

116TH CONGRESS
1ST SESSION

S. 1068

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

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2019

Mr. CARDIN (for himself, Ms. HARRIS, Mr. BOOKER, Mr. LEAHY, Mr. BLUMENTHAL, Mr. REED, Ms. WARREN, Mr. VAN HOLLEN, Mr. SANDERS, Mrs. MURRAY, Ms. SMITH, Ms. HIRONO, Ms. KLOBUCHAR, Mrs. GILLIBRAND, Mr. DURBIN, Mr. WHITEHOUSE, Mr. MARKEY, Mr. COONS, Mr. CASEY, Mr. BROWN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Democracy Restoration
5 Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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

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

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

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

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

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

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

14 (5) State disenfranchisement laws vary widely.
15 Two States do not disenfranchise individuals with
16 criminal convictions at all. In 34 States, individuals
17 with convictions may not vote while they are on pa-
18 role and 30 of those States disenfranchise individ-
19 uals on felony probation as well. In 12 States, a con-
20 viction can result in lifetime disenfranchisement.

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

23 (7) In 2016, an estimated 6,100,000 citizens of
24 the United States, or about 1 in 40 adults in the
25 United States, could not vote as a result of a felony

1 conviction. Of the 6,100,000 citizens barred from
2 voting then, only 22 percent were in prison. By con-
3 trast, 77 percent of persons disenfranchised then re-
4 sided in their communities while on probation or pa-
5 role or after having completed their sentences. Ap-
6 proximately 3,100,000 citizens who had completed
7 their sentences were disenfranchised due to restric-
8 tive State laws. As of November 2018, the lifetime
9 ban for persons with certain felony convictions was
10 eliminated through a Florida ballot initiative. As a
11 result, as many as 1,400,000 people are now eligible
12 to have their voting rights restored. In 6 States—
13 Alabama, Florida, Kentucky, Mississippi, Tennessee,
14 and Virginia—more than 7 percent of the total pop-
15 ulation is disenfranchised.

16 (8) In those States that disenfranchise individ-
17 uals post-sentence, the right to vote can be regained
18 in theory, but in practice this possibility is often
19 granted in a non-uniform and potentially discrimina-
20 tory manner. Disenfranchised individuals sometimes
21 must either obtain a pardon or an order from the
22 Governor or an action by the parole or pardon
23 board, depending on the offense and State. Individ-
24 uals convicted of a Federal offense often have addi-
25 tional barriers to regaining voting rights.

1 (9) State disenfranchisement laws disproportion-
2 tionately impact racial and ethnic minorities. As of
3 2016, more than 7 percent of the voting-age Afri-
4 can-American population, or 2,200,000 African-
5 Americans, were disenfranchised. One out of every
6 13 African-Americans were unable to vote because of
7 felony disenfranchisement, which is a rate more than
8 4 times greater than non-African-Americans. 7.4
9 percent of African-Americans were disenfranchised
10 whereas 1.8 percent of non-African-Americans were.
11 In 2016, in 4 States—Florida (23 percent), Ken-
12 tucky (22 percent), Tennessee (21 percent), and Vir-
13 ginia (20 percent)—more than 1 in 5 African-Ameri-
14 cans were unable to vote because of prior convic-
15 tions.

16 (10) Latino citizens are also disproportionately
17 disenfranchised based upon their disproportionate
18 representation in the criminal justice system. If cur-
19 rent incarceration trends hold, the lifetime likelihood
20 of incarceration for males born in 2001 is 17 per-
21 cent for Latinos, in contrast to less than 6 percent
22 for non-Latino White men. When analyzing the data
23 across 10 States, Latinos generally have dispropor-
24 tionately higher rates of disenfranchisement com-
25 pared to their presence in the voting age population.

1 In 6 out of 10 States studied in 2003, Latinos con-
2 stituted more than 10 percent of the total number
3 of persons disenfranchised by State felony laws. In
4 4 States (California, 37 percent; New York, 34 per-
5 cent; Texas, 30 percent; and Arizona, 27 percent),
6 Latinos were disenfranchised by a rate of more than
7 25 percent.

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

13 (12) State disenfranchisement laws can sup-
14 press electoral participation among eligible voters by
15 discouraging voting among family and community
16 members of disenfranchised persons. Future elec-
17 toral participation by the children of disenfranchised
18 parents may be impacted as well.

19 (13) The United States is the only Western de-
20 mocracy that permits the permanent denial of voting
21 rights for individuals with felony convictions.

22 **SEC. 3. RIGHTS OF CITIZENS.**

23 The right of an individual who is a citizen of the
24 United States to vote in any election for Federal office
25 shall not be denied or abridged because that individual has

1 been convicted of a criminal offense unless such individual
2 is serving a felony sentence in a correctional institution
3 or facility at the time of the election.

4 **SEC. 4. ENFORCEMENT.**

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

8 (b) PRIVATE RIGHT OF ACTION.—

9 (1) IN GENERAL.—A person who is aggrieved
10 by a violation of this Act may provide written notice
11 of the violation to the chief election official of the
12 State involved.

