

# FROM “CIVIL DEATH” TO UNIVERSAL SUFFRAGE: THE CASE FOR RESTORING A PRISONER’S RIGHT TO VOTE

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## INTRODUCTION

“The day I stop learning is the day I die,” exclaimed a Maine resident registering to vote.<sup>1</sup> The 2020 presidential election was this anonymous voter’s first time filling out the age-old symbol of democracy—a ballot—and he did it from behind the bars of a prison cell.<sup>2</sup> Maine is one of only four U.S. jurisdictions to allow currently incarcerated citizens to vote<sup>3</sup>, but this Essay will make the case for expanding that right to vote to all incarcerated individuals in the United States. Part I will survey a brief legal history of felon voting rights, from the state codification of disenfranchisement for all felons to the modern era of restoring the right to vote for those who have completed their prison sentence. Part II will explore the modern arguments for expanding voting rights to currently incarcerated individuals and examine two states that already have this practice in place, Maine and Vermont. Part III will describe the horizontal scaling (i.e. state action) efforts of this policy innovation, but, ultimately argue that state governments are an ineffective path to universal suffrage. Finally, Part IV will argue that because horizontal scaling is limited and unstable, vertical scaling (i.e. federal action) is necessary to restore prisoner’s voting rights, thus building a more democratic and just society, even for those serving a prison sentence.

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1. *Here’s What It’s Like to Vote from Inside Prison*, VOX (Oct. 14, 2020, 10:00 AM), <https://www.vox.com/first-person/21514289/election-2020-voting-rights-felon-prison-inmate-maine>.

2. *See id.*

3. *Voting Rights in the Era of Mass Incarceration: A Primer*, THE SENT’G PROJECT 1, 1 (2021), <https://www.sentencingproject.org/wp-content/uploads/2015/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf>.

## PART I: THE HISTORY OF FELON VOTING RIGHTS

Like much of American jurisprudence, American voting laws were fundamentally shaped by common law ideas that English settlers brought to the colonies centuries ago. In England, certain crimes were thought to be so morally reprehensible that being found guilty of them resulted in “civil death.”<sup>4</sup> Early colonial laws reflected this principle of “civil death” by disenfranchising those who committed crimes thought to be “egregious violations of the moral code” such as treason. Initially, not all crimes fell into this category.<sup>5</sup> But when states began codifying disenfranchising provisions after the American Revolution, they expanded the punishment to all felony offenses.<sup>6</sup> In fact, by 1869, twenty-nine states had adopted such broad laws.<sup>7</sup>

During this same period after the Civil War, Congress passed the Reconstruction Acts; in part, they required readmitted Southern states to draft constitutions guaranteeing suffrage regardless of race.<sup>8</sup> However, Northern and Western states continued to disenfranchise Black Americans.<sup>9</sup> Thus, Congress passed the Fifteenth Amendment, theoretically securing the right of Black Americans to vote.<sup>10</sup> Nonetheless, the Compromise of 1877 undermined the hope of the Reconstruction Era and, soon after, states began adopting Jim Crow laws, some of which continued to codify felon disenfranchisement for both former and current felons.<sup>11</sup>

It was not until the Civil Rights Era and the passage of the Voting Rights Act that some states began reforming these laws.

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4. *See id.* at 3.

5. *Id.*; *see also* Alec C. Ewald, “Civil Death”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1059 (2012).

6. *See* THE SENT’G PROJECT, *supra* note 3.

7. *See id.*

8. *See* Alex Cohen & Wilfred U. Codrington III, *The Promise and Pitfalls of the 15th Amendment Over 150 Years*, BRENNAN CTR. FOR JUST. (February 3, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/promise-and-pitfalls-15th-amendment-over-150-years>.

9. *See id.*

10. *See* Christina Rivers, *A Brief History of Felon Disenfranchisement and Prison Gerrymanders*, ORG. FOR AM. HISTORIANS (Nov. 2017), <https://www.oah.org/tah/issues/2017/november/a-brief-history-of-felon-disenfranchisement-and-prison-gerrymanders/>.

