



April 4, 2019

The Honorable Kevin McCarty
California State Capitol, Room 2136
Sacramento, California 95814

Re: Support for ACA 6 / AB 646 (McCarty) to Restore Voting Rights

Dear Assemblymember McCarty,

We at Dēmos write in strong support of ACA 6, a bill that would place a state constitutional amendment on the ballot to restore voting rights to Californians on parole, and AB 646, which would make corresponding changes to the Elections Code. Passage of both bills, and adoption by voters in the 2020 election, would help build a more inclusive democracy in California.

Dēmos is a policy and advocacy organization that helps power the movement for a just, inclusive, multi-racial democracy. As part of our work in democracy reform, we are committed to eradicating barriers to the right to vote—including criminal disenfranchisement laws, which disproportionately lock people of color out of the electoral process.

Nationwide, more than 5 million people are barred from voting because of a felony conviction. Nearly 50,000 of these individuals are Californians disenfranchised only because they are on parole.¹ These parolees are disproportionately Black and Latino.² They are community members who work, pay taxes, and raise families in the state but have no say in the policies that shape their daily lives.

It is time for the Golden State to ensure that everyone—regardless of past involvement with the criminal legal system—can have their voices heard and ballots counted. In doing so, California can be a leader in the democracy movement. We therefore applaud the introduction of ACA 6 and AB 646 and urge the Assembly to pass these measures.

¹ Public Policy Institute of California, California's Changing Parole Population, available at <https://www.ppic.org/publication/californias-changing-parole-population/>.

² *Id.*

Felony Disenfranchisement Perpetuates A Legacy of Racial Bias

Felony disenfranchisement laws in the United States have troubling race and class dimensions that cannot be reconciled with our shared present-day values of equal citizenship and equal dignity.

Scholar Ward Elliott has observed that the spread of disenfranchisement laws may have been a response to the abolition of property-holding requirements, which “had served a number of indispensable functions, such as holding down the voting strength of free blacks, women, infants, criminals, mental incompetents, unpropertied immigrants, and transients.”³ After Reconstruction, states in the South began to tailor their disenfranchisement laws to cover crimes for which Black citizens were most frequently prosecuted, “as part of a larger effort to disfranchise African American voters and to restore the Democratic Party to political dominance.”⁴ Over time, states imposed blanket disenfranchisement for all felony convictions.

Discriminatory disenfranchisement laws are not unique to the South. California, too, must confront its history on this issue. Not only did the state reject ratification of the Fifteenth Amendment in 1870 (ratifying the Amendment only in 1962), it also included permanent felony disenfranchisement in its first constitution in 1849. Although California has changed and states have repudiated discriminatory barriers to voting such as poll taxes and literacy tests, criminal disenfranchisement laws persist. These laws continue to have a disproportionate racial impact due to the pervasive racial bias in the criminal justice system.

African Americans and Latinos make up 32% of the U.S. population, but in 2015 they comprised 56% of all incarcerated persons in the country.⁵ This is because individuals of color are prosecuted and sentenced at much higher rates than whites for comparable behavior. For example, in a national survey on drug use, it was reported that “African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost *6 times that of whites*.”⁶ African Americans “represent 12.5% of illicit drug users, but

³ WARD E.Y. ELLIOTT, *THE RISE OF GUARDIAN DEMOCRACY* 43 (1974).

⁴ Pippa Holloway, “*A Chicken-Stealer Shall Lose His Vote*”: *Disenfranchisement for Larceny in the South, 1874-1890*, 75 J. S. HIST. 931, 931 (2009); see also Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407, 409 (2015) (“Disenfranchisement became an important aspect of the Jim Crow laws used in reconstruction-era America to continue to subjugate the newly-freed slaves.”).

⁵ NAACP, Criminal Justice Fact Sheet, available at <https://www.naacp.org/criminal-justice-fact-sheet/>.

⁶ *Id.* (emphasis added).

