

THE POLITICAL CONSEQUENCES OF FELON DISFRANCHISEMENT LAWS
IN THE UNITED STATES

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As levels of criminal punishment have risen in the United States, an ever-larger number of citizens have temporarily or permanently lost the right to vote. What are the political consequences of such franchise restrictions for convicted felons? Answering this question requires an examination of the impact of felon disfranchisement on turnout, vote choice, and electoral outcomes. To estimate expected turnout and vote choice among disfranchised felons, we combine legal sources with data series from the National Election Study, the Current Population Survey Voting Supplement, Surveys of State Prison Inmates, and the National Corrections Reporting Program. To assess political impact, we examine two counterfactual conditions: (1) whether removing disfranchisement laws would have altered the outcomes of U.S. Senate, presidential, and gubernatorial elections; and, (2) whether applying contemporary rates of disfranchisement to prior elections would have affected their outcomes. Because felons are drawn disproportionately from the ranks of racial minorities and the poor, disfranchisement laws tend to take votes from Democratic candidates. Our results suggest that felon disfranchisement played a decisive role in several U.S. gubernatorial and Senate elections, and contributed to establishing a Republican Senate majority in the 1990s. Moreover, at least one Republican presidential victory would have been reversed had felons been allowed to vote and at least one Democratic presidential victory would have been jeopardized had contemporary rates of disfranchisement prevailed during earlier periods.

THE POLITICAL CONSEQUENCES OF FELON DISFRANCHISEMENT LAWS IN THE UNITED STATES

For a fifty-year period from the 1920s to the early 1970s, incarceration rates in the United States fluctuated within a narrow band of approximately 110 prisoners per 100,000 people. The policy consensus accompanying this stability was undergirded by a model of “penological modernism” in which the rehabilitation of offenders was the primary goal of incarceration (e.g. Rothman 1980). Structural elements of the criminal justice system, including probation, parole, and indeterminate sentencing, were designed to reform offenders and reintegrate them into their communities. The model began to break down in the 1960s, as Republican presidential candidates Barry Goldwater (in 1964) and Richard Nixon (in 1968) and other conservative and moderate politicians (such as Nelson Rockefeller in New York) promoted more punitive criminal justice policies (Beckett 1997; Savelsberg 1994). By the mid-1970s, a rising chorus of conservative scholars, policy analysts, and politicians were advocating punitive strategies of deterrence and incapacitation, dismissing the rehabilitative model as “an anachronism” (Martinson 1974, p. 50; Wilson 1975). These trends continued in the 1980s and 1990s, with the Reagan, Bush, and Clinton Administrations aggressively focusing the nation’s attention on problems associated with drug use (and dramatically increasing the incarceration of drug offenders).

The conservative crime policy agenda over the past three decades had a remarkable impact. First, public concern about crime and drugs soared, frequently topping the list of social problems of greatest concern to citizens (Hurwitz and Peffley 1997, p. 375). Although there has been wide fluctuation in survey responses, often in reaction to the degree of attention paid to crime by national political leaders (Petinico 1994; Beckett 1997), public concern about crime had reached unprecedented levels by the 1980s. Second, there has been an enormous increase in felony convictions and incarceration. Since 1970, the number of state and federal prisoners has grown by over

700 percent, from 196,429 to 1,381,892 (U.S. Department of Justice 1973, p. 350; 2001, p. 1). Other correctional populations have also grown in rate and number, with a four-fold increase in the number of felony probationers (from 455,093 to 1,924,548) and parolees (from 160,900 to 712,700) from 1976 to 1999 (U.S. Department of Justice 1979; 2000a).

Although rising punishment rates have been associated with Republican political strength (Jacobs and Helms 1996), the bipartisan character of the crackdown is clear, particularly in the 1990s during the Clinton Administration.¹ Republican politicians have frequently used crime as a “wedge issue” to raise larger questions about race, the welfare state, and liberal social policy (e.g. Edsall 1991), perhaps most famously in the Willie Horton advertisements featured in George Bush’s 1988 presidential campaign (Kinder and Sanders 1996, chap. 9; Mendelberg 2001). Yet the Democratic Party has also come to adopt a law and order agenda of its own, or they have embraced conservative policies first promoted by Republicans (e.g. Beckett 1997, chap. 4). Increases in incarceration have continued unabated during years in which the Democrats have controlled the White House since the 1960s, and in states controlled by Democratic governors and state legislatures. During Bill Clinton’s two terms as president, the number of state and federal prisoners rose by more than 60 percent, from 850,566 in 1992 to 1,381,892 in 2000 (U.S. Department of Justice 2001, p. 1; 2000b, p. 2), an increase of over 62 percent. Moreover, during his presidency Clinton refused to endorse either the Federal Sentencing Commission’s 1995 recommendation that crack cocaine users not be penalized more harshly than other types of drug law offenders or the recommendation of the Justice Department to eliminate mandatory sentencing in federal cases (Mauer 1999, pp. 74-75). And it was the Clinton Administration who promoted the largest federal anti-crime

¹ Jacobs and Helms (1996) provide the most rigorous demonstration of the Republican effect on rising incarceration rates, although their longitudinal analysis stops in 1990, or *before* the largest absolute increases in incarceration occurred. They also find that new Democratic as well as new Republican administrations produce increases in incarceration during their first year in office, reflecting the rising importance of crime policy for new administrations of both parties.

legislation ever, the Violent Crime Control Act and Law Enforcement Act of 1994, which designated (among other provisions) funds to employ 100,000 new police officers.

Acceptance of harsh criminal justice policies may have had some important benefits for the Democratic Party. Although the public continued to express high levels of concern, by the 1990s survey data showed that for the first time in decades Democrats were as trusted to fight crime as the Republicans were (Poveda 1994). Yet while the Democrats have succeeded in neutralizing crime as a partisan political issue, the incarceration boom induced by the law and order agenda has had important, and almost completely neglected, consequences for the Democratic Party. As we detail below, over 4.7 million citizens are currently barred from voting because of their status as a felon or ex-felon (see Appendix Table 1). This represents more than 2 percent of all voting-age citizens. It is possible, but not yet proven, that these losses in voter eligibility may have caused significant vote losses for the Democratic Party in recent elections.