11. *See id.*

Notably, in 1974, California citizens voted in favor of Proposition 10, restoring the right to vote to people who had completed both their prison and parole sentences.<sup>12</sup> That same year, however, the Supreme Court upheld California’s prior voting restrictions against felons, concluding that it did not violate the Equal Protection Clause.<sup>13</sup> The Court reasoned that Section 2 of the Fourteenth Amendment permitted states to craft laws restricting the right to vote “for participation in rebellion, or other crime.”<sup>14</sup> In other words, Section 2 exempts felony disenfranchisement from being struck down on a constitutional basis. Thus, while states began purging their laws of egregiously racially discriminatory provisions, many continued to restrict voting for formerly incarcerated individuals.<sup>15</sup> Moreover, the few states that did expand voting rights to formerly incarcerated individuals continued to deny the right to those still serving a sentence.<sup>16</sup>

Consequently, during the rise of mass incarceration in the late twentieth century, disenfranchisement worsened as more people went to prison for longer periods of time—the effects of which fell disproportionately along racial lines.<sup>17</sup> Beginning in the 1970s, the prison population exponentially increased as both parties began pursuing more punitive policies, starting with President Nixon’s “War on Drugs” and continuing later during President Reagan’s administration.<sup>18</sup> Since then, incarceration has become increasingly discriminatory.<sup>19</sup> Today, there are more than two million individuals

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12. See *Historical Timeline: US History of Felon Voting / Disenfranchisement*, BRITANNICA PROCON.ORG, (Sept. 23, 2020), <https://felonvoting.procon.org/historical-timeline/#1950-1999> (hereinafter “Historical Timeline”).

13. See *Richardson v. Ramirez*, 418 U.S. 24, 25 (1974).

14. *Id.* at 42–54.

15. See *Rivers*, *supra*, note 10.

16. See THE SENT’G PROJECT, *supra* note 3, at 1.

17. See *id.* at 3; see also *infra* note 19.

18. See James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>; see also Dara Lind, *One Chart that Puts Mass Incarceration in Historical Context*, VOX (June 7, 2016, 10:30 AM), <https://www.vox.com/2015/10/11/9497161/incarceration-history>.

19. Bruce Drake, *Incarceration Gap Widens Between Whites and Blacks*, PEW RSCH. CTR. (Sept. 6, 2013), <https://www.pewresearch.org/fact-tank/2013/09/06/incarceration-gap-between-whites-and-blacks-widens/>.

behind bars, a 500% increase since 1980.<sup>20</sup> This prison population, however, is disproportionately Black. For instance, in 1960, Black men were five times more likely to be incarcerated compared to white men; in 2010, Black men were more than six times as likely to be incarcerated.<sup>21</sup> Thus, universal suffrage implicates more than just democratic principles; it is also an issue of racial discrimination.

States, however, have primarily focused voting rights reform efforts at the stage of post-incarceration. Starting in 1997, state voter restoration reforms gained widespread attention and more states began expanding the right to vote.<sup>22</sup> Texas began this modern era of voter reform by eliminating the two-year post-sentence waiting period and automatically restoring voting rights at the end of a person’s prison sentence.<sup>23</sup> While these modern reforms still exclude the right to vote for currently incarcerated individuals, they expand the right and make the process easier for formerly-incarcerated citizens to vote.<sup>24</sup> Between 1997 and 2021, half of the states and D.C. adopted laws—either through legislation or executive action—expanding the right to vote to formerly-incarcerated citizens.<sup>25</sup>

## PART II: A “NEW” STATE INNOVATION—UNIVERSAL SUFFRAGE

The principle of felony disenfranchisement is so deeply rooted in American jurisprudence that only four states—Vermont, Maine, Utah, and Massachusetts—have ever allowed incarcerated individuals to vote.<sup>26</sup> But in 1998 and 2000, even Utah and Massachusetts,

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20. *Criminal Justice Facts*, THE SENT’G PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Oct. 31, 2021).

