Felon Disenfranchisement in California

Robyn Gillum and Ryan Joy
Election Law
Issue

Who is disenfranchised by Article 2, Section 4 of the California Constitution?
Rule

The Article 2, Section 4 of the California Constitution and Election Code “shall provide for the disqualification of:

I. electors while:
   A. imprisoned, or
   B. on parole

II. for conviction of a felony.”
Element I: Imprisonment or parole

Imprisoned: to confine in prison especially as punishment for a crime


○ Common definition of “imprisoned” used
○ Law only pertains to people sentenced to time in state or federal prison, or on parole
○ Does not apply to criminals sentenced to time in county jail or on probation
Element II: Convicted of a felony

California: “wobbler offense”

- Certain crimes can be convicted as either a misdemeanor or a felony
- If convicted of a felony for a wobbler offense, can be disenfranchised
  \((\text{League of Women Voters v. McPherson})\)

Where person was convicted:

- California disenfranchisement law applies to any resident of California who is serving a sentence for a felony, regardless of what state they were convicted in \((\text{Flood v. Riggs})\)
Fused Rule

An individual will be barred from registering if they have (a) been convicted of a felony and are imprisoned in a (b) state or (b2) federal prison, in California or a sister state, or are on (b3) parole as a result of the conviction.

For this rule to be met element (a) and one or more of the conditions of element (b) must be fulfilled.
Is Article 2, Section 4 constitutional?

How has this rule been justified?

- Laws infringing the right to vote are subject to strict scrutiny (Dunn v Blumstein)
- Otsuka v. Hite
  - State’s interest in disenfranchising felons is to maintain the ‘purity of the ballot box’
- Richardson v. Ramirez
  - Disenfranchising criminals was justified under section 4 of the 14th Amendment
When could this law be deemed unconstitutional?

- Court uses the *Mobile v. Bolden* test
  - Discriminatory intent and effect
- *Hunter v. Underwood*
  - Alabama law violated the 14th amendment EPC
  - Intentional discrimination proven
- *Farrakhan v. Gregoire*
  - Section 2 of the VRA
  - No discrimination in Washington’s criminal justice system
Where is this law going?

After *Farrakhan*:

- In the 9th district, the test has switched to discrimination in the criminal justice system
- Hypothetically this should be easier to prove
  - However, the intent must be explicit
- Law is unlikely to change