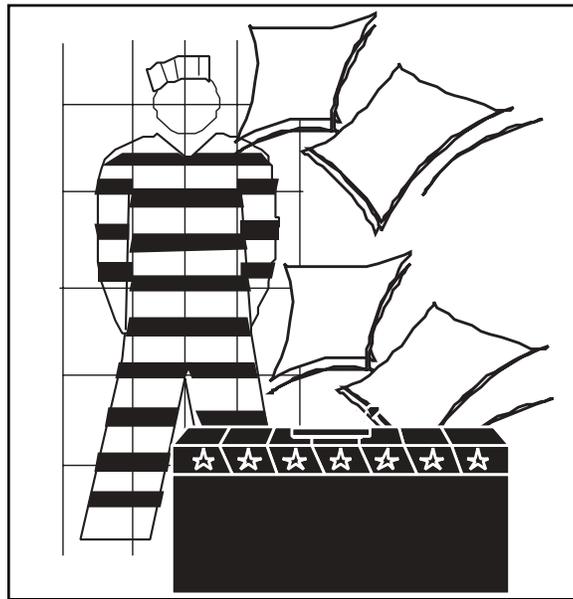


KEEPING THE FELON VOTE

JESSICA McBRIDE

Shortly after the hotly contested 2000 presidential election, Wisconsin officials were warned: What basically amounted to a state voting “honor code” for felons on supervision was not working. Wisconsin’s largest daily newspaper found that more than 361 felons on supervision had voted illegally in that election in the City of Milwaukee alone. Extrapolated statewide, it appeared more than 1,000 felons had cast illegal ballots in an election that turned on just over 5,000 votes. And in some local aldermanic races, the felon vote might have been decisive, due to double-digit margins.¹

Since the presidential election results were so close, it might be expected that the system would act quickly to find solutions—especially before another hotly contested presidential election. At the very least, the merits of a ban might have been officially revisited. But the system’s response was pretty much nothing, other than some measures to ensure felons were notified of the law. But, instead of tightening up the system in a significant way to prevent a replay, the state made it harder for outside researchers to do the investigating that officials had basically abdicated. The Legislature, concerned about identity



theft, ruled that citizens and reporters could no longer obtain dates of births of Wisconsin voters. And the Milwaukee County district attorney sent a clear message to felons on supervision that there would be no penalty if they decided to vote when he declined to prosecute any of the illegal voters from 2000.

District Attorney E. Michael McCann first told reporters

that it was important to prosecute the violations—felonies themselves—to preserve the election system’s integrity. He also said that not knowing it was illegal to vote did not excuse the felons from prosecution.² But McCann ended up levying charges against only three people and then asked for them to be dismissed, saying he couldn’t prove the felons knew they weren’t supposed to vote, something he argued that a new assistant attorney general’s opinion seemed to require.³

Since studies have shown that felon voters are more likely to vote Democratic than Republican, and since McCann and then Attorney General Jim Doyle are Democrats,

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some saw this inaction as political. For their part, Democrats have historically argued that felon voting restrictions disproportionately affect minorities.⁴

The Wisconsin law banning felons on supervision from voting dates to 1849, almost to statehood, according to the state Legislative Reference Bureau.⁵ The ban was part of a mostly-now-archaic law that also limited voters to those who were male and white, paving the way for modern-day accusations that felon voter restrictions are tied up in racial politics.

But Wisconsin is a middle-of-the-road state nationally where felon-voting rights are concerned. Most states—48 plus the District of Columbia—bar felons from voting while they are incarcerated, and Wisconsin is among them. Vermont and Maine are by far the most open, allowing even felons behind bars to cast ballots. Thirteen states go farther than Wisconsin by banning felons from *ever* voting, unless they have their civil rights restored through a usually fruitless and complicated process.

Thirty-three states, like Wisconsin, have found a middle ground. In addition to barring those incarcerated from voting, they bar felons from voting until they are off probation and parole, at which time their voting rights are restored.

