

Consideration of State Report: 139th session  
(Oct. 9 – Nov. 3, 2023, Geneva)

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts, advancing democracy, human rights, and economic opportunity, preventing diseases, and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with universal human rights principles. The Center has monitored more than 110 elections in 40 countries since 1989, forging many of the techniques now common in the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for elections, based on state obligations under public international law. Since 2020, The Carter Center has supported elections in the U.S. by providing objective information about the process and advancing transparent election practices.

This report focuses on key issues relevant to the right to participate in public affairs outlined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), a human rights treaty adopted in 1966, and bolstered by rights and freedoms outlined in other articles of the covenant. The report covers issues raised in the list of issues, along with responses of the state, and highlights additional issues of concern to The Carter Center, specifically felon disenfranchisement, election accessibility for persons with disabilities; the impact of mis-, dis- and mal-information on the election process; political finance; and the need for g(n)5 (d t)n-2 (e)- (i)-2 (c)-1 (l)- tion

“27. With reference to the Committee’s previous concluding observations (para 24), please provide updated information on measures adopted by the State party to encourage the review of state laws on felony disenfranchisement and the removal of lengthy and cumbersome voting

information about their voting restoration options; remove or streamline lengthy and cumbersome voting restoration procedures; as well as review automatic denial of the vote to any imprisoned felon, regardless of the nature of the offence.”<sup>5</sup>

Approximately 4.6 million Americans face disenfranchisement due to felony convictions, a 24% reduction since 2016, driven by state policy shifts and declining prison populations.<sup>6</sup> As of 2016, state and federal prisoners were 2½ times more likely to report a disability than adults in the general population, and people with cognitive disabilities were disproportionately represented among that group.<sup>7</sup>

Congress has limited constitutional authority to compel states to allow felons and ex-felons to vote in federal elections. Furthermore, a recent federal executive order, with notable effects on specific agencies, has encountered substantial resistance from states.<sup>8</sup> To date, the successful restoration of voting rights to millions with felony convictions remains primarily a state responsibility, with limited success in the courts or at the federal level.

Navigating voter eligibility poses a significant challenge for individuals with felony convictions.<sup>9</sup> To address this issue, Federal Executive Order 14019 aims to enhance federal voting access and protect voting rights.<sup>10</sup> It seeks to raise awareness of voting eligibility and improve access for currently and formerly incarcerated individuals. The order directs the U.S. attorney general to provide voter registration education for those in federal custody and jails, coordinate with probation services, and assist formerly incarcerated individuals in obtaining the necessary IDs to meet state voter requirements.<sup>11</sup> While not altering state disenfranchisement laws, the order addresses a critical voting barrier: the lack of awareness regarding eligibility.

According to a 2023 report,<sup>12</sup> while the Bureau of Prisons has provided incarcerated individuals with voter information, the process has experienced delays, leaving “[m]any eligible voters with felony convictions unaware of their continued eligibility to vote, coupled with a lack of opportunities to register or vote.”<sup>13</sup> Furthermore, state cooperation remains uncertain.

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<sup>5</sup> CCPR/C/USA/CO/4

<sup>6</sup> Christopher Uggen, Ryan Larson, Sarah Shannon and Robert Stewart, Locked Out 2022: Estimates of People Denied Voting Rights. The Sentencing Project. Oct. 25, 2022. As012r[222M192 8-0.007f0.003 Tc -0.003 Tw 0.186Bc 0 Tw 2.2.4 (e)-6.27j(e)3

For example, election officials from 15 states challenged the executive order,<sup>14</sup> disputing its constitutionality and absence of congressional approval, arguing that election procedures fall within the purview of state legislatures or Congress, rather than the executive branch.

Despite limited justification, criminal disenfranchisement laws have withstood constitutional challenges. Courts typically subject state restrictions on voting rights to rigorous scrutiny under Section 1 of the U.S. Constitution's 14th Amendment's equal protection clause,<sup>15</sup> mc004 Tw nd2 (ny ug-2 gs)a ( )

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Washington, New York, California, Iowa, and Washington, D.C., have recently expanded voting rights for individuals with convictions.<sup>22</sup>

**Election Material Accessibility for Non-English Speakers**  
General Comment 25, Paragraph 12 states, –( )TjEMmNon

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marginalized communities, or efforts to ensure that “free IDs” are available.<sup>28</sup> There is research that indicates that voter ID laws affect voter participation. One study indicates that about 10% of nonvoters in Wisconsin lack a qualifying voter ID or report that voter ID was at least a partial reason why they did not vote in 2016, and 6% of nonvoters lacked a voter ID or cited voter ID as their primary reason for not voting.<sup>29</sup>