This paper puts such speculations about felon disfranchisement to a test. Could these “lost voters” have had a real political impact that has been neglected by Democratic politicians who have endorsed the conservative crime agenda? Or are they too few in number, or sufficiently unlikely to vote (or to vote for Democratic candidates), to influence election outcomes? Because felon eligibility rules are state-specific, the handful of earlier studies created state-level estimates of the size of the disfranchised felon population to estimate the average impact of disfranchisement laws across states. In the analysis below, we develop an alternative approach, examining specific elections and testing whether the inclusion of felon voters at expected rates of turnout and party preference would have been sufficient to overturn them. We use information on turnout from the Current Population Survey’s Voter Supplement Module, and information on voting intention from the National Election Study to explicitly model the turnout rate and likelihood of Democratic voting among the convicted felon population. We utilize information on felon characteristics from censuses and surveys of prison inmates to estimate the size and social distribution of the felon population. Combining these data sources, we are able to estimate the net votes lost by Democratic candidates in closely

contested presidential and U.S. Senate elections, and to assess the overall impact of felon disfranchisement on the American political landscape.

THE RIGHT TO VOTE AND FELON DISFRANCHISEMENT

Ballot restrictions for felons and ex-felons are specific to each state. They were first adopted by some states in the post-Revolutionary era, and by the eve of the Civil War some two dozen states had felon disfranchisement provisions in their state constitutions or statutes barring felons from voting (Keyssar 2000, pp. 62-63). In the post-Reconstruction South, as part of a larger strategy of disfranchising African Americans which included devices such as literacy tests, poll taxes, grandfather clauses, and “understanding clauses” (Kousser 1974), permanent disfranchisement of ex-felons was often extended to include even minor offenses which could be enforced against African American voters (Keyssar 2000, p.162). Some type of restrictions on felon voting rights gradually came to be adopted by almost all states, and at present nearly every state (48 out of 50) bars felons – in most cases including those on probation or parole – from voting.² At least ten of those states also bar ex-felons from voting, two other states

² The only states that allow currently incarcerated felons to vote are Vermont and Maine. In 1998, a referendum in Utah eliminated voting rights for felons, and in 2000, voters in Massachusetts endorsed a constitutional amendment banning inmate voting, effective in 2001. Even in Vermont and Maine, however, those convicted of treason, bribery, or election offenses may be permanently disfranchised (Olivares et al. 1996; U.S. Department of Justice 1996; Mauer 1997a).

permanently disfranchise recidivists, and one more state requires a post-release waiting period.³

Felon disfranchisement constitutes a growing impediment to political participation in the American political system because of the rapid rise in criminal punishment since the 1970s. When jail inmates are added to state and federal prisoners, over 2 million offenders are currently incarcerated, with an additional 4.5 million persons supervised in the community on probation or parole (U.S. Department of Justice 2000b). The United States incarcerates far more of its citizens than most other advanced industrial societies. Many recent analysts have noted the unique character of American penal exceptionalism and have documented the rapid growth in U.S. correctional populations (e.g. Sutton 1987; Savelsberg 1994; Lynch 1995; Donziger 1996). For example, the 1995 incarceration rate was 600 prisoners per 100,000 population in the U.S., compared to rates of 115 per 100,000 in Canada, 85 per 100,000 in Germany, and 37 per 100,000 in Japan (Mauer 1997b).

There are reasons to believe that felon disfranchisement laws have not had a neutral impact on the American political system. Racial minorities (Tonry 1995; Mauer 1997a; Kennedy 1997) and the poor (Wolfgang, Thornberry, and Figlio 1987; Wilson and Abrahamse 1992; U.S. Department of Justice 1993; 2000c) are significantly over-represented in all official correctional populations. We estimate that 1.8 million of the 4.7 million felons and ex-felons currently barred from voting are African Americans (see

³Our survey of state statutes suggests that as of 2001, 10 states (Alabama, Florida, Iowa, Kentucky, Mississippi, Nevada, Tennessee (for those convicted prior to 1986), Virginia, Washington (for those convicted prior to 1984), and Wyoming) permanently deny convicted felons the right to vote (unless reinstated by a pardon or executive clemency procedure). Additionally, Arizona and Maryland permanently disfranchise recidivists (those with two or more felony convictions). Recently, Texas removed its two-year waiting period (effective September 1, 1997) and New Mexico removed its permanent ban on ex-felon voting (effective July 1, 2001).

Appendix Table 2). Because African Americans are overwhelmingly Democratic Party voters (e.g. Huckfeldt and Kohfeld 1989; Tate 1993; Dawson 1994), felon disenfranchisement erodes the Democratic voting base by reducing the number of eligible African-Americans voters. The partisan political implications are further exacerbated by the composition of the white felon population, which is disproportionately comprised of individuals from poor or working class backgrounds (U.S. Department of Justice 1993; 2000c) who are also more likely to be Democratic voters (though not nearly to the same extent as African-Americans) (see e.g. Form 1995; Hout, Brooks and Manza 1995). For example, felons tend to be less educated than the rest of the voting age population. According to a nationally representative survey of state prison inmates, 69 percent of all state prisoners had not completed high school and fewer than half reported annual income of \$10,000 in the year prior to incarceration (U.S. Department of Justice 1993, p. 3). In the Southern states, where disenfranchisement laws are most restrictive, education and income levels are even lower (tables available from authors).

In investigating the general impact of the incarceration boom, social scientists have to date emphasized the relation between incarceration and labor markets (e.g., Western and Beckett 1999), the effect of incarceration on families and communities (Rose and Clear 1998), the political economy of poverty and inequality (Crowther 2000), and more broadly the political and cultural meaning of punishment in the modern state (e.g., Garland 1990). Yet the scope of felon disenfranchisement suggests that the relation between punishment and political life deserves consideration as well.

PRIOR RESEARCH AND ANALYTICAL STRATEGY

Our primary research question in this paper is whether laws denying the vote to felons and ex-felons have had meaningful political consequences. Would election outcomes have differed if the disenfranchised had been allowed to vote? To fully answer this counterfactual question, we need to develop a way to estimate how many offenders would have turned out to vote, how they would have voted, and whether those choices

would have influenced electoral outcomes. If so, a closely related consideration is whether disfranchisement has affected public policy through feedback processes tied to these electoral outcomes. Figure 1 provides a schematic representation of the questions we pose in this paper. The burden in this paper is to estimate (a), (b), and (c), although in the conclusion we suggest some possible answers regarding (d) as well.

[Figure 1 about here.]