21. See Drake, *supra* note 19.

22. See THE SENT’G PROJECT, *supra* note 20.

23. See Morgan McLeod, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms*, THE SENT’G PROJECT (Oct. 17, 2018), <https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/>.

24. See generally THE SENT’G PROJECT, *supra* note 3, at 1 (categorizing state reforms into how restrictive their laws still are).

25. *Id.* at 4; see also Drake, *supra* note 19.

26. See Vann R. Newkirk II, *Polls for Prisons*, ATLANTIC (Mar. 9, 2016), <https://www.theatlantic.com/politics/archive/2016/03/inmates-voting-primary/473016/>.

respectively, ended that practice.<sup>27</sup> Therefore, Maine and Vermont remain the only states to never codify restrictions against current or formerly incarcerated people exercising the right to vote.<sup>28</sup> The reasons why these two states have always allowed currently incarcerated individuals to vote are inconclusive, but legal scholars have pointed to several shared characteristics that may explain the irregularity. First, in both places, incarcerated individuals are registered to vote in the place they last lived, not the county in which they are completing their prison sentence. Thus, they can't vote as a bloc in the election, potentially swaying local politics.<sup>29</sup> Second, in neither state are the majority of incarcerated individuals a racial minority, so the racial dynamics of felony disenfranchisement may not apply.<sup>30</sup>

Further, and most importantly, both states' constitutions guarantee the right to vote for all citizens,<sup>31</sup> and their state courts have long interpreted these provisions to include the right for incarcerated people to vote.<sup>32</sup> In fact, a Vermont case from the 1790s overruled legislation that banned inmate voting.<sup>33</sup> Other state legislative attempts to enact felony disenfranchisement have failed in their legislatures, and there is no currently pending legislation to change voting laws in this manner.<sup>34</sup> Thus, Maine and Vermont's policies are state innovations in the sense that the constitutional provisions protecting the right to vote and subsequent interpretation sets those provisions apart from all other state practices. In fact, it wasn't until 2020 that another jurisdiction—D.C.—adopted a similar policy innovation.<sup>35</sup>

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27. *Id.*

28. See Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here's Why Few Do.*, MARSHALL PROJ. (June 11, 2019), <https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>.

29. *See id.*

30. *See id.*

31. VT. CONST. ch. 2, § 42; ME. CONST. art. II, § 1.

32. *See* Lewis, *supra* note 28.

33. *See* JAMES H. DOUGLAS, RECORDS OF THE COUNCIL CENSORS OF THE STATE OF VERMONT 174 (Paul S. Gillies & Gregory Sanford eds., 1991), [https://sos.vermont.gov/media/4aamkeww/council\\_of\\_censors.pdf](https://sos.vermont.gov/media/4aamkeww/council_of_censors.pdf); *see also* THE SENT'G PROJECT, *supra* note 20.

34. Lewis, *supra* note 28.

35. *See infra* Part III.

### PART III: HORIZONTAL SCALING—THE ROLE OF STATES IN INMATE VOTING REFORM

Horizontal scaling has been the primary avenue for spreading inmate voting reform nationwide, but it is a flawed method of widespread expansion of universal suffrage. Horizontal scaling occurs when other governments of the same level, in this case state governments,<sup>36</sup> adopt similar policy innovations. For instance, in July 2020, D.C. became the first jurisdiction to adopt a voting policy similar to Vermont and Maine.<sup>37</sup> Invoking its Home Rule Act, the D.C. Council enacted the Restore the Vote Amendment, which enables currently incarcerated residents to vote.<sup>38</sup> The amendment was part of emergency legislation adopted in response to the killing of George Floyd,<sup>39</sup> but the Council permanently restored voting rights for inmates in later legislation.<sup>40</sup> Under the reform, District residents in either the local jail or a federal prison in another state are able to vote.<sup>41</sup>

Other states have attempted but failed to adopt similar policies through both constitutional amendments and state legislation. A state senator from Massachusetts, for instance, proposed to place a constitutional amendment restoring the right to vote to incarcerated individuals on the state ballot in 2019, but it failed to pass in

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36. Local government, insofar as D.C. is considered a local government, has also played a role in adopting inmate voting reforms similar to Maine and Vermont.

