. Other UN and Regional Bodies Recommendations

The ACLU lodged a petition in the Inter-American Commission on Human Rights (IACHR) in 2006 alleging that New Jersey's practice of denying voting rights to convicted felons on parole and probation violates U.S. and international law, including the right to vote, right to be free from racial discrimination, and the right to rehabilitation. As of December 2012, the petition is still pending admissibility determination before the IACHR.¹⁶

In 2008, the UN Committee on the Elimination of Racial Discrimination (CERD Committee) expressed concern about the "disparate impact that existing felon disfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons" and recommended that the U.S. ensure that only those convicted of the most serious crimes are denied the right to vote, and that "the right to vote is in any case automatically restored after the completion of the criminal sentence."¹⁷

The UN Working Group of experts on people of African Descent also expressed concern over felon disenfranchisement after its visit to the U.S. in January 2010. The Working group stated that NGOs informed members that “the disenfranchisement of some voters was a structural issue that disproportionately affected people of African descent.”¹⁸

In its Needs Assessment Mission in advance of its election monitoring mission to the U.S. during the November 2012 election, the Organization for Security and Co-operation in Europe (OSCE) expressed concern with felony disenfranchisement in the United States, specifically noting legislation passed in Florida in 2011 that re-introduced permanent disenfranchisement of prisoners and ex-prisoners.¹⁹ The OSCE reiterated these concerns in its statement of preliminary findings and conclusions in November 2012.²⁰

V. Recommended Questions

1. We urge the Committee to ask the U.S. whether changes to state felon disenfranchisement laws since 2008 decreased participation among voting age citizens in the 2012 general election, and whether any change in participation disproportionately impacted racial minorities.
2. We ask the Committee to seek U.S. review of the nature of the offenses for which citizens are subject to disenfranchisement in the U.S. and consider whether the term of disenfranchisement is proportionate to the offense.

VI. Suggested Recommendations

1. We suggest the Human Rights Committee recommend that the U.S. investigate the disproportionate minority impact of felon disenfranchisement in the U.S.
2. We suggest the Human Rights Committee recommend that the U.S. investigate the disproportionate minority impact of felon disenfranchisement in Florida.
3. We ask the Committee to recommend that the U.S. pass the Democracy Restoration Act, restoring voting rights in federal elections to disenfranchised Americans upon release from incarceration.

¹ The Human Rights Committee issued General Comment 25 regarding Article 25, stating: “In their reports, State parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.” Human Rights Comm., 57th Sess., General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service (Article 25), ¶14, U.N. Doc. CCPR/C/21/Rev.1/Add.7 available at <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

² The Florida Constitution provides that “[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights[.]” Fla. Const. art. VI, § 4 (1968).

³ Christopher Uggen, Sarah Shannon & Jeff Manza, The Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at 16 (2012).

⁴ *Id.*, at 16 – 17.

⁵ *Id.*, at 17.

⁶ See ICCPR Article 25, General Comment No. 25, *supra* note 1.

⁷ See Florida Rules of Executive Clemency, effective March 9, 2011. The rule change eliminated eligibility for restoration upon release from prison, and with it the process by which the Florida Department of Corrections automatically forwarded category 1 restoration applications to the Florida Parole Commission for immediate review. See Fla.R.Ex.C., effective April 5, 2007. The 2011 Rules instead require returning citizens to apply individually for restoration. An applicant must complete all sentences and conditions of supervision, satisfy all restitution obligations, and complete the five or seven year waiting period before they become eligible to apply for restoration. Applicants in the five-year ineligibility category must also remain arrest-free for 5 years, regardless of the outcome of an arrest, and have no criminal charges pending.

⁸ Florida Parole Commission, Annual Report, 2007 – 2008, at 42 (Dec. 31, 2008) *available at* <https://fpc.state.fl.us/PDFs/FPCAnnualreport200708.pdf>; Florida Parole Commission, Status Update: Restoration of Civil Rights' (RCR) Cases Granted 2009 and 2010, at 9 (July 1, 2011) *available at* <https://fpc.state.fl.us/PDFs/2009-2010ClemencyReport.pdf>; Florida Parole Commission, Status Update: Restoration of Civil Rights' (RCR) Cases Granted 2010 and 2011, at 6 (July 1, 2012). The July 2011 Florida Parole Commission report lists 5,582 grants of restoration in 2010 whereas the July 2012 Florida Parole Commission report lists 5,719 grants of restoration in 2010.

⁹ See Florida Senate Criminal Justice Subcommittee, Presentation on the Amended Rules of Executive Clemency (September 20, 2011).

¹⁰ See Florida Parole Commission, Annual Report, 2011 – 2012, at 18 (Dec. 14, 2012) *available at* <https://fpc.state.fl.us/PDFs/FPCAnnualreport201112.pdf>. In FY 2011 – 2012, the Florida Parole Commission received 5,781 clemency applications and closed 73,569 clemency applications. 28,024 clemency applications were pending on June 30, 2012.

¹¹ Uggen, Shannon, & Manza, *supra* note 3, at 16 – 17.

¹² Human Rights Comm., 87th Sess., July 10-28, 2006, Concluding Observations of the Human Rights Committee: United States of America, ¶35, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) *available at* <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

¹³ *Id.*

¹⁴ Human Rights Comm., Fourth Periodic report: United States of America, ¶¶457 – 460, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) *available at* <http://www.state.gov/j/drl/rls/179781.htm>.

¹⁵ *Id.*, ¶459.

¹⁶ Michael Mackson and Ors., v. United States, Petition P-990-08, Inter-Am. Comm'n H.R (2006).

¹⁷ Comm. on the Elimination of Racial Discrimination, 72nd Sess., Feb. 18 – Mar. 7, 2008, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶27, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008) *available at* <http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf>.

¹⁸ Human Rights Council, 15th Sess., Rep. of the Working Group of Experts on People of African Descent: Visit to the United States of America, Jan. 25-29 2010, ¶¶47, 73, U.N. Doc. A/HRC/15/18 (Aug. 6, 2010) *available at* <http://www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf>.

¹⁹ OSCE/ODIHR, Needs Assessment Mission Report: United States of America General Elections 2012, at 5 (Apr. 2012) *available at* <http://www.osce.org/odihr/elections/90650>.

²⁰ OSCE/ODIHR, Limited Election Observation Mission: United States of America-General Elections, 6 Nov. 2012, Statement of Preliminary Findings and Conclusions, 5 (Nov. 7, 2012) *available at* <http://www.osce.org/odihr/elections/96960>.