These are difficult questions to answer. A group the size of the disfranchised felon population *could* have a considerable political impact, but given its composition, neither its rate of political participation nor its preferences are likely to mirror those of the general population. In this case, and in observational research more generally, information is missing on an important counterfactual condition (Holland 1986). If we could assume unit homogeneity, that felons would have voted in the same numbers and with the same preferences as non-felons, we could simply count the disfranchised felons and apply national turnout and party preference averages. Because felons differ from non-felons in ways that are likely to affect political behavior, however, this sort of blanket assumption is likely untenable.

Another way to measure impact is to estimate the average causal effect of a treatment -- in this case laws stripping criminals of their voting rights. Since a state either has such laws or does not have them, we cannot observe both conditions simultaneously. Instead, states with disfranchisement laws must be contrasted with states lacking such restrictions. Pursuing a sophisticated variant of this strategy, Miles (1999) finds the felon disfranchisement effect is small relative to its standard error and not distinguishable from zero (cf. Hirschfield 2000). Specifically, Miles reports that neither a state's electoral participation rate, nor its likelihood of electing a Republican candidate, is significantly affected by legal restrictions on the voting rights of felons. Although such studies provide convincing evidence about the statistical significance of the *average* effect of disfranchisement laws, there is another way to look at the problem.

First, it may be reasonable to examine particular elections rather than overall impact, because political choices are less about average causal effects than about tipping points. In some elections, particularly those in two-party systems requiring a simple plurality for victory (as in most United States elections), a small number of votes can have great practical significance for the outcome. In this case, we also have a great deal more information at our disposal than the standard statistical approach assumes, since we have access to population data rather than sample data. We know the exact number of votes cast for each candidate and the plurality or margin of victory in each election. We also know the exact number of prisoners, probationers, and parolees in each state who cannot vote, and we can calculate a reasonable estimate of the number of ex-felons in states that restrict their voting rights as well. The only real question is how many of them would have turned out to vote, and which candidate they would have selected.

We therefore undertake a historical accounting of the counterfactual condition: what would have happened if felons had been allowed to participate in national elections. We count the felon and ex-felon population, then estimate turnout and vote choice on the basis of their known characteristics to determine the number of votes lost to Democratic candidates. To assess the real political consequences of felon disfranchisement, we then compare the actual margin of victory with counterfactual results that take into account the likely political behavior of the disfranchised felon population.

DATA AND METHODS

Turnout and Vote Choice

Our analyses of turnout and vote choice utilize standard election data sources. To derive estimates of the expected turnout of the disfranchised population, we analyze data from the Voting Supplement of the Current Population Survey (CPS). The CPS is a monthly survey of individuals conducted by the Bureau of the Census. Since 1964, in each November of even-numbered (national election) years, the survey includes

questions about political participation. All sampled households are asked, “In any election some people are not able to vote because they are sick or busy or have some other reason, and others do not want to vote. Did [you/another household member] vote in the election on November __?”

Questions of this type produce slightly inflated estimates of turnout in the CPS series, with the inflation factor ranging from a low of 7.5 percent (1968) to a high of 11.1 percent (1988) in presidential elections between 1964 and 1996 (U.S. Bureau of the Census 1998, p.2). Accordingly, after obtaining estimated turnout percentages for the felon population, we reduce them by a CPS inflation factor, multiplying predicted turnout rates by the ratio of actual turnout to reported CPS turnout for each election.⁴ Because turnout tends to be most over-reported among better-educated citizens (Silver, Anderson, and Abramson 1986; Bernstein, Chadha, and Montjoy 2001), inflation rates are likely lower among disfranchised felons than among non-felons and this procedure can be expected to produce a conservative estimate.

⁴ A potentially greater threat to validity is the use of proxy respondents to report on the voting behavior of others in the household. However, a Census Bureau verification test in conjunction with the 1984 elections showed that proxy and self-reports were in agreement about 99% of the time (U.S. Bureau of the Census 1986, p. 10), and 98% of the time in 1992 (U.S. Bureau of the Census 1993). We should also note that the CPS has produced much more reliable turnout estimates than the National Election Study, which typically overestimates turnout by 18 to 23 percent.

Our estimates of the expected vote choice of disfranchised felons are developed using National Election Study (NES) data, for the period 1972 to 2000.⁵ The NES is the premier source of U.S. voting data, with a rich battery of sociodemographic and attitudinal items and the lengthy time-series needed for this investigation. The biggest drawback of the NES series is that while it asks respondents how they voted in presidential and congressional elections, there are too few respondents ($N < 2500$) to permit meaningful state-level analyses.⁶ However, we partially correct for this by grouping respondents into regions, thus capturing much of the state-level variation (especially by distinguishing Southern states).

To analyze the expected turnout and vote choice of disfranchised felons, we do not have any survey data that asks disfranchised felons how they would have voted. However, we can “match” the felon population to the rest of the voting age population to derive such an estimate. Our models of political behavior include sociodemographic attributes that have been shown in voting research to contribute to turnout and vote choice: gender, race, age, income, labor force status, marital status and education (Manza

⁵ We begin with 1972 for two reasons: it provides a useful baseline year immediately before the major increases in incarceration began; and because it is the first presidential election for which we have reasonably proximate sociodemographic information about the incarcerated felon population (as discussed below).

⁶ We thus acknowledge some unavoidable crudeness in our estimates of the likely voting behavior of disfranchised felons in Senate races, though not enough to significantly bias our estimates. It would in principle be possible to obtain state-level survey data for many elections, such as that collected in recent elections by the Voter News Service. Unfortunately, these surveys do not have the full battery of items that would allow us to match the characteristics of the felon population to those of the survey respondents and thereby derive estimates of their voting behavior.

and Brooks 1999; Wolfinger and Rosenstone 1980). We analyze age and education in years as continuous variables. Income is a continuous variable measured in constant dollars. Labor force status, marital status, gender and race are dichotomies (the latter necessitated by the lack of information about Hispanic voters in the NES series prior to the 1980s). We use similar measures for both the turnout analyses (using the CPS data) and vote choice analyses (using the NES data).⁷ Once we have estimated political participation and party preference equations on the general population, we insert the modal characteristics of disfranchised felons into these equations to obtain their predicted rates of turnout and Democratic Party preference. We obtain information on the sociodemographic characteristics of convicted felons from the *Survey of State Prison Inmates* data series (U.S. Department of Justice 1993; 2000c).

