

VOTING RIGHTS

Response to the Periodic Report of the United States
to the United Nations Committee on the Elimination
of Racial Discrimination

February 2008

***Violations of Articles 1, 4, and 5 of the
International Convention on the Elimination of all forms of Racial Discrimination
In the area of Voting Rights and Political Participation:***

A Response to the 2007 Periodic Report of the United States of America¹

EXECUTIVE SUMMARY

1. In recent years, there have been numerous reports by organizations across the United States of violations of the right to participate in elections and to vote on the basis of universal and equal suffrage.² Many African-American, Latino/a, Asian, and Native American communities have challenged existing federal and state laws and programs as discriminatory, while also reporting serious violations of the national Voting Rights Act.
2. The April 2007 Periodic Report of the U.S. Government references “problems with balloting in the 2000 election”³ but fails to note that there have been no prosecutions or penalties imposed in response to those problems. Nor have there been prosecutions or even investigations into many other violations of Article 5, paragraph (c) of the ICERD, including cases in Florida, Georgia, Louisiana, Ohio, New York, and Texas (as detailed in the following report). The failure to enforce existing laws enacted to protect the universal right to vote is a serious violation of Article 4.
3. The U.S. Government report does address the Committee’s concerns about the denial of voting rights to U.S. citizens residing in the nation’s capital, Washington, D.C.⁴ However, the Government does not provide information about actions taken to restore the right to vote to these citizens. In fact, the Administration has rejected recent legislative proposals to grant the right to vote to D.C. residents. These actions are a clear violation of Article 5, paragraph (c), to ensure universal suffrage and equality in the right to vote.
4. The U.S. Government report claims that there is a “lively debate within the United States” on the question of voting rights for persons convicted of serious crimes, but that the practice of felon disfranchisement does not violate U.S. obligations under the Convention.⁵ In fact, because the practice of disfranchising persons convicted of a felony has a well-documented

¹ This report was written and edited by Cicely Harris and Kevin Cunningham (Howard University School of Law), and Margaret Huang (Global Rights). Contributions were made by the Prison Working Group (whose coordinators are Naima Black and Tonya McClary), the Court Proceedings Working Group (coordinated by Ryan King, The Sentencing Project), and Lisa Crooms, Howard University School of Law.

² See, for example, reports from the Lawyers Committee for Civil Rights Under Law found at <http://www.lawyerscommittee.org/2005website/projects/votingrights/votingrights.html> (last viewed December 4, 2007); from the Leadership Conference on Civil Rights found at <http://www.civilrights.org/issues/voting/> (last viewed December 4, 2007); and from the NAACP Legal Defense Fund found at <http://www.naacpldf.org/content.aspx?article=1200> (last viewed December 4, 2007);

³ Periodic report of the United States of America to the U. N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, April 2007, paragraph 200, p. 69.

⁴ *Id.* at paragraphs 211-212, p.72-73.

⁵ *Id.* at paragraphs 208-210, p. 72.

racially disparate impact⁶, the U.S. government is in violation of its obligations under Article 1 to review and eliminate all laws and policies that result in racially discriminatory impact.

5. Based on these concerns, we make the following recommendations to the U.S. Government:

- In order to comply with Article 1 of the ICERD, the U.S. Government must immediately review and eliminate all federal and state laws and policies that have a racially discriminatory *impact* on the protection of universal suffrage and equality in the exercise of the right to vote. In particular, laws and programs in the states of Florida, Georgia, Louisiana, Ohio, New York, and Texas must be reviewed and reformed to ensure that the rights of racial and ethnic minorities to vote are fully protected.
- In order to comply with Article 4 of the ICERD, the U.S. Department of Justice Civil Rights Division must immediately commit more resources and energies to enforcing the Voting Rights Act and ensuring the protection of the right to vote for all citizens.
- The U.S. government must take immediate measures to protect the right of Washington, D.C., residents to vote by supporting national legislation that extends voting rights to these citizens.
- Given the wide disparities among the states and territories of the U.S. in their disfranchisement laws and in the application of those laws, the U.S. government should:
 - ensure that local governments are informed about their obligations to protect universal suffrage under the ICERD; and
 - adopt measures to make reasonable and uniform throughout the country the procedures for disfranchisement of those who convict a crime, as well as the procedures for restoring the rights of those individuals.