In federal elections, those who fail to produce the required ID or whose eligibility is not immediately verifiable, federal law mandates they be able to cast a “provisional” ballot that may later be cured.<sup>30</sup> The method for “curing”<sup>31</sup> and casting a provisional ballot varies by state.<sup>32</sup> The number of provisional ballots cast also varies greatly by jurisdiction, as noted by the MIT Election Data and Science Lab, observing that “jurisdictions with younger, more mobile and minority populations distribute them at a higher rate.”<sup>33</sup> Some research indicates that demographic factors such as race and sex may influence whether provisional ballots are ultimately counted.<sup>34</sup>

### Participation in Public Affairs for Persons with Disabilities

In a survey of 2,000 voters, The U.S. Election Assistance Commission found a voter turnout gap of 3.6% between people with and without disabilities in the 2022 election. In their analysis of census data, they found a voter turnout gap of 1.5%.<sup>35</sup> One in five voters with disabilities needed

assistance to vote in 2022, with 10% of voters reporting difficulty in 2022, and 18% of voters reporting difficulty in 2020. (U.S. Election Assistance Commission, *2022 Voter Turnout by Disability*, <https://www.eac.gov/2022/08/22/2022-Voter-Turnout-by-Disability>)

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while in other states, a person under guardianship may retain their right to vote unless a court explicitly determines that they do not have the capacity.<sup>37</sup>

### Voter Registration

Although the registration gap between voters with and without disabilities is less than 1%, people with disabilities experience greater disenfranchisement from state and federal voting laws as well as access barriers to voter registration. Although online voter registration allows people to use assistive technology, some states have not implemented an online voter registration system. In those states, voters with print disabilities (perceptual, physical, or visual) may have difficulty printing and signing the form.<sup>38</sup> In some states, that signature may be used for wet signature verification for absentee ballots and may not be consistent for voters with print disabilities.<sup>39</sup> In states with online voter registration systems, those systems may be noncompliant with accessibility standards or difficult to use with assistive technology.<sup>40</sup> Voters with disabilities may have a harder time obtaining proper ID, especially those who are unable to leave their homes due to disabilities or who don't have access to accessible transportation.

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position that is part time and comes with no salary. Their campaign activity may be taken as a sign of [medical improvement](#) or functional ability to work. Because of this, people who receive federal disability benefits [risk reducing or eliminating their benefits](#) by campaigning for elected office. Federal legislation was proposed in the [Senate in 2022](#)

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free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”

An important challenge for the U.S. regarding adherence to Article 25 lies in the area of campaign expenditures. State and federal laws limit amounts that individuals can give to campaigns and require disclosure of campaign records to ensure that such limits are respected. But so-called “outside spending” – on election-related advertisements and other communication that is managed independently from a candidate’s campaign – provides a legal way to bypass such limits.

The U.S. Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission* rendered unconstitutional any state or federal law limiting such outside spending, citing it as a violation of freedom of speech. Following that decision, outside spending grew from \$205 million across all elections in 2010 to \$2.9 billion in the presidential election year of 2020.<sup>53</sup> In many races, more money is spent by outside spending groups than by candidate campaigns.

Outside spending can be pooled and operated by organizations referred to as super PACs (political action committees), which are not required to disclose their sources, creating an opportunity for foreign entities, corporations, interest groups, and individuals to influence elections anonymously.

In most U.S. elections since the *Citizens United* decision, a small handful of individuals or interest groups have spent more on election communications than all other contributors combined. In one well-documented instance, industrialists David and Charles Koch used massive election spending to change the policy of the Republican party on climate change.<sup>54</sup>

Concentrated outside spending has a particularly large impact on elections for specific functions such as judges and school boards. Special interest groups, often with direct interest in cases before or expected to come before courts, accounted for 35% of all spending on state supreme court justice elections in 2019-2020 (the latest data available), according to one analysis.<sup>55</sup>

## Impartial Election Administration

The U.S. is highly unusual in the degree to which political parties have direct involvement, and sometimes full control, over the administration of elections. This fact creates significant problems for state compliance with some elements of Article 25. General Comment 25 recommends two specific institutional structures for adherence with Article 25, and because of partisan involvement in elections, the U.S. is largely at odds with those recommendations. First, Paragraph 20 of the Commentary states, “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws...” Second, Paragraph 23 recommends that states

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<sup>53</sup> Open Secrets, *Outside Spending* at <https://www.opensecrets.org/outside-spending/>

<sup>54</sup> Coral Davenport and Eric Lipton, *How G.O.P Leaders Came to View Climate Change as Saleable* New York Times. June 3, 2017. at <https://www.nytimes.com/2017/06/03/us/politics/republican-leaders-climate-change.html>

<sup>55</sup> Douglas Keith and Douglas Velasco *The Politics of Judicial Elections 2019-20*. Brennan Center. Jan. 25, 2022. <https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2019-20>.



Likewise, for congressional elections, both parties use redistricting to maximize the number of seats they win in the states they control. Because of gerrymandering, the two parties have won roughly 10-20 “excess seats”<sup>58</sup> above their state vote share in most elections. Districts drawn for partisan

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