

**THE DISENFRANCHISEMENT OF THE RE-ENFRANCHISED:
FOUR YEARS LATER**

**Ohio Justice & Policy Center
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About the Ohio Justice & Policy Center

The **Ohio Justice & Policy Center (OJPC)** is a Cincinnati-based non-profit, non-partisan law firm that represents people marginalized by the criminal justice system and advocates for evidence-based criminal justice reform.

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SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

A. Introduction

In August 2004, the Ohio Justice & Policy Center¹ released a report entitled “The Disenfranchisement of the Re-Enfranchised: How Confusion Over Felon Voter Eligibility in Ohio Keeps Qualified Ex-Offender Voters From the Polls.” Although Ohio law permits former prisoners to resume voting after their release, the 2004 report found that election officials’ knowledge of this law varied by region. The report further found that a significant number of felons on community supervision in the state of Ohio (i.e. probation, parole, post-release control) incorrectly believed that they were ineligible to vote. Additionally, when faced with an inquiry regarding when a felon may vote, many of the 88 county boards of elections did not consistently respond that felons can re-register to vote immediately upon release from prison. Lastly, OJPC found that many boards of elections were sending out written correspondence to felons that misstated or did not clearly explain the law regarding a felon’s right to vote.

In the wake of this report, OJPC sued then Secretary of State Kenneth Blackwell and 21 boards of elections that were advising felons that they could not vote while on probation or parole.² The suit settled with the boards of elections agreeing to take steps to ensure that correct information is provided to felons about their right to vote. OJPC also brought a separate suit against the Summit County Board of Elections related to the board’s practice of sending letters to felons stating that their right to vote had been revoked but failing to inform them that it was reinstated upon release from prison.³ As a result of this omission, the letter implied that the voter had been permanently disenfranchised as a result of the felony conviction. The federal district court agreed with OJPC’s argument and ordered a temporary restraining order requiring the Summit County Board of Elections to send correction letters to over 1900 people who had been potentially misled by the earlier letter.

Four years later, election officials’ knowledge is more accurate and uniform across the state. In spite of this significant improvement, our 2008 follow-up assessment indicates that there is still progress to be made. This summary report documents the need to implement the suggestions proposed in OJPC’s 2004 report and also offers additional practical solutions to increase knowledge of felon voting rights in Ohio. Moreover, because the October 6, 2008 voter registration deadline for this year’s election is fast approaching, it is imperative that all of us, as citizens of a democracy, convey the message that people with felony records can register to vote after release from prison (or immediately if placed on probation in lieu of prison).

B. Significance of the Issue

Approximately 22,000 Ohio prisoners are released each year to live in communities across the state.⁴ Though not eligible to vote while incarcerated, individuals with felony convictions are able to re-register to vote upon discharge.⁵ In Ohio, released prisoners are

not required to be “off paper” (no longer under community supervision) before they can register to vote.⁶ Thus, the more than 33,000 ex-offenders statewide who are currently under some form of community supervision⁷ are eligible to vote.

The right to vote is one of the most fundamental and cherished rights of a free and democratic society. States like Ohio, where former prisoners can vote as soon as released, should take steps to ensure that ex-offenders fully understand this important right. Civic participation is the hallmark of good citizenship as it provides a voice in representative government and a tie to the community. When former prisoners are valuable stakeholders in their communities and feel they are able to contribute in a meaningful way to civic life, their chances of recidivism are reduced⁸ and their likelihood of future success increases.⁹ Such success beneficially impacts society as a whole.

As the 2000 and 2004 presidential elections demonstrated, every vote is significant. The outcome of each election is dependent on thousands of electors and on the evenness, fairness, and accuracy of boards of elections practices. Though this report will not go into depth concerning those particular presidential elections, some sources estimated that irregular practices by boards of elections across the state of Ohio disenfranchised 357,000 voters, well beyond the margin of victory.¹⁰ As in the last two presidential elections, every vote in Ohio will be important in the upcoming 2008 presidential election.

C. Methodology

This 2008 summary report surveyed all 88 county boards of elections using three sources: (1) call-in questioning to point-of-contact staff to discover what information is given to those calling in to inquire about the voting rights of felons (2) public records requests issued pursuant to the Ohio Revised Code requesting the procedures used by boards of elections to remove felons from voting rolls and the correspondence sent by boards of elections to individuals who have been convicted of a felony, and (3) an informal survey distributed to felons in Adult Parole Authority (APA) offices in Montgomery and Hamilton counties to determine their awareness of their voting rights.