37. *DC Council Approves Voting in Prison Ahead of November Election*, THE SENT'G PROJECT (July 8, 2020), <https://www.sentencingproject.org/news/dc-council-approves-voting-prison-ahead-november-election/>.

38. Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, 67 D.C. Reg. 9148 (July 22, 2020).

39. Martin Austermuhle, *D.C. Council Passes Emergency Police-Reform Bill, But Delays Shrinking Size Of MPD*, DCIST (June 9, 2020), <https://dcist.com/story/20/06/09/d-c-council-passes-emergency-police-reform-bill-but-delays-shrinking-size-of-mpd/>.

40. D.C. CODE ANN. § 23-277 (West 2020).

41. See THE SENT'G PROJECT, *supra* note 37; see also Julie Zauzmer Weil & Ovetta Wiggins, *D.C. and Maryland Have New Policies Allowing Prisoners to Vote. Making It Happen Is Hard.*, WASH. POST (Sept. 28, 2020), <https://www.washingtonpost.com/dc-md-va/2020/09/28/dc-maryland-prisoners-voting/>.

committee.<sup>42</sup> Similarly, Hawaiian legislation to restore the right to vote failed to make it out of committee in 2019.<sup>43</sup> In New Mexico, legislation to ban felony disenfranchisement failed,<sup>44</sup> though a more limited bill restoring the right to vote to probationers and parolees is currently being debated in the state legislature.<sup>45</sup>

State legislatures and grassroots organizers continue to promote state-level adoption of these policies, but the success of these campaigns is unlikely. While there appears to be pockets of momentum for state legislation and citizen-led initiatives, the sheer unpopularity of this reform poses a barrier to adopting it.<sup>46</sup> Despite this, state legislators continue to introduce bills that would restore voting rights for currently incarcerated individuals. For instance, the Oregon legislature is currently debating such legislation.<sup>47</sup> Currently, the House bill is stuck in the Rules Committee<sup>48</sup> and the Senate bill is stuck in the Ways and

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42. Dana Liebelson, *In Prison, and Fighting to Vote*, ATLANTIC (Sept. 6, 2019), <https://www.theatlantic.com/politics/archive/2019/09/when-prisoners-demand-voting-rights/597190/>.

43. See Daniel Nichanian, *Hawaii Proposal to End Disenfranchisement Stalls as Advocates Vow to Press Ahead*, APPEAL (Mar. 7, 2019), <https://theappeal.org/politicalreport/hawaii-proposal-to-end-felony-disenfranchisement/>.

44. See Auster Muhle, *supra* note 39.

45. See Robert Nott, *Measure Granting Voting Rights to Felons Clears New Mexico House Committee*, SANTA FE N. MEXICAN (Feb. 3, 2021), [https://www.santafenewmexican.com/news/legislature/measure-granting-voting-rights-to-felons-clears-new-mexico-house-committee/article\\_701a3eec-6624-11eb-a73a-ebd1bbd6131a.html](https://www.santafenewmexican.com/news/legislature/measure-granting-voting-rights-to-felons-clears-new-mexico-house-committee/article_701a3eec-6624-11eb-a73a-ebd1bbd6131a.html).

46. In 2019, sixty-nine percent of registered voters believed currently incarcerated felons should not have the right to vote. See *Poll: 69 Percent of Americans Say Prisoners Shouldn't Be Allowed to Vote*, THE HILL (May 2, 2019), <https://thehill.com/hilltv/what-americas-thinking/441863-poll-69-percent-of-voters-say-prisoners-shouldnt-be-allowed-to>.

47. Dirk VanderHart, *Oregon Lawmakers Consider Allowing Prisoners to Vote*, OR. PUB. BROAD. (Feb. 11, 2021), <https://www.opb.org/article/2021/02/11/oregon-lawmakers-consider-allowing-prisoners-to-vote/>.