29% of those arrested for drug offense and 33% of those incarcerated in state facilities for drug offenses.”⁷

California is not immune from the national illness of deep racial disparities, particularly in the prison system. Black Californians and, to some extent, Latinos are overrepresented in the state’s parole population. According to the Public Policy Institute of California, in 2016 “African Americans made up 26% of parolees but only 6% of California’s adult population. Whites also make up 26% of the parolee population but comprise a much larger share—41%—of the total adult population. Latinos account for 40% of parolees and 35% of California adults, while 7% of parolees—and 18% of the adult population—are persons of other races.”⁸

The prison population in California has spiked over the past several decades, meaning the parole population has increased too. In 1980, the state’s prison population was under 30,000. Today, it’s over 130,000—more than four times what it was forty years ago.⁹

Because people of color are policed, prosecuted, convicted, and incarcerated for crimes at disproportionately higher rates than whites, they lose their right to vote at disproportionately higher rates too. As a result, the electorate—in the United States as a whole and in California—is disproportionately white. Communities of color experience reduced political power and the underrepresentation of their interests in government. Restoring voting rights, therefore, would be promote equity in the democratic process.

Felony Disenfranchisement Lacks a Defensible Rationale

Dauras Cyprian, a Californian who is halfway through his parole and already working and paying taxes, has observed, “Voting is the cornerstone of any democracy. When I went to prison and was incarcerated, I didn’t lose my citizenship. So why would I lose my access to democracy simply because I’m on parole?”¹⁰

The response is typically that individuals who have committed felonies have shown themselves morally unworthy of holding the franchise. This argument is exceedingly weak.

⁷ *Id.*

⁸ Public Policy Institute of California, *California’s Changing Parole Population*, available at <https://www.ppic.org/publication/californias-changing-parole-population/>

⁹ The Sentencing Project, *State-by-State Data, Prison Population over Time – California*, available at <https://www.sentencingproject.org/the-facts/#map>.

¹⁰ Bryan Anderson, *Should Convicted Felons on Parole be Allowed to Vote? Californians May Soon Decide*, SACRAMENTO BEE (Jan. 28, 2019).

Society exacts retribution and expresses its moral condemnation of criminal conduct through penal sanctions—the deprivation of liberty involved in a criminal sentence that is tailored to the defendant and the offense—not through collateral consequences.¹¹ Moreover, it is disproportionate and ill-fitting to judge a person’s moral worth based on a relatively small slice of their life. As civil rights attorney Bryan Stevenson has eloquently written, “Each of us is more than the worst thing we’ve ever done.”¹² In addition, tying deprivation of the vote to criminal conviction is necessarily arbitrary when the majority of crime goes undetected¹³ and the criminal system is marred by systemic racial biases.

Ending Felony Disenfranchisement Would Serve Reentry and Public Safety

While there is no legitimate justification for felony disenfranchisement, there is ample reason to believe restoring the vote to those on parole would benefit California as a whole.

In a survey of over 1,000 Californians in prison and on parole, Initiate Justice found that although only 37% voted before incarceration, 98% said they would vote if they could because they want “to contribute to society in a positive way, feel like a member of a larger community, and have a voice in our political process.”¹⁴ Relatedly, scholar Alec Ewald has argued that permitting people with convictions to vote would strengthen our democracy by expressing “confidence in the robust nature of our elections and the inclusiveness of our political values.”¹⁵ Voting can be a means of education, rehabilitation, and reentry. According to Ewald, participating in elections could help individuals with criminal justice involvement to “develop their sense of social responsibility and membership in the political community.”¹⁶

¹¹ Alec Ewald, *Punishing at the Polls*, DEMOS, 29-30 (2003) (“[I]t is very unlikely that the policy has any retributive, punitive effects at all on the many members of the offender population already estranged from political life—particularly when we take away the vote in an invisible, automatic way, as all American disenfranchisement law does.”), available at https://www.demos.org/sites/default/files/publications/FD_-_Punishing_at_the_Polls.pdf.

¹² BRYAN STEVENSON, JUST MERCY 17-18 (2014).