1. Call-In

OJPC staff called all 88 county boards of elections to find out whether county elections officials were aware that felons on community supervision could vote. OJPC staff conducted three rounds of surveys in April, May, and June of 2008. During the calls, OJPC staff usually spoke with the elections board employee who answered the phone. Although in a few instances our calls were referred to the Director or Deputy Director, OJPC representatives did not ask to speak to these officials because the objective was to test the information provided by the employees who usually have contact with the general public. During each call, the OJPC staff member posed as a felon on community supervision inquiring about his or her right to vote.

2. Public Records Request

On April 9, 2008, OJPC requested documents setting forth the procedure and correspondence used by county boards of elections to communicate with felons regarding their voting rights.

3. Informal Surveys

Informal surveys were conducted on two separate occasions to determine felons' knowledge of their voting rights. The first series of surveys was conducted on September 3, 2008 at the Montgomery County APA office. The second series of surveys was conducted on September 4, 2008 and September 9, 2008 at the Hamilton County APA office. Each person was asked if he or she, as a result of their felony conviction, was permitted to vote.

D. Summary of Key Findings and Conclusions

1. **Nine Local Boards of Elections Did Not Consistently Respond That Felons Are Eligible to Vote While On Community Supervision.**

- a. The boards of elections for Ashtabula County, Henry County, Lucas County, and Tuscarawas County each indicated at least once that felons on probation or parole could not vote.
- b. The boards of elections for Darke County, Knox County, Medina County, Putnam County, and Wood County each indicated that they did not know whether felons could vote while on probation or parole.

2. **Local Boards of Elections Do Not Communicate Uniformly With Those Who Have Been Convicted of a Felony and Many Letters of Notification Are Confusing or Misleading.**

- a. Eighteen boards of elections send letters advising registered voters who have been convicted of a felony that their voting rights have been terminated as a result of their conviction. Those letters also purport to explain that such individuals may re-register to vote once released from prison or immediately if placed on probation. Seventy boards of election do not send any notice to voters upon conviction of a felony.
- b. Of the 18 letters sent, the majority were either confusing or misleading. Many imply that something beyond re-registration is required in order to exercise the right to vote.¹¹

3. **While Most Felons Surveyed By OJPC Know They Have the Right To Vote Upon Release From Prison, A Significant Percentage Do Not.**

- a. Hamilton County APA office: 84% reported they knew they were permitted to vote, a 41% improvement since the 2004 survey. However, 6% of this number believed they could vote only upon final release. 16% of those surveyed believed they were disenfranchised permanently.

- b. Montgomery County APA Office: The majority of individuals surveyed, (approximately 81%) understood they were able to vote upon release, a 10% improvement from the 2004 survey. In contrast, approximately 6.5% believed they could never vote as a result of their conviction, 3% believed they were not able to vote until their parole/probation officer tells them they are able to, 3% believed they could not vote until final release (i.e. release from community supervision), and 6.5% did not know whether they had the right to vote.

E. Summary of Key Recommendations

1. Secretary of State

- a. Although the Secretary of State recently sent an advisory to all county boards of elections explaining felon voting rights in Ohio, it should follow up with the nine boards of elections that disseminated incorrect information during OJPC's investigation to ensure that those boards understand the law.
- b. Create a uniform letter that the 88 boards of elections can send to voters who have been convicted of a felony. This letter should state, in everyday language, that voting rights are restored upon release from incarceration and that the only requirement to exercise this right is that the individual re-register to vote.

2. Local Boards of Election

- a. Ensure that every employee knows that voting rights are restored upon release from incarceration.
- b. Post signs conspicuously advising former prisoners, in everyday language, that voting rights are restored upon release from incarceration.
- c. Use the form letter mentioned in 1b when communicating with those convicted of felony.

3. Ohio Department of Rehabilitation and Correction

- a. Develop a standardized voter education program to be used at all Ohio correctional institutions.
- b. Before discharge from a correctional institution, have individuals execute a form stating that they are aware that Ohio law permits them to vote upon release. Maintain these forms for data tracking purposes.

4. Adult Parole Authority Offices

- a. APA officers should advise every individual during his or her first visit following release that he or she is permitted to vote and provide the opportunity to re-register during the visit.
- b. Have individuals under APA supervision execute a form stating that they are aware that Ohio law permits them to vote. Maintain these forms for data tracking purposes.
- c. Make voter registration forms readily available in the lobby of each APA office.