48. *2021 Regular Session: HB 2366*, OR. STATE LEG. (last visited Oct. 8, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2366>.

Means Committee.<sup>49</sup> In Virginia, a similar constitutional amendment<sup>50</sup> was proposed in the Senate, but in order for it to become the law, it must win a majority in two separate legislative sessions with an intervening election and be approved by a majority of voters.<sup>51</sup> The soonest these steps could occur is November 2022.<sup>52</sup>

Another route to horizontal scaling of this policy is through grassroots organizing. In Massachusetts, an incarcerated citizen created an organization—Emancipation Initiative<sup>53</sup>—to, among other things, expand the right to vote for all inmates in the United States.<sup>54</sup> Emancipation Initiative led a campaign in Massachusetts, specifically, targeted at getting a citizen-led initiative on the 2022 ballot to expand the right to vote to currently incarcerated individuals.<sup>55</sup> Though this campaign failed, Emancipation Initiative continues to organize around inmate voting rights and other enfranchisement issues.<sup>56</sup>

Even if states were to adopt universal suffrage, the policy would not be a permanent solution to the issue of prisoner disenfranchisement. Given the history of voting rights in America—courts giving deference to state legislatures to establish felony disenfranchisement policy and states being the level of government most likely to adopt voting reforms<sup>57</sup>—continued horizontal scaling may appear to be the most realistic option for widespread adoption of universal suffrage. But this same history shows that voting reform comes in waves and is hardly permanent.<sup>58</sup> Even as some states expanded the right to vote to formerly

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49. 2021 Regular Session: SB 571 A, OR. STATE LEG. (last visited Oct. 8, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB571>.

50. 2021 Session: HJ 555 Constitutional Amendment; Felon Disenfranchisement, Etc. (First Reference), VA.'S LEGIS. INFO. SYS. (last visited Oct. 8, 2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+HJ555>.

51. Jackie DeFusco, *Virginia Senate Proposal Lets Inmates Vote While Incarcerated, House Version Restores Rights Upon Release*, WJHL (Feb. 2, 2021), <https://www.wjhl.com/news/regional/virginia/virginia-senate-proposal-lets-inmates-vote-while-incarcerated-house-version-restores-rights-upon-release/>.

52. *Id.*

53. EMANCIPATION INITIATIVE, <https://emancipationinitiative.org/> (last visited Oct. 8, 2021).

54. *See id.*; *see also* Austeruhle *supra* note 39.

55. *Mass Power*, EMANCIPATION INITIATIVE (last visited Oct. 8, 2021), <https://emancipationinitiative.org/ballots-over-bars/>.

56. *See id.*

57. *See infra* Part I.

58. *See* Historical Timeline, *supra* note 12.

incarcerated individuals,<sup>59</sup> others rolled back the rights of inmates during the same period.<sup>60</sup>

If voting is a fundamental right that must be afforded to all citizens, even those who have committed violent crimes, horizontal scaling is an unstable path to realize this vision. Both the Supreme Court and Congress have described the right to vote as “fundamental,” the former invoking its necessity in a “free and democratic society.”<sup>61</sup> Yet, United States history demonstrates a long line of rolling back voter protections.<sup>62</sup> However, that does not, per se, conflict with the idea that voting is an essential measure of democracy or a right that should be exercised by all Americans. Rather, this pushback exemplifies the need for long-lasting reform, especially as it relates to voting rights for the currently incarcerated. Thus, the instability of horizontal scaling requires a re-imagining of how voting rights reform should take place: through strong federal action.

#### PART IV: VERTICAL SCALING—THE ROLE OF THE FEDERAL GOVERNMENT IN INMATE VOTING REFORM

Perhaps, then, vertical scaling is necessary to guarantee this right for generations to come. Vertical scaling occurs when a higher order of government, in this case the federal government, adopts a similar policy innovation of a lower order of government. So far, it has played a minor role in spreading the policy innovation of universal suffrage through attempts at both executive and legislative actions. Senator Bernie Sanders was the first presidential candidate in recent

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59. See THE SENT’G PROJECT, *supra* note 3.