The Wisconsin dispute is part of a national debate, particularly in an era of exceptionally close federal elections, because an estimated 4.7 million Americans are not allowed to vote because of felony convictions.⁶ Internationally, the United States is the only one of democratic nations that bans felons from voting after they are no longer incarcerated.⁷ Nationally, about 1.8 million African-Americans are banned from voting because they are felons.⁸ In Milwaukee County alone, according to the state Department of Corrections, more than 11,500 felons were on supervision at the time of the November 2004 election.⁹

Since 1996, nine states have revised felon-voting laws to make them more lenient.¹⁰ But this trend has occurred even as controversies in other states have erupted in recent years

that mirror the Wisconsin debate and break down along the same political fault lines as in Wisconsin:

- The extraordinarily close gubernatorial election in Washington State last fall has prompted allegations of illegal felon voting. The *Seattle Times* found in January 2005 that at least 129 felons had voted illegally, some by absentee ballot. Reporters in Washington State had access to birth dates to perform the checks. County election officials in Washington admitted they didn't really check for felon voters but rather "relied on them to be honest."¹¹

In February, Washington State Republicans alleged in court that 1,108 felons voted illegally; Democratic Governor Christine Gregoire won the gubernatorial election by only 129 votes. Democrats countered that Republicans would have to prove that the felon votes would have swayed the election. Most of the felons voted in a county that Gregoire handily won, even though state law required that their names be purged from voter lists.¹²

In March, a King County prosecutor said he'd found 99 felons who voted illegally from the newspaper's list and would seek to void their voter registrations. Washington felons told the media they didn't know they couldn't vote.¹³ In addition, the American Civil Liberties Union sued Washington State saying that its ban was unconstitutional because some of the felons were not allowed to vote because they had not yet paid off supervision fees.¹⁴ The investigation continues to unfold.

- In 1998, the *Miami Herald* reported that more than 100 felons voted illegally in the Miami mayoral election. It was then discovered that almost 3,000 ineligible felons were registered to vote in one Florida County alone and efforts were made to purge them from a registered voter list.¹⁵ But cleaning up the voting rolls had its own consequences when it was shown that more than 1000 names, mistakenly

removed from a registered voter list before the 2000 election, turned out to not be ineligible felons.¹⁶ But still the *Palm Beach Post* found that five times that number of felons voted illegally in Florida in 2000, and 68% were Democrats.

Last fall, state Republicans maintained that 925 felons who were ineligible to vote were on the state registered voters' list that had been eventually scrapped because of the earlier inaccuracies. The party argued just days before the 2004 presidential election that the 925 felons had voted early or requested an absentee ballot. The party alleged that 580 of the felons were Democrats; Democrats accused the party of trying to suppress the minority vote.¹⁷

- *The Denver Post* reported shortly before the November 2004 presidential election that 6,000 felons remained on voter lists despite being ineligible to vote. The paper also was able to use dates of birth to do the match. Most of the felons were not affiliated with a party, but of those who were, 34% were Democrats and 21% were Republicans. More than 500 of the felons registered in 2004, many as part of registration drives to get out the vote, including one that took place in a jail. As a result, Colorado officials agreed to flag the names of felons on the list and give them provisional ballots if they showed up at the polls. They said the problem would be fixed in 2006 when a new federal law requires states to have statewide registration systems.¹⁸

- Despite the problems with felon voting nationwide, a trio of Democratic senators—including Hillary Clinton of New York—have introduced a bill that would

require all states to allow felons to vote.¹⁹ But, wrote political commentator George Will of the proposal, the courts have continually ruled that the 14th Amendment's "equal protection" guarantee does not make it unconstitutional to deny felons the right to vote. Rather, the amendment says that states should not deny the right to vote except "for participation in rebellion, or other crime."²⁰

In Wisconsin, the felon-voting ban was not significantly revised after the 2000 revelations. It was just ignored, largely by Democratic officials. For example, no measures were taken to make sure that felons did not merely show up at the polls and register on election day—something made possible by the state's lenient same-day registration law.

Back in 2000, McCann did suggest in the newspaper that elections officials should ask all new registrants whether they were felons on supervision. But then Election Commission Executive Director, Julietta Henry, publicly objected, saying she was afraid such an effort would target

African-Americans, telling the newspaper, "We don't want to get into election profiling."