The dependent variables in both the turnout and voting analyses are dichotomous. In the turnout equations, the outcome is coded “1” for voted, and “0” for not voted. In the voting equations, the outcome is coded “1” for Democratic and “0” for Republican vote choice. The analyses focus on major party voters only, as in Senate elections very few third party or independent candidates have come close to winning office.⁸ Because turnout and party preference are dichotomous outcomes, we utilize logistic regression to estimate the probabilities of felon participation and Democratic vote choice respectively. Results of these regressions are included in Appendix Table 3.

Legal Status and Correctional Populations

⁷ Using sociodemographic information to predict vote choice is crude; ideally, we would also have information about partisan, candidate, and policy preferences to develop more rigorous estimates of felons’ likely voting behavior. But no such information currently exists.

⁸The only independent candidate who won a Senate seat since 1972 was Harry F. Byrd, Jr. of Virginia in 1976.

In addition to estimating the likelihood of voting and the partisan alignment of felons, we must also determine their absolute numbers in each state. We first examined state statutes and secondary sources documenting the voting rights of offenders to determine which correctional populations to count among the disfranchised population (e.g. Burton et al. 1986; Olivares et al. 1996; Mauer 1997a; Fellner and Mauer 1998; U.S. Department of Justice 1996). To establish the number of disfranchised felons currently under supervision, we sum the relevant prison, parole, felony-probation, and convicted felony jail populations. The felons under supervision data come from Bureau of Justice Statistics publications, such as the *Correctional Populations in the United States* data series. We estimate that 2.8 million current felons were legally disfranchised on 12/31/98 or approximately half of the 5.7 million adults under correctional supervision (U.S. Department of Justice 1999a). For most states, this is a rather straightforward accounting exercise for the prison, parole and felony probation populations.⁹ Convicted felons who serve their sentences in jail represent a smaller but potentially important group not considered in prior estimates (Mauer 1997a). In 1992, for example, 26 percent of felony convictions resulted in a jail sentence (U.S. Department of Justice 1995). We therefore include a conservative estimate of the number of convicted felons in jail – 10 percent of the total jail population.¹⁰

⁹ Seven jurisdictions (Connecticut, Rhode Island, Vermont, Delaware, Washington, DC, Alaska, and Hawaii) maintain a combined or integrated prison and jail system. For these states, we classify convicted felons serving greater than one year as prison inmates and those serving shorter sentences as jail inmates. Data on the type of conviction (felony versus non-felony) are currently unavailable for five of the states that disfranchise convicted felony probationers. For these states, we estimate that 50% of total probationers are felony probationers (a figure slightly more conservative than the 57 percent national average) (U.S. Department of Justice 1999b).

¹⁰ For the year 2000, our estimates of felons currently under supervision are taken directly from *Prisoners in 2000*. The most recent probation and parole data are from December 31, 1999, and

These “head counts” are based on excellent data by social scientific standards. Estimating the number of disfranchised *ex-felons* not currently under supervision is a greater challenge, and estimates vary widely with the assumptions made by researchers (Miller 1979; Burton et al. 1986). The Sentencing Project (Mauer 1997a) used national conviction data to determine the number of newly-disfranchised felony offenders in a given year. By dividing this number by the total crime index offenses reported to the police, a ratio of new convictions per reported offense was obtained and then applied to each state’s index offenses and cumulated over the period 1960-1993. Unfortunately, this estimate makes a number of untenable stability and homogeneity assumptions.

We develop alternative estimates based on exits *from* (rather than entry *into*) correctional supervision.¹¹ We establish the median age of released prisoners using annual data from the National Corrections Reporting Program (e.g., U.S. Department of Justice 1994) and recidivism data from a national probability sample of inmates released from state prisons (U.S. Department of Justice 1989) and those under probation supervision (U.S. Department of Justice 1992) to establish the number reincarcerated. We then use double-decrement life tables for the period 1948-2000 to obtain the number of

the most recent available jail data are from June 30, 1999. We obtained 2000 estimates for these populations by applying the state-specific rate of change in the prison population between 1999 and 2000 to each state’s felony probation, parole, and jail populations for 1999.

¹¹ Our primary U.S. Department of Justice data sources for years 1973-1997 were the annual *Sourcebook of Criminal Justice Statistics* and *Correctional Populations in the United States* series. For more recent years, we used *Probation and Parole in the United States*, *Prisoners in 1999* and *Prisoners in 2000*, and *Prison and Jail Inmates at Midyear 1999*. For earlier years, we referenced *National Prisoner Statistics, 1948-1964*, and *Race of Prisoners Admitted to State and Federal Institutions, 1926-1986*.

released felons lost to recidivism¹² (and therefore already appearing in our annual head counts) and mortality¹³ each year (see, e.g., Bonczar and Beck 1997). Each existing cohort of disfranchised releasees is thus successively reduced each year and joined by a new cohort of releasees. This allows us to compute the number of ex-felons no longer under correctional supervision for states that disfranchise ex-felons.¹⁴

¹² Our recidivism estimates are based upon the three-year Bureau of Justice Statistics' "Recidivism of Prisoners Released in 1983" study and "Recidivism of Felons on Probation 1986-1989." For prisoners and parolees, the reincarceration rate is 18.6% at one year, 32.8% at two years, 41.4% at 3 years. For probationers and jail inmates, the corresponding three-year failure rate is 36%. To extend the analysis to subsequent years, we calculated a trend line using the ratio of increases provided by Hoffman and Stone-Meierhoefer (1980) on federal prisoners. By year 10, we estimate a 59.4% recidivism rate among released prisoners and parolees, which increases to 65.7% by year 52 (the longest observation period in this analysis). Because these estimates are higher than most long-term recidivism studies, they enable us to produce conservative estimates of the disfranchised ex-felon voting base.

¹³ We calculate mortality based on the expected number of deaths for black males at the median age of release for each state, multiplied by a factor of 1.46 to reflect the higher death rates observed among releasees in the Bureau of Justice Statistics' *Recidivism of Prisoners Released in 1983* study. Year-specific mortality data were obtained from the *Statistical Abstract* series ("Expectation of Life and Expected Deaths, by Race, Sex, and Age").

¹⁴ Some "ex-felon" states only disfranchise a portion of ex-felons. Florida, for example, has restored voting rights to over 160,000 disfranchised felons since the 1960s and does not impose felony adjudication for some probationers who successfully complete their sentences. Our ex-felon estimates account for each of these factors.