⁶ See, for example, information and reports from The Sentencing Project found at <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4> (last viewed December 4, 2007).

OVERVIEW OF VOTING RIGHTS IN THE UNITED STATES

1. When the United States Constitution was adopted in 1787, there were no national voting standards. While the federal government decided who was considered an American citizen (the primary criteria for exercising voting rights), decisions about who could vote were left to the individual states. In 1790, the federal legislature passed a Naturalization Law, which decreed that only “free white” immigrants could become American citizens. This law excluded Native Americans from voting because they were seen as citizens of their own sovereign nations and therefore not eligible for American citizenship. (Native Americans were not considered citizens until 1924.⁷) Nearly all of the states restricted voting rights to white men who owned property. As result of these strict standards, less than 5% of the newly formed American population was allowed to vote in the 1800 election.
2. Over the next century, legal racial barriers kept many immigrants from becoming full citizens and therefore they were excluded from having the right to vote. The African slave trade first brought slaves to America in 1619. The Emancipation Proclamation (1863) and the Thirteenth Amendment to the Constitution (1865) were adopted to legally end slavery. However, it was not until the 1867 adoption of the Fourteenth Amendment that Black males gained citizenship, and Black males were not granted the right to vote until the Fifteenth Amendment was adopted in 1870. In response to the Fifteenth Amendment, many states adopted legal measures to prevent Blacks from voting, including literacy tests, “Grandfather Clauses”, poll taxes, and “Jim Crow” laws.⁸
3. In 1965, the U.S. Congress enacted the Voting Rights Act. The Act outlawed legal measures designed to deny the vote to people based on their race or color. The Act also required the federal government to penalize states that had traditionally not allowed Blacks to vote. Furthermore, the U.S. Department of Justice was charged with enforcing the Act, including assigning federal monitors of specific polling places.⁹ The act was up for renewal in 2007, and President George W. Bush renewed the act on July 27, 2006.
4. A number of jurisdictions have proposed new legislation to extend voting rights to more U.S. residents. The proposed 2007 Voting Rights Restoration Act in New York would allow immigrants who have lived in the United States six months or longer the privilege to vote in municipal elections.¹⁰ The proposed District of Columbia Voting Rights Restoration Act of 2007 seeks to give Washington, D.C., residents the ability to vote as Maryland residents in presidential and congressional elections.¹¹

⁷ <http://www.crmvet.org/info/votehist.htm> (last visited Nov. 21).

⁸ *Id.*

⁹ http://www.usdoj.gov/crt/voting/intro/intro_b.htm (last visited Nov. 21).

¹⁰ <http://www.immigrantvoting.org/> (last visited Nov. 21).

¹¹ http://www.washingtonwatch.com/bills/show/110_HR_492.html (last visited Nov. 21).

RECENT VOTING RIGHTS VIOLATIONS BY STATE GOVERNMENTS

5. The following examples of voting rights violations by state governments are all clear violations of **Article 1**, paragraph 1, which requires State parties to prohibit and eliminate practices and legislation that are discriminatory *in effect*.
6. In the aftermath of Hurricane Katrina (August 2005), the state of **Louisiana** failed to allow many displaced citizens to vote in local elections. In November of 2005, the Louisiana state legislature enacted Act 40, which granted the Secretary of State the authority to formulate a special emergency election plan.¹² However, the Act failed to ensure that measures were adopted to enable all displaced residents to vote by absentee ballot.¹³ Because of the hurricane, the New Orleans area lost 27-48% of its voters, and 75% of the displaced voters were African-American.¹⁴ The impact of this legislation was clearly discriminatory in effect, if not by intent.
7. In March 2005, the **Georgia** state legislature approved a new law that required voters to obtain one of six forms of photo identification before going to the polls, in contrast to the seventeen types of identification previously allowed.¹⁵ The law required voters without a driver's license or other photo identification to obtain a special digital identification card, which would cost \$20 for five years and could be obtained from motor vehicle offices in only fifty-nine (59) of the state's one hundred and fifty-nine (159) counties. While the law's proponents claimed the legislation would prevent voter fraud, a U.S. District Court Judge imposed an injunction against the law as unconstitutional and resulting in unfair treatment for poor and African-American citizens. When asked to review the new law, the U.S. Department of Justice supported the proposed voter ID requirements, despite concerns among staff attorneys about the racial implications of the program. The state legislature revised the law, and currently Georgia accepts only valid photo identification in order to cast a vote. Without valid photo ID, a voter is only allowed to cast a provisional ballot.¹⁶ Numerous civil society groups continue to challenge the Georgia law because of its racially discriminatory impact.
8. **New York** felon disenfranchisement laws particularly affect Blacks and Latinos who constitute 81% of the prison population and 82% of those on parole. Two New York cases have addressed felon disenfranchisement: *Hayden v. Pataki* and *Muntaqim v. Coombe*. These lawsuits challenged the New York law that prohibits prisoners convicted of a felony from voting while incarcerated or on parole. The suits were brought on the claim that the voting laws were enacted to discriminate against Blacks and continue to have a disproportionate

