Groups claim criminals' voting rights wrongly disenfranchised

By Henry Meier

A memorandum from the state’s top elections official has sparked controversy - and now legal action - over the alleged disenfranchisement of some criminals’ voting rights.

In the memo, the secretary of state’s office lays out new guidelines that explicitly forbid county officials from registering to vote felons sentenced under California’s new realignment laws, which shift non-violent, non-sexual and non-serious felony offenders from state prisons and parole monitoring to county jails and local post-release supervision.

The ACLU and several other organizations filed a petition in the 1st District Court of Appeal in San Francisco Wednesday, asking a judge for a writ of mandate in order to prevent county clerks and registrars from following those orders.

The petition claims Secretary of State Debra Bowen’s Memorandum No. 11134 blatantly violates the state’s constitution.

Jory Steele, an attorney for the ACLU, said she was hopeful that the court would take the petition under consideration.

"It’s a discretionary decision by the court," she said. "We believe voting rights are a fundamental issue and are very hopeful that the court will take it. Voting is one of the most precious rights in a democracy and it makes us no safer, no stronger, and no fairer if we take these rights from people."

Article II section 4 of the state’s Constitution says that inmates in state prison and those released on parole can be disenfranchised. It does not mention offenders serving jail time in county jails or under local supervision. The petitioners claim that since these criminals are being held and monitored at the local level, they are not eligible to be disenfranchised.

Bowen’s office argues the exact opposite in the memo. The office maintains that at the time the section was written, all felony offenders would be sentenced to state incarceration and then be subject to parole. Therefore, the felons that are now locked up and supervised at the local level are still subject to a voting ban.

A spokeswoman for Bowen said the office does not comment on pending litigation and said the legal reasoning for the guidelines were contained in the memo.

A letter dated Wednesday from the attorney general’s office to the petitioners said that the secretary of state would litigate the matter if necessary but was willing to take under advisement "any detailed legal analysis of these important issues..."

Richard Hasen, a professor at UC Irvine School of Law who focuses on election law, said there was a vast disparity in how states dealt with voting rights for felons.

"It’s really a state by state issue," he said. "There are states like Vermont and Maine that have no voter disenfranchisement for felons, while other states ban all offenders from voting."
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