

Felon Disenfranchisement in California

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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

League of Women Voters v. McPherson (2006)

- 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 (*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 (*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