CONCLUSION

Secretary of State Jennifer Brunner should be recognized for the significant progress her office has achieved in the area of voter services. In particular, the office should be recognized for issuing Advisory 2008-16 to all county boards of elections, which clearly explains the law regarding felon voting rights and sets forth the duties of county boards of elections. However, the results of our survey indicate that the potential for confusion and misinformation still exists. This confusion and misinformation could ultimately result in tens of thousands of eligible individuals being unaware that they have the right to vote, and consequently, failing to exercise that right. Thus, Secretary Brunner's office must continue to follow up to ensure that all 88 county boards of election are providing accurate information about felon voting rights in Ohio. Furthermore, only 18 of 88 counties send correspondence to registered voters who have been convicted of felonies notifying them that their voter registration has been cancelled as a result of the conviction and that they may re-register to vote. Those counties that do send letters of notification often use language that is misleading or confusing. This problem must be corrected. The Secretary of State should develop a uniform letter that is easy to understand and encourage all boards of elections to use it. Lastly, while a greater number of felons know they are able to vote upon release from prison as compared to 2004, there are still a significant number of felons who do not know they can vote. We must all resolve to fix this problem. As a democracy, it is our civic duty to ensure that all who are able to participate in elections are able to do so as it benefits the individual, the local community, and society as a whole.

¹ OJPC previously operated as the Prison Advocacy Reform Center (PRAC).

² See *C.U.R.E. Ohio v. Kenneth Blackwell et al.* (S. Dist. Ohio 2004), No. 1:04CV543 (unpublished).

³ See *Racial Fairness Project et al. v. Summit County Bd. of Elections* (N. Dist. Ohio 2004), No. 5:04CV1947 (unpublished).

⁴ Nancy G. LaVigne et al., *A Portrait of Prisoner Reentry in Ohio*, URBAN INSTITUTE (November 2003), <http://www.urban.org/url.cfm?ID=410891>. In 2001, 95% of the 23,874 released prisoners returned to communities in Ohio.

⁵ Ohio Revised Code § 2961.01(A).

⁶ Effective July 1, 1996, parole was abolished and replaced with post-release control. Post-release control, which is mandatory for the most serious offenses, imposes supervision requirements similar to those imposed under parole. Post-release control applies to those offenders sentenced on or after July 1, 1996. Those sentenced prior to July 1, 1996, are subject to parole. For purposes of this paper, parole, probation, and post-release control may be referred to as “community supervision.”

⁷ Ohio Adult Parole Authority, *Regional Workforce Analysis* (August 2006), <http://www.drc.state.oh.us/web/reports/APAMonthly/August%202006.pdf>

⁸ Christopher Uggen et al., *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS, AAPSS 281, 303-304 (May 2006).

⁹ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From A Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 213 (2004) (“Taken as a whole, [our] analysis suggests that a relationship between voting and subsequent crime and arrest is not only plausible, but also that it receives some degree of empirical support. We find consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior. While the single behavioral act of casting a ballot is unlikely to be the single factor that turns felons’ lives around, it is likely that the act of voting is tapping something real, such as a desire to participate as a law-abiding stakeholder in a larger society”).

¹⁰ Robert F. Kennedy, Jr. *Was the 2004 Election Stolen?* ROLLING STONE MAGAZINE, June 15, 2006, at 46.

¹¹ The following are excerpts from letters sent by different boards of elections across the state to individuals incarcerated on felony convictions:

Ashland County- “[Y]our voter registration has been removed from the list of registered voters. After you are placed on probation and your civil rights are restored, you may register to vote; or, if you are paroled by a state penal institution and receive a document restoring your civil rights, you may re-register to vote.”

Carroll County- “This letter is to advise you that . . . the Carroll County Board of Elections has cancelled your voter registration . . . When you are eligible to vote again, it will be necessary for you to come into our office to re-register.”

Harrison County- "You will not be permitted to vote as long as you are incarcerated, upon completing your sentence you may register again."

Logan County- "[W]e regret that it is mandatory that we cancel your voter registration as of this date. Please be advised that when you again become eligible, you may re-register."

Trumbull County- "You are incompetent to be an elector unless your conviction is reversed or annulled or you are granted probation, parole, or a conditional pardon . . . In the event that your right to vote is restored, you must renew your voter registration . . ."