Thus, no new significant measures were taken after the 2000 election to ward off a repeat of the problem, says Sharon Robinson, the new Milwaukee Election Commission executive director, who replaced embattled head Lisa Artison. Although she said Milwaukee, well before 2000, attempted to purge voter registration lists of felons using updates from the courts, she believes the updates were not done frequently enough; and she is also concerned the lists were not complete, something borne out by investigations into the 2004 election that have found examples of felon voters registered before election

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day. In addition, she said there was “no way to identify” felons who tried to register on election day. And she believes “a lot of misinformation” was given to felons by activists driving “massive voter registration efforts” in 2004, erroneously making some felons think they could vote.

However, the few changes that *were* made will make it a lot more difficult for officials to argue this time around that felons did not know the law; in 2004, the Wisconsin Legislature mandated that judges inform disqualified felons at sentencing that they are not allowed to vote. The change also ordered the state Department of Corrections to inform felons on supervision that they cannot vote.²¹

But fast-forward to November 2, 2004, and another hotly contested presidential election. Despite the very real possibility that Wisconsin, a battleground state, could have become the epicenter that narrowly decided the race, elections officials again decided simply not to make significant changes to check at the polls whether voters were on felony supervision. This was despite the fact that the state Republican Party raised the issue again shortly before the election—raising concerns about felons requesting absentee ballots from jails and voting drives in jails. Governor Doyle said he was sure the felon-voting law would be carefully followed. But it remained basically an honor code.²²

After the election, a chorus of Democratic officials said they doubted fraud had occurred. “I don’t think we have seen any evidence of fraud,” Milwaukee Mayor Tom Barrett bluntly stated.²³ This came despite revelations of thousands of nonexistent addresses, potential double voters, and other problems.

But did felons vote illegally in Wisconsin in November 2004?

Despite the roadblocks on research imposed by the system since 2000, a Wisconsin Policy Research Institute investigation into felon voting in the City of Milwaukee determined that *at least* more than 100 felons on supervision appear to have voted illegally in the 2004 presidential election. A *Milwaukee*

Journal Sentinel investigation also conducted this spring used different methodology and came up with almost identical results. The newspaper also found that almost 300 felons statewide had voted illegally.²⁴

In the Wisconsin Policy Research Institute investigation, the felons shared the same names and addresses as city voters. Felon dates of birth were used to determine whether the felon had lived at the same address as the person on the voting database. Obvious father-and-son matches were excluded.

The number is almost certainly an extremely conservative estimate due to the restrictions on obtaining key identification information about voters—namely voter dates of birth.

For this investigation, the City of Milwaukee voter database was obtained and, using Microsoft Access, a computer data manager program, was crossed with the Milwaukee County felons on supervision database maintained by the state Department of Corrections. A researcher also did a random check of the matches by directly contacting some of the individuals at the addresses given in the city voter database.

The State of Wisconsin felons on supervision database used in this investigation included first name, last name, dates of birth, and most middle initials. The city voting database contained first name, last name, addresses, and most middle initials, in addition to information about whether the person voted and whether he or she had registered at the polls or before election day.

Arguably, the cases of felons who voted illegally but were registered before election day are more troubling because they could have been identified before the election. Incidentally, the state is now in the process of developing a controversial database of all registered voters, which would allow for a cross-check in the future.

After first names, last names, and middle initials were matched in both databases, those names, along with the dates of birth from the

INFORMATION PROVIDED

| | First Name | Last Name | Middle Initial | Address | Date of Birth |
|---------------------------|-------------------|------------------|-----------------------|----------------|----------------------|
| Milwaukee voter database | Yes | Yes | For most | Yes | No |
| Milwaukee felons database | Yes | Yes | For most | No | Yes |

felon database, were matched with public court records to determine whether a person with that name and date of birth had used the same address as provided by the voter with the same name. Only those people whose *addresses also matched* were counted in the tally. In a few cases, names and addresses were matched without middle initial.