THE POLITICAL IMPACT OF FELON DISFRANCHISEMENT LAWS

Turnout and Party Preference

Table 1 shows the estimated national participation rates and voting preferences for disfranchised felons by year since 1972 (region-specific estimates for all years after 1982 are available from the authors). These estimates are based on the voting behavior of those matching felons in terms of gender, race, age, income, labor force status, marital status, and education, reduced for overreporting in the CPS. In short, they provide some evidence regarding the likely behavior of hypothetical felon and ex-felon voters. The table shows that our estimates of felon turnout range from a low of 15.2 percent (for the 1998 Senate elections) to a high of 37.2 percent (for the 1972 presidential election). On average, we predict that about 31 percent of disfranchised felons would have turned out to vote in presidential elections, approximately 29 percent would have voted in senatorial elections held in presidential election years, and that about 17 percent would have participated in Senate elections during non-presidential election years. Although these numbers are well below the corresponding percentages among non-felons (which range from 33 percent to 55 percent nationally during this period), they do suggest that a non-trivial proportion of disfranchised felons were likely to have voted if they had been given the opportunity to vote.

[Table 1 about here.]

According to our analysis of party preferences, our hypothetical felon voters showed a strong preference for Democratic candidates in both presidential and senatorial elections, as shown in Table 1. In recent presidential elections, even comparatively unpopular Democratic candidates such as George McGovern in 1972 would have garnered over 70% of the felon vote. These Democratic preferences are less pronounced and somewhat less stable in senatorial elections. Nevertheless the survey data suggest

that for most years U.S. Senate candidates would have received at least seven of every ten votes cast by the felons and ex-felons. By removing those with Democratic preferences from the pool of eligible voters, disfranchisement laws have thus provided a small but clear advantage to Republican candidates in every presidential and senatorial election from 1972 to 2000.

Impact on Individual U.S. Senate Elections

We next apply these turnout and preference estimates to see whether they would influence results from U.S. presidential and Senate elections from 1978 to 2000. We obtained information on victory margins and Senate composition from standard election data sources (Congressional Quarterly's *America Votes* biennial series). Table 2 details seven elections that may have been overturned if disfranchised felons had been allowed to participate. The voting behavior estimates are identical to those in Table 1.

[Table 2 about here]

To determine the *net* Democratic votes lost to disfranchisement, we first multiply the number of disfranchised felon voters by their estimated turnout rate and probability of voting for the Democratic candidate. Since some felons would have chosen Republican candidates, we then deduct from this figure the number of Republican votes lost to disfranchisement, which we obtain in a similar manner. For the 1978 Virginia election detailed in the top row of Table 2, for example, we estimate that 16,076 of the state's 93,554 disfranchised felons would have voted (17.184 percent). We calculate that 13,552 of these voters would have selected Andrew Miller, the Democratic candidate (84.3 percent of 16,076), and that the remaining 15.7 percent (or 2,524) would have chosen John Warner, the Republican candidate. This results in a net total of 11,028 Democratic votes lost to disfranchisement in the 1978 U.S. Senate race in Virginia, more than double the actual Republican victory margin of 4,721 votes.

In recent policy debates over felon disfranchisement, restoring voting rights has been most widely discussed for ex-felons who have completed their sentences (see, e.g., Sengupta, 2000; Bush, 2001). Yet some analysts have asserted that ex-felon voting restrictions are “electorally insignificant” (*Harvard Law Review* Note 1989, p. 1303). Is this assumption accurate? The results in Table 2 offer a new perspective on this issue. Most states only deprive those currently under some form of correctional supervision of the right to vote (see Appendix Table 1). A few states *also* disfranchise ex-felons. But in only one instance (Georgia in 1992), was a Senate election likely to have been overturned as a result of the disfranchisement of those actively under correctional supervision.¹⁵ Even in this instance, however, the number of current prisoners (25,290) and convicted felony jail inmates (2,163) was too small to affect the election. Rather, it was the large number of probationers (80,639, or a full 61 percent of the state’s disfranchised population) and parolees (23,819, or 18 percent of disfranchised Georgians) that likely cost the Democrats the election. As this case illustrates, the impact of disfranchisement laws varies dramatically with the particular correctional populations disfranchised. The other reversible cases all include net Democratic vote losses from *ex-felon* voters.¹⁶

Impact on U.S. Senate Composition

Would changes to a handful of elections have had any actual impact? Since 1978, there have been over 400 Senate elections, and only 6 or 7 outcomes would have been reversed. Yet even this low number might have influenced the balance of power in the Senate (which has been fairly evenly divided between the two major parties for most of

¹⁵ Georgia amended its state constitution in 1983. Whereas the 1976 constitution “provided for continuous disenfranchisement of felony convicts until the granting of pardon,” the 1983 constitution provides for disfranchisement until “completion of this sentence”.

¹⁶ The electoral importance of ex-felons is likely to grow in the future, as they become a larger proportion of the total disfranchised population in those states which bar them from the ballot.

this period). To assess this possibility, we recompute the U.S. Senate composition after each election. Since two Republican seats were overturned in the 1978 elections, the Democratic majority would have increased from 58:41 to 60:39. We followed the beneficiaries of these closely contested elections to see how long these seats remained under Republican control. John Warner of Virginia remains in office today and John Tower's Texas seat also remains in Republican hands (with Phil Gramm currently holding office). Although we cannot know whether the Democratic Party would have held these seats in subsequent elections, this seems likely based on recent voting patterns and the well-known advantages of incumbency. Of the 32 U.S. Senate elections in 1978, the incumbent party retained the seat through the 1990 elections in 29 cases (91 percent) and through the 1996 elections in 25 cases (78 percent). To continue the counterfactual example, we therefore cumulate the Democratic gains in Senate composition in Table 2.

After the 1984 elections, the Republicans held a narrow 53:47 Senate majority. Under the counterfactual scenario in which disfranchised felons had voted, the Democrats may have achieved parity with the Republicans. In the Kentucky election of 1984, the Republican candidate (Mitch McConnell) narrowly defeated the Democratic nominee Huddleston by 5,269 votes. Since Kentucky is a state that disfranchises ex-felons as well as current prison and jail inmates, parolees, and felony probationers, the total number disfranchised was over 75,000 in 1984. Because 1984 was a presidential election year, turnout was relatively high (30.2 percent) and our voting preference estimates indicate that about three-fourths of the felon voters would have selected the Democratic candidate. Thus, about 11,000 Democratic votes were likely lost to disfranchisement in this election, more than twice the 5,269-vote Republican plurality. With the addition of this seat and the Virginia and Texas seats discussed above, the counterfactual Senate composition shows an even 50:50 party distribution.