60. See Historical Timeline, *supra* note 12.

61. See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (“Undoubtedly, the fight of suffrage is a fundamental matter in a free and democratic society. Especially since the fight to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”); see also For the People Act of 2021, H.R. 1, 117th Cong. (1st Sess. 2021) (describing voting as a “fundamental” right numerous times). *But see* Joshua A. Douglas, *Is the Right to Vote Really Fundamental?*, 18 CORNELL J. OF L. & PUB. POL’Y 143 (2008) (describing a line of cases that does not treat voting as a fundamental right).

62. See *infra* Part I.

years to support a policy of universal suffrage.<sup>63</sup> Sanders, one of the only president candidates from a jurisdiction with universal suffrage, first publicly supported this policy at a town hall in Iowa in 2019 and later reaffirmed his position at a CNN town hall.<sup>64</sup> He eventually published an op-ed defending his belief, arguing that “the right to vote is an inalienable and universal principle that applies to all American citizens 18 years and older. Period.”<sup>65</sup> He never clarified how he would adopt this policy as president, whether through an executive action or support of a legislative priority,<sup>66</sup> and because Sanders lost the presidential election, he never had the opportunity to initiate vertical scaling as President.

Congress has also tried to adopt the policy of universal suffrage. Representatives Cori Bush and Mondaire Jones proposed an amendment to the For the People Act that would restore the right to vote for all currently incarcerated individuals.<sup>67</sup> It failed in a 97-328 vote in March 2021.<sup>68</sup> No Republicans voted in favor of it, and only 97 of 220 Democrats voted in favor.<sup>69</sup> However, Bush and other activists for universal suffrage maintain hope that this policy will be adopted at the federal level.<sup>70</sup> They believe it is the beginning of a necessary national

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63. See German Lopez, *The Democratic Debate Over Letting People in Prison Vote, Explained*, VOX (May 13, 2019), <https://www.vox.com/policy-and-politics/2019/5/13/18535423/prisoner-felon-voting-rights-bernie-sanders-2020> (explaining how most Democrats, including other presidential candidates, did not support this policy in 2016).

64. *Id.*

65. Bernie Sanders, *Bernie Sanders: Everyone deserves to vote, even felons like Paul Manafort & Michael Cohen*, USA TODAY (Apr. 30, 2019), <https://www.usatoday.com/story/opinion/2019/04/30/bernie-sanders-felons-deserve-vote-participate-democracy-suppression-trump-column/3621258002/>.

66. *See id.*

67. *H.R. 1—For the People Act of 2021*, COMM. ON RULES (last visited Oct. 8, 2021), <https://rules.house.gov/bill/117/hr-1>; see also Jerry Iannelli, *The Fight for People in Prison to Vote Reaches Congress*, CORI BUSH (Mar. 2, 2021), <https://bush.house.gov/media/in-the-news/fight-people-prison-vote-reaches-congress>.

68. FINAL VOTE RESULTS FOR ROLL CALL 53 (Mar. 2, 2021), <https://clerk.house.gov/evs/2021/roll053.xml>.

69. *Id.*

70. See Jerry Iannelli, *The Fight for People in Prison to Vote Reaches Congress*, APPEAL (Mar. 2, 2021), <https://theappeal.org/politicalreport/congress-voting-from-prison-vote/>.

conversation about voting rights in America and point to the 97 votes in favor as a sign of momentum for this policy.<sup>71</sup>

Constitutionally, there is nothing preventing Congressional action from restoring the right to vote for all currently incarcerated felons. In fact, a liberal reading of Section 2 of the Fifteenth Amendment would expressly authorize this action.<sup>72</sup> The Brennan Center for Justice, for instance, has argued that Section 2 of both the Fourteenth and Fifteenth Amendments are sources of Congressional authority to restore voting rights to those with criminal records.<sup>73</sup> Similarly, these sections could enable the federal government to implement universal suffrage nationwide.