¹² http://www.advancementproject.org/news/news-display-article.php?content_news_id=110%22 (last visited Nov. 21).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/16/AR2005111602504.html> (last visited Nov. 22, 2007).

¹⁶ <http://www.electionline.org/Default.aspx?tabid=364> (last visited Nov. 22, 2007).

impact on Blacks and Latinos. Ultimately, the U.S. federal courts that heard the claims dismissed them.¹⁷

9. Also in **New York**, recent studies demonstrate that the rights of Limited English Proficient (LEP) individuals are violated by the New York state election procedures.¹⁸ LEP individuals have special laws to ensure that they receive voting privileges. In addition to the Title VI of the Civil Rights Act of 1964, and the Title VI regulations which prohibit discrimination based on national origin, in 2000 the President adopted Executive Order 13166. “The “LEP” Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, states that people who are LEP should have meaningful access to federally conducted and federally funded programs and activities. New York has passed additional LEP statutes. For example, poll inspectors are obligated to place a conspicuous note in all the necessary languages instructing voters how to operate the booth so that their vote may be counted.¹⁹ Despite these laws, LEP voters still experience problems at the polls. According to a study done on the November 2005 elections, many voters did not receive any assistance from poll workers, nor were there language signs instructing voters how to cast their ballots. The report also noted that a small number of voters were prevented from voting at all.

VOTING IRREGULARITIES IN RECENT STATE ELECTIONS

10. Since the Reconstruction era after the U.S. Civil War (1863-1877), many southern states have made concerted, systematic efforts to frustrate the implementation of a truly equal voting process. Although the methods used vary greatly, the results are typically the same: the suppression of a large portion of the racial minority vote sufficient to swing the results of the election. The impact of this deflation of the power of the vote in certain communities can be clearly seen statistically and has become known as “voting irregularities.” Such irregularities are clearly a violation of **Article 5**, paragraph (c), which recognizes the right of everyone to vote in a non-discriminatory basis.
11. The **Florida** elections in 2000 illustrate many of the challenges to protecting voting rights in the U.S. today. Some of the factors that contributed to voting irregularities in that election were:
 - the partisan administration of elections by a Secretary of State who also served as the campaign leader for one of the candidates;
 - the failure to provide heavily populated urban areas with sufficient numbers of polling stations;
 - allegations that law enforcement officers were intimidating voters, threatening to issue loitering tickets to people standing in line to vote;
 - poll workers who required two forms of identification from some voters, despite the lack of legal requirement for one ID;

¹⁷ <http://www.demos-usa.org/pubs/Hayden%20v%20Pataki%20press%20release.pdf> (last visited Nov. 23, 2007)

¹⁸ http://nylarnet.org/NYLARNet_Polling_Access_Report%5B1%5D.pdf (last visited Nov. 23, 2007).

¹⁹ <http://70.86.230.142/archive/larc/newsitedesign/LEPTopics/VO/Voting.htm> (last visited Nov. 23, 2007).

- confusing ballots used in some districts but not uniformly required across the state; and
- the wrongful removal of individuals from the state's list of eligible voters because of an overly expansive felon purge effort.²⁰

It's significant to note that many of these factors had racially disparate impacts on the voting population of Florida.