Pursuing the counterfactual scenario to the present day, we find that Democratic candidates in Florida (1988) and Georgia (1992) are likely to have won by large margins if felons had been allowed to vote, with a narrower reversal occurring in Wyoming (1988). The Kentucky election of 1998 was too close to determine with certainty – under

our counterfactual scenario the Republican Jim Bunning would have retained office by a single vote. Taken together, this suggests that Democrats may well have controlled the Senate throughout the 1990s. Although it is possible that both parties may have shifted course or that other factors would have arisen to neutralize the effects observed in our counterfactual, it seems likely that the Senate deadlock after the 2000 elections would have been broken in favor of the Democrats if felons had been permitted to vote in recent years. We discuss the implication of these shifts in the conclusion.

Further Tests

Our counterfactual results are startling, but subject to a number of assumptions that might be challenged. How robust are they? On the one hand, our estimates of disfranchised felon turnout are based on sociodemographic characteristics at the time of incarceration. For the *ex-felons* who represent more than one third of the entire disfranchised population, the sample means do not consider how personal characteristics related to voting (for example, their low rates of education, labor force attachment, and marriage) may change over time.¹⁷ During or after completion of their sentences, many ex-offenders will acquire greater education and more stable attachments to work, family, and their communities (Sampson and Laub 1993) that will increase their likelihood of voting.

Moreover, the surveyed inmate population is generally less educated, less likely to be married, and less likely to be employed than the *entire* felon population, which also includes a large number of felony probationers who were never sent to prison. For these reasons, we might expect felons and ex-felons to be closer to the national turnout mean than suggested by our estimates, which are based on sociodemographic characteristics at the time of incarceration. If this is the case, higher estimated turnout rates would *increase*

¹⁷ Unfortunately, we lack reliable population information about the demographic characteristics of ex-felons, as noted above.

the impact on electoral outcomes. Finally, our estimates only count ten percent of the total jail population among the disfranchised. Although in many states jail inmates serving time for misdemeanor offenses or being held prior to trial are legally eligible to vote, they often lack access to a polling place, rendering them practically – if not legally – disfranchised. If we had included all of the 621,149 jail inmates in 2000 (U.S. Department of Justice, 2001) among our disfranchised felon estimates, the political impact of disfranchisement laws would have been even greater.

But other unmeasured characteristics of felons and ex-felons, beyond those measured by the individual- and group-level sociodemographic information available from the inmate surveys, could serve to significantly depress political participation among this group. Felons may be less cognizant of, or less likely to accept, basic norms of citizenship and acceptable behavior than non-felons with otherwise identical characteristics (Gottfredson and Hirschi 1990). If so, they may be less likely to vote than a model based solely on sociodemographic characteristics would predict. We do not have any measures that capture defiance, marginalization, or isolation from the social norms of citizenship. But we can crudely simulate these by assigning to the hypothetical felon voter an independent partisanship identity (“pure” independent), which is known to be associated with lower-levels of political information and voting than voters with a Democratic or Republican identity (cf. Wattenberg 1994). By assigning them independent status, we can thus capture some of the aspects of alienation and marginalization that might produce more accurate estimates of turnout among felon voters.

Unfortunately, information about respondents’ political partisanship is not available in the CPS Voter Supplement. But partisanship status is available in the NES, and we can use this information to see how much it would reduce the net votes lost by Democratic candidates in the six Senate elections our basic model predicts would have

been reversed.¹⁸ NES respondents significantly over-report participation, much more so than in the CPS (yielding over-reporting gaps of between 18 and 23 percent since 1972). As with the CPS data, then, we have adjusted the NES turnout projections downward to account for over-reporting among all respondents.

[Table 3 about here]

In Table 3, we present the results of a simulation on the seven potentially reversible Senate elections reported in Table 2 above, but imposing more conservative assumptions about the knowledge and citizenship norms of felon voters by assigning them political independence. We see that (in comparison with Table 2) turnout is reduced in all seven elections. For example, in the Kentucky 1998 Senate race, we estimate hypothetical felon turnout at 9.9%, rather than 14.0%, once independent partisanship is imposed. As a result of this conservative adjustment to the turnout estimate, three of the seven Senate races (Florida and Wyoming in 1988, and Kentucky in 1998) would not have been reversed.¹⁹

We think this adjustment is probably too conservative, as it arbitrarily strips all felon voters of the partisan cues which would in the real world push some of them to an increased likelihood of voting. But even this estimate of the impact on electoral outcomes has a profound effect on the shape of the U.S. Senate. Applying the same assumptions as before, the Democrats would have maintained control of the Senate from 1994 to 1998, the middle years of the Clinton Presidency (albeit with a narrow majority). The

¹⁸ The NES has, since its inception, inquired about partisanship status, and this has indeed been one of the most robust and consistent factors predicting voting behavior in national elections (cf. Miller and Shanks 1996).

¹⁹ We also conducted a similar analysis of vote choice, but found the same result (5 Senate elections reversed). Details available upon request.

Democratic gains in the 2000 elections would, under either model, have given the Democrats a decisive Senate majority.

Impact on Presidential Elections

While the outcome of the extraordinary close 2000 presidential election could have been altered by a large number of factors, it would almost certainly have been reversed had voting rights been extended to any category of disfranchised felons. While Al Gore actually won a plurality of the popular vote, defeating the Republican George W. Bush by over 500,000 votes, he lost narrowly in the Electoral College. Had disfranchised felons been permitted to vote, we estimate that the Democrat Gore's margin of victory in the popular vote would have risen to approximately one million votes, as shown in Table 4. Regardless of the popular vote, however, one state – Florida – held the balance of power. If disfranchised felons in Florida had been able to vote, the Democrat Gore would almost certainly have carried the state and the election.