¹³ John Gramlich, *5 Facts About Crime in the U.S.*, PEW RESEARCH CENTER (Jan. 3, 2019), <http://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/> (citing Bureau of Justice Statistics data and summarizing, “[m]ost crimes are not reported to police, and most reported crimes are not solved”).

¹⁴ Initiate Justice, *Democracy Needs Everyone: The Urgency of Ending Felony Disenfranchisement in California* 5 (March 2019), available at <https://www.initiatejustice.org/wp-content/uploads/2019/03/Democracy-Needs-Everyone-Report-Initiate-Justice.pdf>.

¹⁵ Ewald, *supra* note 11, at 11.

¹⁶ *Id.*; see also Note, *The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and “the Purity of the Ballot Box,”* 102 HARV. L. REV. 1300, 1309 (1989) (“[R]epublicanism seeks to nurture civic virtue in its citizens, and is premised on the notion that political participation is the path to moral growth.”).

Reenfranchising people who have previously been convicted of crimes is also a vital step toward ensuring the safety and vitality of California’s communities. Research shows that people “who enter stable work and family relationships are most likely to desist from crime.”¹⁷ This is because once an individual with a criminal record rejoins the community—through gainful employment and resumption of full family duties—the person becomes accountable to the other members of that community. Any and all duties that help the person fully reintegrate will motivate that individual to further engage in community-based activity and away from unlawful conduct. Assuming responsibilities of a “voting member of one’s community would appear to be a logical analog to work and family reintegration.”¹⁸

Academic research supports this idea. A 2004 study controlling for factors like race and gender found that “among former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.”¹⁹ It concluded that “there is at least some correlation between voting and recidivism . . . among people who have had some official contact with the criminal justice system.”²⁰ Another study found that “individuals who are released in states that permanently disenfranchise are roughly nineteen percent *more likely* to be rearrested than those released in states that restore the franchise post-release. This finding provides initial evidence consistent with the thesis that disenfranchisement is directly related to recidivism.”²¹

Plainly, restricting those with felony convictions from voting does nothing to improve the safety of neighborhoods. Restoring the right to vote, on the other hand, would help educate and prepare these individuals for full re-entry. Registering to vote and casting a ballot would engage their responsibilities as citizens, ultimately resulting in stronger, safer communities in which members do right by one another.

¹⁷ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 197 (2004-2005) (citing Robert Sampson & John Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 AM. SOC. REV. 609, 617-618 (1990); Christopher Uggen, *Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism*, 65 AM. SOC. REV. 529, 542 (2000)); John Laub et al., *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63 AM. SOC. REV. 225, 237 (1998).

¹⁸ Uggen & Manza, *supra* note 17, at 197.

¹⁹ *Id.* at 205.

²⁰ *Id.* at 206.

²¹ Hamilton-Smith & Vogel, *supra* note 4, at 426 (emphasis added).



California Can Help Lead the Way

The right to vote is the core and essence of modern democracy. Per capita, however, no country strips voting rights from more of its citizens than the United States.²² By contrast, for example, most of Europe allows people to vote while in prison.²³

Two states in America—Maine and Vermont—do not disenfranchise their citizens for felonies. Both states typically boast voter turnout higher than the national average, with Maine often taking the top spot nationally. Now other states are beginning to recognize the importance of restoring the right to vote. In the most recent midterms, almost 65% of Floridians approved a constitutional amendment that has the potential to restore the right to vote to 1.4 million individuals with conviction histories.

California can build on that momentum. With the passage of ACA 6 and AB 646 and subsequent approval by the voters, California could join 14 other states and the District of Columbia in restoring the right to vote to individuals upon completion of incarceration.²⁴ This reform will move us closer to our nation's promise of an inclusive democracy.

If you have any questions or would like to discuss this further, please contact me at (202) 864-2746 or cbains@demos.org. Thank you.

Sincerely,

Chiraag Bains
Director of Legal Strategies
Dēmos

cc: Members and Committee Staff,
Assembly Elections and Redistricting Committee

²² *Id.* at 411.

²³ ACLU, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies* 6 (2006), available at https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf.

²⁴ National Conference of State Legislators, *Felon Voting Rights*, available at <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.