12. Today, 80% of votes cast in elections in the United States are counted electronically. Despite this clear reliance on technology to ensure the fairness of the elections process, there is no oversight of any kind by the government of the software or hardware used to tabulate election results. The job of testing the privately manufactured voting machines has been outsourced to private companies. Voting machine companies have successfully argued that their software is proprietary and that allowing the government to review it would unreasonably compromise their businesses. On Election Day 2004, there were widespread reports of problems with the tally of the vote machines. In particular, reports from **Ohio** included an Associated Press story noting that the electronic voting system in Columbus, Ohio, gave one candidate nearly four thousand extra votes, and numerous reports from Youngstown, Ohio, that voters who attempted to cast a vote for one candidate saw that their votes were instead recorded as votes for another. Many of these reports came from communities with significant racial minority populations.
13. Another practice that limits the voting influence of communities of color is the use of political redistricting by state legislatures. After the 2000 census, **Texas** went from having 30 to 32 congressional districts. The Texas legislature was unable to reach an agreement on a map reorganizing the political districts. As required by the Texas constitution, when a redistricting map cannot be agreed on by the legislature, it is referred to a panel of three judges known as the Legislative Redistricting Board, who were able to reach an agreement on a new map. In 2002, however, a new majority party in the legislature tried to push through a new redistricting plan. The proposed plan was challenged legally on the grounds that its fundamentally partisan nature made it unconstitutional, and also on the grounds that it violated the Voting Rights Act. When the challenges to this redistricting plan were finally ruled on by the Supreme Court in *League of United Latin American Citizens v. Perry*, 125 S.Ct. 351 (2006), the court produced six different opinions and no clear standard. The Court did find, however, that the Texas plan violated the Voting Rights Act in one of the proposed congressional districts.²¹ Texas legislators are currently revising the law to confirm with the Court's findings.

²⁰ The Sentencing Project, "Felony Disenfranchisement Laws in the United States," found at http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf (last viewed December 4, 2007). During the 2004 presidential election, 960,000 ex-felons in Florida were not able to vote as a result of the state's felony disenfranchisement policy.

²¹ <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=05-204> (last visited December 4, 2007)

LACK OF ENFORCEMENT OF VOTING RIGHTS ACT

14. The failure of the U.S. Government to enforce the Voting Rights Act – particularly to prosecute and punish the denial of the right of racial minorities to vote – is a clear violation of **Article 4**.
15. The 1965 Voting Rights Act requires the Department of Justice to enforce the protection of voting rights of different racial groups and communities. However, under the current Administration, the Justice Department has undertaken significantly fewer cases on violations of the right to vote for people of color.²² Since 2001, despite widespread complaints about voter intimidation and denial of African-Americans' right to vote, the Bush Administration has filed only two cases claiming voter discrimination against African-Americans.²³
16. The U.S. Government report notes that the U.S. law 42 U.S.C. 1973 – Voting Act criminal provisions – makes it illegal for a private individual or public official to deny or abridge the right of any citizen of the United States to vote on the basis of race, color, or membership in a language minority group. However, the U.S. Department of Justice has failed to prosecute obvious cases of voting irregularities and discrimination such as those found in the 2000 and 2004 elections in Florida and Ohio. Despite acknowledging that severe disparities existed and had a harmful effect on minority turnout, the Justice Department refused to proceed with litigation arguing that such disparities were entirely legal under the Voting Rights Act.²⁴

VOTING RIGHTS OF RESIDENTS OF THE DISTRICT OF COLUMBIA

17. In another clear violation of **Article 5**, paragraph (c), the more than half a million Americans living in the nation's capital do not have congressional voting rights. While District of Columbia residents do elect a non-voting delegate to the House of Representatives, they have no representation at all in the Senate. The disfranchisement of the residents of Washington, D.C., was addressed by the CERD in its review of the U.S. Government's Initial Report. Because a majority (as much as 75%) of the District's residents is African-American, this disfranchisement is a violation of Article 5, which requires universal suffrage.
18. The U.S. Government report notes that Washington, D.C., residents are entitled to vote in elections for President and Vice-President, and that they elect a mayor and other local representatives. The current Administration has taken the position that congressional representation for the District would require a constitutional amendment. Even if that

²² http://www.americanprogress.org/issues/2007/03/pdf/civil_rights_report.pdf (last visited December 4, 2007).

²³ *Id.*

²⁴ *Id.*

position were widely accepted²⁵, the Administration has not undertaken any actions to promote a constitutional amendment in order to protect the voting rights of D.C. residents.