As Appendix Table 1 shows, there are more disfranchised felons in Florida, approximately 887,000, than in any other state. Had they participated in the election at our estimated rate of turnout (21.6 percent) and Democratic preference (74.5 percent), Gore would have prevailed in Florida by more than 90,000 votes. As a test on the robustness of these results, we reduce the turnout rate to 15 percent and the Democratic preference to 60 percent in Table 4. Under these scenarios, the Democratic Party's margin of victory remains approximately 25,000 votes. If merely ex-felons had been enfranchised in that state, Gore would have easily overcome Bush's initial 1,725-vote margin.²⁰ Applying our estimate of turnout (21.6%) and Democratic voting (74.5%) to Florida's disfranchised ex-felons would have yielded an additional 71,000 net votes for Gore, more than enough to overcome Bush's narrow margin in that state (and to reverse

²⁰ For these analyses, we use the November 7, 2000 vote margin of 1,725 rather than the narrower margin of 537 votes certified on November 26, 2000.

the outcome in the Electoral College). Even if the more conservative turnout and party preference estimates are applied to the disfranchised ex-felons alone, Gore's margin of victory would be more than 18,000 votes. Therefore, the election hinged on the narrower question of ex-felon disfranchisement rather than the broader question of voting restrictions on felons currently under supervision (prisoners, parolees, and felony probationers).

We first asked whether the Democratic votes lost to disfranchisement in previous elections would have been sufficient in number to overturn Republican majorities in Senate elections and in a recent presidential election. We now turn to earlier presidential elections. We first examine a much different counterfactual condition. Since a larger share of the voting age population is disfranchised now than ever before, some closely contested Democratic political victories of the past might have gone to the Republicans had contemporary rates of disfranchisement prevailed at the time. Two Democratic presidential victories in the last forty years (1960 and 1976) were decided by very narrow margins that might have been threatened if current levels of incarceration and disfranchisement had existed then.

[Table 4 about here.]

John F. Kennedy won the 1960 presidential election by a popular vote margin of 118,550 and a 303:219 margin in the Electoral College. Had contemporary rates of criminal punishment prevailed at the time, however, it is very likely that Richard M. Nixon would have won the popular vote and possible that he may have won the electoral vote. As Appendix Table 1 shows, we estimate that 4.7 million citizens or 2.29 percent of the voting age population were disfranchised in 2000 due to a felony conviction. If this proportion had held in 1960, about 2.5 million voters would have been disfranchised, as shown in Table 4 (.022935 multiplied by the voting age population of 109,672,000). Since the population proportion of convicted felons was actually much lower in 1960 than today, however, we estimate that only about 700,000 were actually disfranchised at

the time of the 1960 election.²¹ Therefore, at current rates of disfranchisement, about 1.8 million additional citizens would have been denied the vote in 1960. If 40 percent of these felons voted (in an election where the overall turnout rate was at a post- World War II high of 62.8%), and 75 percent of this group selected the Democratic candidate, figures in line with our estimates for other presidential elections, then Kennedy would have lost 364,000 votes –three times the popular vote margin in the election. In fact, we find that at current disfranchisement levels the Republican Nixon would have prevailed even if the felon turnout rate had been only 15 percent or if the rate of Democratic preference were only 60 percent. Under the most conservative scenario, using both lower turnout and lower party preference figure, it is likely that Kennedy’s victory over Nixon would have been preserved.

To apply the counterfactual to the Electoral College, we again used state-level data on correctional populations and our own estimates of the number of ex-felons in each state to compute disfranchisement rates for 1960 and 2000. Although both the actual and the imputed margins of victory are slim for most states, our analysis suggests that Nixon would likely have been victorious in New Mexico (with 4 electoral votes) and Hawaii (3 votes) and may have been victorious in Texas (24 votes), Missouri (13 votes), and Delaware (3 votes).²² Therefore, if current rates of disfranchisement had held during

²¹ Our data sources are less consistent for these earlier historical periods, so we can only approximate the actual number of disfranchised felons for years prior to the mid-1970s. Prison, parole and jail information are available for 1960, but probation figures were imputed based on state-specific ratios of probation to other correctional populations. The ex-felon figures were calculated based on releasees between 1948 and 1960 and may therefore be understated relative to contemporary figures.

²² Texas disfranchised ex-felons for a two-year waiting period until September 1, 1997, but no longer restricts the voting rights of ex-felons. Under our counterfactual conditions, the Democrats also nearly lost the states of New Jersey (16 electoral votes) and Nevada (3).

the 1960 election, it is possible that Nixon may have surpassed Kennedy in both popular and electoral votes.

It is unlikely that applying contemporary disfranchisement rates would have overturned the 1976 election, although the Democratic victory margin would have been considerably narrower. At current rates of disfranchisement, about 2.5 million additional citizens would have been denied the vote in 1976. We estimate (based on the NES) that 29.4 percent of these would have voted and that 80.7 percent of this group would have selected the Democratic candidate Jimmy Carter. This would have accounted for 462,164 votes or about 27 percent of the 1,682,970-vote victory margin.

Impact on Gubernatorial Elections

What about the impact on state-level elections? The NES does not ask respondents how they voted in gubernatorial (or other state) elections, so we do not have systematic survey data over the entire time period to estimate the likelihood of Democratic preference or the likelihood of voting in those elections. However, we can make some informed assumptions that would allow us to speculate about the effect of felon disfranchisement on gubernatorial elections. If we impute the mean rate of predicted Democratic voting among the disfranchised population in state-level Senate elections (70.0%), and the mean rate of turnout in these elections (23.2 percent), four gubernatorial races won by Republicans would have changed hands, in Alabama (with James Folsom (D) defeating James Forrest (R) in 1994), New Jersey (with James Florio (D) defeating Thomas Kean (R) in 1981), Texas (with John Hill (D) defeating William Clements (R) in 1978), and Georgia (with Lester Maddox (D) defeating Howard Callaway (R) in 1966).

DISCUSSION AND IMPLICATIONS FOR AMERICAN DEMOCRACY

In the preceding analysis we have estimated the political consequences of laws denying convicted felons the right to vote in United States Senate, presidential, and gubernatorial elections. We find that felon disfranchisement, combined with the rapid growth in the size of the disfranchised population, would have altered the outcome of at least four, and likely six, recent U.S. Senate elections, four Governor's races, and one presidential election (and if current levels of disfranchisement had existed in 1960, a Democratic victory may have been reversed). One startling implication of these findings relates to control over the Senate. Assuming that Democrats who might have been elected in the absence of felon disfranchisement had held their seats as long as the Republicans who narrowly defeated them, the Democratic Party would have gained parity in the 1984 Senate and would have maintained majority control of the U.S. Senate from 1986 to the present. Changing partisan control of the Senate would have had a number of important policy consequences: in particular, it might have enabled the Clinton Administration to gain approval for a much higher proportion of its federal judicial nominees, and it would have changed control over key Senate committees from Republican to Democratic control.