The primary barrier, then, is political will and partisan politics. A poll taken soon after Sanders voiced his support of universal suffrage found that 69 percent of registered voters do not support restoring the right to vote to currently incarcerated felons.<sup>74</sup> Yet, Congress has acted in spite of negative public opinion before. For instance, at the time of its passage, the Affordable Care Act only had a 40 percent approval rating.<sup>75</sup> Now, however, a majority of Americans support the measure.<sup>76</sup> Moreover, with an issue as important as democracy and voting, especially in a time where election integrity is being called into question,<sup>77</sup> serious federal action adopting universal suffrage would be a signal of a commitment to our democratic principles.

Universal suffrage itself does not appear to heavily favor either

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71. *Id.*

72. U.S. CONST. amend XV, § 2.

73. Erika Wood, *Legal Analysis of Congress' Constitutional Authority to Restore Voting Rights to People with Criminal Records*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Brennan%20Center%20analysis%20of%20DRA%20federal%20authority%208-10-09.pdf> (last visited Oct. 31, 2021).

74. *See Poll: 69 Percent of Americans Say Prisoners Shouldn't Be Allowed to Vote*, THE HILL (May 2, 2019), <https://thehill.com/hilltv/what-americas-thinking/441863-poll-69-percent-of-voters-say-prisoners-shouldnt-be-allowed-to>.

75. Hannah Fingerhut, *Support for 2010 Health Care Law Reaches New High*, PEW RSCH. CTR. (Feb. 23, 2017), <https://www.pewresearch.org/fact-tank/2017/02/23/support-for-2010-health-care-law-reaches-new-high/>.

76. *Id.*

77. *See* Ann Gerhart, *Election Results Under Attack: Here Are the Facts*, WASH. POST (Mar. 11, 2021), <https://www.washingtonpost.com/elections/interactive/2020/election-integrity/>.

political party. In fact, a first-of-its-kind survey of incarcerated voters found that a plurality of white inmates supported President Donald Trump, contradicting claims that universal suffrage would merely benefit Democrats.<sup>78</sup> Further, if Congress were to model the legislation after Vermont and Maine, inmates would vote in their last known legislative district, not where the prison facility is located, meaning they would not be able to vote as a bloc.<sup>79</sup> And some research suggests that many inmates would not vote even if given the right to do so.<sup>80</sup> Yet, this is primarily a problem with low literacy rates and access to information—problems that could also be addressed by a Congress willing to take action to preserve democracy.<sup>81</sup> All of this suggests that universal suffrage transcends party lines and ought merely to be preserved because voting is plainly a fundamental right and tool of democracy.

#### CONCLUSION

As with many unquestioned American traditions, history will haunt those who refuse to take action or remain willfully ignorant to democratic catastrophe. Being able to vote behind bars is only one step to realizing a more just future, but it is a necessary one. Congress, not the states, holds the key to implementing this long overdue vision. The idea of a “civil death” is archaic and inapplicable in an increasingly interconnected world where one person’s struggle affects countless others. As the anonymous incarcerated voter in Maine explained, “I feel I should get a say in who I want to represent me. If I can do that, I’m better off for it. And I think the country will be better off for it. Other prisoners in the facility would be better off for it, too. They are people

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78. Nicole Lewis, Aviva Shen, & Anna Flagg, *What Do We Really Know About the Politics of People Behind Bars?*, MARSHALL PROJ. (March 11, 2020), <https://www.themarshallproject.org/2020/03/11/what-do-we-really-know-about-the-politics-of-people-behind-bars>.

79. See Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here's Why Few Do.*, MARSHALL PROJ. (June 11, 2019), <https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>.

80. See *id.*

81. See *id.*

as well.”<sup>82</sup>

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82. *Here’s What It’s Like to Vote from Inside Prison*, VOX (Oct. 14, 2020, 10:00 AM), <https://www.vox.com/first-person/21514289/election-2020-voting-rights-felon-prison-inmate-maine>.