19. The U.N. Human Rights Committee has also addressed the issue of the lack of voting rights of Washington, D.C. residents in the 1995 and 2006 reviews of the U.S. Government's initial and second reports to that Committee. In its 2006 Concluding Observations, the Human Rights Committee expressed concern that the disfranchisement of Washington, D.C., residents was a violation of Article 25 and urged the U.S. government to ensure these residents direct representation in the Congress.
20. Beyond the United Nations treaty bodies, the Inter-American Commission on Human Rights has also addressed this issue by adopting a ruling in December 2003 concluding that the U.S. Government is in violation of its legal obligations under the *American Declaration of the Rights and Duties of Man* in denying the rights of Washington, D.C., residents to participate in the federal legislature.

VOTING RIGHTS OF INCARCERATED AND FORMERLY INCARCERATED INDIVIDUALS

21. Another violation of **Article 5**, paragraph (c), is the practice of felon disfranchisement in the United States. The Committee raised this concern in its 2001 *Concluding Observations*, paragraph 397, which expressed concern about the “political disenfranchisement of a large segment of the ethnic minority population who are denied the right to vote by disenfranchising laws and practices based on the commission of more than a certain number of criminal offences... sometimes by preventing them from voting even after the completion of their sentences.”
22. Today, forty-eight (48) of the fifty U.S. states still refuse to allow people in prison to vote.²⁶ It is estimated that 5.3 million Americans are denied voting rights due to a felony conviction. This disfranchisement disproportionately affects U.S. Blacks and Latinos, who are 60% of the total U.S. prison population²⁷ but only 27% of the total population of the country.²⁸ Because of the racial disparity of those currently or formerly incarcerated for felony offenses, voting disenfranchisement is disproportionately harsh – for example, at least 13% of black men are denied the right to vote.²⁹ If current rates of incarceration continue, in

²⁵ Numerous scholars and advocates have published papers on the constitutionality of Congressional legislation to give D.C. residents the vote. Such papers can be found at <http://www.dcvote.org/advocacy/dcvrlegal.cfm> (last viewed on Dec. 4, 2007).

²⁶ All states but Maine and Vermont currently bar people in prison for felonies from voting.

²⁷ Paige M. Harrison and Allen J. Beck, *Prisoners in 2005*, Bureau of Justice Statistics, p. 8 (November 2006) available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf> (last viewed September 26, 2007).

²⁸ U.S. Census 2000 Quickfacts. Available at <http://quickfacts.census.gov/qfd/states/00000.html> (last viewed September 26, 2007).

²⁹ The Sentencing Project, “Felony Disenfranchisement,” found at <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4> (last viewed December 4, 2007).

states that permanently disenfranchise ex-offenders, 40% of African Americans will be denied the right to vote.³⁰

23. A study conducted by Chris Uggen of the University of Minnesota considered the political impact of felony disenfranchisement. He estimated that approximately 35 percent of disenfranchised felons would have voted in past presidential elections, and 25 percent in Senate elections. He further estimated that Democrats would receive at least 70 percent of the votes from disenfranchised felons. The results of the study indicated that felony disenfranchisement laws may have altered as many as seven recent Senate elections, and at least one presidential election. Furthermore, it was estimated that had these laws not been in effect, Democrats would have had parity in the Senate from 1986 until present.³¹
24. Another violation of **Article 5**, paragraph (c), is in the practice of drawing political districts based on flawed census data. U.S. Supreme Court decisions require that each state's legislative districts be substantially equal in population so that each resident is given the same representation in government. To account for changing populations, each state must update its districts at least once per decade. However, all fifty states determine their districts based on flawed data from the U.S. Census that counts prisoners as if they were residents of the prison location, not of their home addresses. Under U.S. common law, people are residents of the place they choose to reside with an intent to remain, and as incarceration is involuntary, it should not qualify as a residence.³² In most states, this is explicit. For example, the New York State Constitution declares: "for purposes of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence...while confined in any public prison."³³ The use of flawed Census data to apportion legislative districts results in the dilution of the votes of urban and minority communities from which prisoners disproportionately come.³⁴ The transfer of this large, predominantly minority, non-voting population to upstate prisons, where it is counted as part of the population base for state legislative redistricting, artificially enhances the representation afforded to predominantly white, rural legislative districts.
25. In **New York State**, 62% of the population is white³⁵, but the prison population is 82% Black or Latino.³⁶ 66% of prisoners come from New York City³⁷, but all of the 43 new prisons built

³⁰ The Sentencing Project, "Felony Disenfranchisement Laws in the United States," found at http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf (last viewed December 4, 2007).