Hundreds of people with the same first and last names and middle initials came up in both the felon and voting databases for the November 2004 election. But many of those people are different people with the same names. Such a check is too broad to be meaningful. However, including an address check makes it far more likely that the felon and voter with the same name were the same person, particularly since the felons' dates of births were used. Public records were used to eliminate obvious father-and-son matches living at the same address.

Some examples from the more than 100 matches (last names and specific addresses are being withheld because the felons have not been charged with crimes for voting):

- Deanna M. A., age 24 at the time of the election. A Caucasian female given three years probation for substantial battery in 2003. Registered to vote before the November 2004 election. Used the same address on the city's south side in court records as the voter with the same first name, last name, and middle initial.
- Roy P. C., age 51 at the time of the election. A Caucasian male given a six-year prison term in 1999 for cocaine possession and paroled before the election. Registered at the polls. Used the same address on the city's north side in a December 2004 crimi-

nal traffic case as the voter with the same first name, last name, and middle initial.

- Torri A. C., age 41 at the time of the election. An African-American female on supervision for a forgery conviction in 1995. Registered before the election. Used the same address on the city's north side as the voter with the same first name, last name, and middle initial as far back as 2000.
- Deshawn B.B., age 23 at the time of the election. An African-American male on five years of supervision for 2000 convictions for felon in possession of firearm and cocaine possession. He registered at the polls. Used the same address on the city's north side in a September criminal traffic case as the voter with the same first name, last name, and middle initial.

When contacted by a researcher, felons admitted voting, but most—although not all—said they didn't know it was illegal.

One 43-year-old Milwaukee woman, who asked that her name not be printed, said she had voted just a few weeks after getting out of jail. She said no one asked her about her felon status at the polls.

"They didn't ask me or anything. In fact, I had just come home, just got out of jail a few weeks prior. No one said anything to me at jail neither." The woman was already registered to vote. In fact, she said she planned to vote again even though it is illegal. "If no one is going to stop me, why not," she said. "I didn't know and no one told me so I am gonna keep on doing it." The woman is an administrative assistant who was convicted of misconduct in office for theft of movable property.

A Milwaukee man, 31, who also did not want his name printed, said that he voted even though he knew it was illegal. He said he voted because "we are all given the right to vote." And he said taking away that right was unfair. "One vote can make a difference," he said.

Dislike for George W. Bush drove him to the polls. "I have to live with the choices that Bush makes every day," he said. "I should have a say in who the president is going to be. I came out of retirement from voting because of Bush." He said he registered to vote on election day at a school and provided an ID and proof of address. The man is on probation for felony bail jumping.

Others were willing to provide their names. Tara Pledger, 32, said she voted for John Kerry and was a felon on supervision. She said that she didn't know it was against the law for a felon to vote, adding that it is not fair to take away a person's right to vote just because they are on paper. Terry L. Spears, 50, also said that he voted for Kerry. He confirmed that he was currently a felon on probation. He is on probation from 1994 because he has not paid the amount he owes in fines. He received a felony for the manufacture, possession and delivery of a cocaine base.

Specifically, the Wisconsin Circuit Court automated records program and the Milwaukee Municipal Court automated records program were used to match voter addresses with felon dates of birth and names. The state Department of Corrections refuses to release the current addresses of felons on supervision, saying it can harm the rehabilitation of offenders, compounding researcher difficulties.

The WPRI investigation, and that of the newspaper, shows the state's felon voting honor code was filled with holes back in 2000 and in 2004.

This time, spurred by questions raised by Republicans and the media, McCann and U.S. Attorney Steve Biskupic launched an investigation into whether fraud occurred in the 2004 presidential election. And Doyle in April intro-

duced an election reform package calling for leaving felon names on voter registration lists with an asterisk so poll workers could provide them with a challenged ballot. People registering on election day would be crosschecked with a felon list provided by the state Department of Corrections. Voters trying to register at the polls would have to sign a statement asserting they are not a felon on supervision.²⁵

But the system had ample warning years ago and pretty much did nothing, so few should be surprised that history appeared to repeat itself last fall.

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