In examining presidential elections, we find that the Republican presidential victory of 2000 would have been reversed had felons been allowed to vote, and that the Democratic presidential victory of 1960 would have been jeopardized had contemporary rates of disfranchisement prevailed during that time. Disfranchised felons and ex-felons currently make up 2.3 percent of the voting age population, a figure that we project will rise to 3 percent within 10 years. Because the margin of victory in 3 of the last 10 presidential elections has been 1.1 percent of the voting age population or less, felon disfranchisement could be a decisive factor in future presidential races.

One potentially important implication of these results concerns the differing correctional populations affected by disfranchisement. We estimate that the disfranchised population is composed of approximately 36 percent ex-felons, 28 percent probationers, 9 percent parolees but only 27 percent prison and jail inmates. Disfranchisement of prisoners alone is unlikely to alter elections, but the numbers mount when those

supervised in the community are added, and reach a critical mass when ex-felons are also disfranchised (as some or all are in 13 states). Thus, the impact of felon disfranchisement would have been greatly reduced if ex-felons, probationers, and parolees had been permitted to vote in all states. Moreover, the philosophical justification for disfranchisement, founded on the liberal legal model and Enlightenment conceptions of the social contract, would appear to be much stronger for current prison inmates than for those who have completed their sentence (ex-felons), or those otherwise deemed fit to maintain community ties (probationers and parolees).

Although these results suggest that felon disfranchisement laws have significant political implications, we must also note a number of caveats to these findings. First, our counterfactual examples rely upon a *ceteris paribus* assumption – that nothing else about the candidates or elections would change save the laws regulating the voting rights of felons and ex-felons. Had these laws changed, other forces might have arisen to negate the political influence of felons and ex-felons. Second, our estimated vote choice and turnout analysis matched non-felon voters to felons on the basis of region, gender, race, age, income, labor force status, marital status and education. Although the non-felon voters resembled the felons in many respects, we cannot be certain that the experience of criminal conviction itself may not suppress, (or conversely, mobilize) political participation. Our attempts to estimate a lower bound by assigning “independent” political identities to felon voters reduces their estimated turnout rate, and some, but by no means all, of their political impact. Third, our analyses have assumed that felon disfranchisement laws are well enforced, and that felons and ex-felons do not attempt to vote in disregard of these laws. Surely some disfranchised felons have voted, although occasional charges of fraudulent voting have not, upon further investigation, produced significant evidence of illegal voting. There is also some evidence that state authorities have improperly purged ex-felons from the rolls, thereby offsetting or perhaps eclipsing the number of votes cast fraudulently (cf. Palast 2000).

Despite these important caveats, we find considerable evidence that the restrictions to the ballot for felons and ex-felons have had a demonstrable impact on

national elections. Further, our focus on national and state-level elections understates the full impact of felon disfranchisement. Because of the geographic concentration of disfranchised felons and ex-felons in urban areas, it is likely that such impact is even more pronounced in elections below the state-level, such as House, state legislative, and mayoral races.²³ Moreover, our analysis has only examined past elections. Unless disfranchisement laws are changed, the continuing growth of all correctional populations (U.S. Department of Justice 2000b) will exacerbate the political consequences of felon disfranchisement in the future. Even as the numbers of those incarcerated begin to level off (U.S. Department of Justice 2001), the number of disfranchised ex-felons will continue to rise for several years in those states that restrict their franchise.

Although this investigation has specified the impact of these laws, we have yet to address their origins or variations in their application across states and time. These questions are important for situating felon disfranchisement within a broader model of social control of dispossessed groups. Proponents of the “new penology” argue that the focus of criminological interest has recently shifted from the rehabilitation of individual offenders to social control of aggregate groups (Feeley and Simon 1992; Wacquant 2001). The correctional population is subject to a number of exclusions: they are typically excluded from access to federal grants for education (such as Pell Grants), they have restricted access to social programs, they face sharp disadvantages in the labor market, and they must live with the social stigma associated with a felony conviction. Restricted access to the ballot is but a piece of a larger pattern of social exclusion for America’s vast correctional population.

²³ We should note that in many local races, especially in mostly black urban districts, the actual partisan impact of felon disfranchisement might be diminished because Republican candidates are already uncompetitive in these districts.

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Figure 1. What is the Impact of Felon Disfranchisement on American Politics?

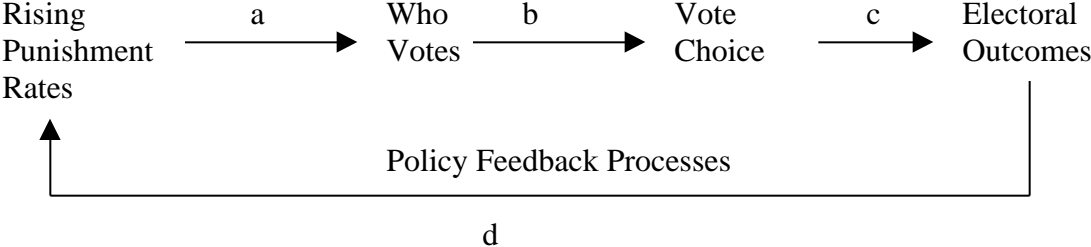


Table 1. Estimated Turnout and Voting Preferences of Disfranchised Felons

Year	Candidate	Presidential Elections		Senate Elections	
		Turnout	% Democratic	Turnout ¹	% Democratic
1972	McGovern	37.2%	71.6%	34.2%	77.5%
1974				17.0	64.4
1976	Carter	32.2	86.6	29.4	80.7
1978				17.2	84.3
1980	Carter	31.0	68.8	28.0	74.7
1982				20.0	79.4
1984	Mondale	35.6	76.3	31.9	74.2
1986				16.6	73.8
1988	Dukakis	29.7	76.3	26.5	82.9
1988				16.8	81.0
1992	Clinton	33.0	75.7	30.4	74.7
1994				17.1	52.5
1996	Clinton	27.2	88.1	25.4	80.2
1998				15.2	70.0
2000	Gore	21.6 ²	74.3	21.6 ³	76.7

¹ National estimates shown. Region-specific turnout estimates are available from authors. In presidential election years, a small percentage of voters cast a ballot for president but not Senate.

² NES estimate, CPS data not yet available.