³¹ Christopher Uggen and Jeff Manza. *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*. 67 *American Sociological Review* 777-803 (2002) at http://www.soc.umn.edu/~uggen/Uggen_Manza_ASR_02.pdf (last viewed December 4, 2007).

³² *Stifel v. Hopkins*, 477 F.2d 1116 (6th Circuit 1973).

³³ N.Y. Const. art. II, § 4.

³⁴ *Importing Constituents* (Main Report, Part IV), available at <http://www.prisonpolicy.org/importing>. *Importing Constituents* combines Department of Correctional Services data on the demographics of its prison population with the legislative district lines and data published by the New York State Legislative Task Force on Demographic Research and Reapportionment. According to *Importing Constituents*, counting people in prison as residents of the prisons and not their homes cost New York City a net loss of 43,740 residents to prison towns outside the city.

³⁵ U.S. Census 2000, Summary File 1, Table P4, and New York State Department of Correctional Services, *The Hub System: Profile of Inmates Under Custody on January 1, 2000* p. i (2000).

³⁶ *Id.*

in New York since 1976 have been built outside the city in disproportionately white areas.³⁸ As a result, 98% of New York State’s prisoners – who are not allowed to vote – are counted as residents in state Senate districts that are disproportionately white as compared to the State's overall population.³⁹ The legislators whose districts are dependent on including prison populations make little pretense of providing actual representation to the prisoners in their districts. Indeed, representatives of such districts do not merely ignore their incarcerated constituents, but advocate policies inimical to their interests. Two upstate white state senators, Dale Volker and Michael Nozzolio, whose districts contain 17% of the state’s prisoners, have been the strongest advocates of retaining New York State’s harsh Rockefeller Drug Laws requiring long mandatory prison sentences.⁴⁰ This problem of lack of representation is not limited to prisoners in New York. For example, prisoners constitute 12% of the population of one Texas legislative district,⁴¹ and 15% of one Montana district.⁴² Such actions by the state governments are a clear violation of Article 5 of the ICERD.

RECOMMENDATIONS

26. In order to comply with Article 1 of the ICERD, the U.S. Government must immediately **review and eliminate all federal and state laws and policies that have a racially discriminatory impact** on the protection of universal suffrage and equality in the exercise of the right to vote. In particular, laws and programs in the states of Florida, Georgia, Louisiana, Ohio, New York, and Texas must be reviewed and reformed to ensure that the rights of racial and ethnic minorities to vote are fully protected.
27. In order to comply with Article 4 of the ICERD, the U.S. **Department of Justice** Civil Rights Division must immediately commit more resources and energies to **enforcing the Voting Rights Act** and ensuring the protection of the right to vote for all citizens.
28. The U.S. government must take immediate measures to **protect the right of Washington, D.C., residents to vote by supporting national legislation** that extends voting rights to these citizens.
29. Given the wide disparities among the states and territories of the U.S. in their disfranchisement laws and in the application of those laws, the U.S. government should:
 - ensure that local governments are informed about their obligations to protect universal suffrage under the ICERD; and

³⁷ *Importing Constituents* (Further Research & Methodology).

³⁸ *Id.*

³⁹ Peter Wagner, Prison Policy Initiative, “98% of New York's prison cells are in disproportionately white districts,” (posted January 17, 2005), available at <http://www.prisonersofthecensus.org/news/2005/01/17/white-senate-districts/> (last viewed Sept. 23, 2007).

⁴⁰ *Importing Constituents* (*Id.*, Part VI and Fig. 10.)

⁴¹ Peter Wagner and Rose Heyer, Prison Policy Initiative, *Importing Constituents: Prisoners and Political Clout in Texas*, (November 2004), available at <http://www.prisonersofthecensus.org/texas> (last viewed September 23, 2007).

⁴² Peter Wagner, Prison Policy Initiative, *Importing Constituents: Prisoners and Political Clout in Montana*, (December 2004), available at <http://www.prisonersofthecensus.org/montana> (last viewed September 23, 2007).

- **adopt measures to make reasonable and uniform throughout the country the procedures for disfranchisement** of those who convict a crime, as well as the procedures for restoring the rights of those individuals.