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

21 (3) EXCEPTION.—If the violation occurred
22 within 30 days before the date of an election for
23 Federal office, the aggrieved person need not provide
24 notice to the chief election official of the State under
25 paragraph (1) before bringing a civil action to obtain

1 declaratory or injunctive relief with respect to the
2 violation.

3 **SEC. 5. NOTIFICATION OF RESTORATION OF VOTING**
4 **RIGHTS.**

5 (a) STATE NOTIFICATION.—

6 (1) NOTIFICATION.—On the date determined
7 under paragraph (2), each State shall notify in writ-
8 ing any individual who has been convicted of a
9 criminal offense under the law of that State that
10 such individual has the right to vote in an election
11 for Federal office pursuant to the Democracy Res-
12 toration Act of 2019 and may register to vote in any
13 such election and provide such individuals with any
14 materials that are necessary to register to vote in
15 any such election.

16 (2) DATE OF NOTIFICATION.—

17 (A) FELONY CONVICTION.—In the case of
18 such an individual who has been convicted of a
19 felony, the notification required under para-
20 graph (1) shall be given on the date on which
21 the individual—

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

24 (ii) is released from the custody of
25 that State (other than to the custody of

1 another State or the Federal Government
2 to serve a term of imprisonment for a fel-
3 ony conviction).

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

10 (b) FEDERAL NOTIFICATION.—

11 (1) NOTIFICATION.—Any individual who has
12 been convicted of a criminal offense under Federal
13 law shall be notified in accordance with paragraph
14 (2) that such individual has the right to vote in an
15 election for Federal office pursuant to the Democ-
16 racy Restoration Act of 2019 and may register to
17 vote in any such election.

18 (2) DATE OF NOTIFICATION.—

19 (A) FELONY CONVICTION.—In the case of
20 such an individual who has been convicted of a
21 felony, the notification required under para-
22 graph (1) shall be given—

23 (i) in the case of an individual who is
24 sentenced to serve only a term of proba-
25 tion, by the Assistant Director for the Of-

1 fice of Probation and Pretrial Services of
2 the Administrative Office of the United
3 States Courts on the date on which the in-
4 dividual is sentenced; or

5 (ii) in the case of any individual com-
6 mitted to the custody of the Bureau of
7 Prisons, by the Director of the Bureau of
8 Prisons, during the period beginning on
9 the date that is 6 months before such indi-
10 vidual is released and ending on the date
11 such individual is released from the cus-
12 tody of the Bureau of Prisons.

13 (B) MISDEMEANOR CONVICTION.—In the
14 case of such an individual who has been con-
15 victed of a misdemeanor, the notification re-
16 quired under paragraph (1) shall be given on
17 the date on which such individual is sentenced
18 by a court established by an Act of Congress.

19 **SEC. 6. DEFINITIONS.**

20 For purposes of this Act:

21 (1) CORRECTIONAL INSTITUTION OR FACIL-
22 ITY.—The term “correctional institution or facility”
23 means any prison, penitentiary, jail, or other institu-
24 tion or facility for the confinement of individuals
25 convicted of criminal offenses, whether publicly or

1 privately operated, except that such term does not
2 include any residential community treatment center
3 (or similar public or private facility).

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

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

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

9 (C) a primary election held for the selec-
10 tion of delegates to a national nominating con-
11 vention of a political party; or

12 (D) a primary election held for the expres-
13 sion of a preference for the nomination of per-
14 sons for election to the office of President.

15 (3) FEDERAL OFFICE.—The term “Federal of-
16 fice” means the office of President or Vice President
17 of the United States, or of Senator or Representa-
18 tive in, or Delegate or Resident Commissioner to,
19 the Congress of the United States.

20 (4) PROBATION.—The term “probation” means
21 probation, imposed by a Federal, State, or local
22 court, with or without a condition on the individual
23 involved concerning—

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

1 (B) the payment of damages by the indi-
2 vidual;

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

5 (D) supervision of the individual by an of-
6 ficer of the court.

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

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

13 (b) CERTAIN FEDERAL ACTS.—The rights and rem-
14 edies established by this Act are in addition to all other
15 rights and remedies provided by law, and neither rights
16 and remedies established by this Act shall supersede, re-
17 strict, or limit the application of the Voting Rights Act
18 of 1965 (52 U.S.C. 10301 et seq.), the National Voter
19 Registration Act (52 U.S.C. 20501), or the Help America
20 Vote Act of 2002 (52 U.S.C. 20901 et seq.).

21 **SEC. 8. FEDERAL PRISON FUNDS.**

22 No State, unit of local government, or other person
23 may receive or use, to construct or otherwise improve a
24 prison, jail, or other place of incarceration, any Federal

1 funds unless that State, unit of local government, or per-
2 son—

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

4 (2) has in effect a program under which each
5 individual incarcerated in that person's jurisdiction
6 who is a citizen of the United States is notified,
7 upon release from such incarceration, of that indi-
8 vidual's rights under section 3.

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

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

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