



Rodney McKenzie, Jr. Executive Vice President of Movement Strategies, Demos
Written Testimony on “The Restore the Vote Amendment Act of 2019”
Submitted to the Committee on Judiciary and Public Safety
District of Columbia City Council

Good afternoon, my name is Rodney McKenzie, Jr., Executive Vice President of Movement Strategies at *Demos*, a dynamic “think-and-do” tank dedicated to racial, social, and economic justice. Thank you to Chairman Allen, Council Member White and Members of the Committee for the opportunity to submit testimony on this critical issue.

The name *Demos* means “the people.” The organization bears that name because of our commitment to lifting up every individual in this country and challenging our government to live up to its ideals of equality, freedom, justice and indeed, democracy. That is why I am here today in strong support of the Restore the Vote Amendment Act of 2019, which would expand voting rights to eligible incarcerated residents with felony convictions. I also want to acknowledge and thank Council Member White for his leadership on this critical intervention to strengthen our democracy.

An Equal Say

Currently in the U.S. there are close to [6 million individuals](#) who do not have the most basic civil right, the right to vote, because of a criminal conviction.¹ Our bloated system of criminal justice has not only destroyed individuals and families, but it has also weakened our democracy by silencing the voices of millions. The District of Columbia City Council has taken a bold and profoundly democratic step by [introducing legislation](#) to restore this fundamental right to currently incarcerated individuals, a move which will impact roughly 6000 residents.² This is a particularly profound reform in light of the fact that the District of Columbia itself lacks representation in Congress.

Original Sin, Original Intent

As our system of mass incarceration has come under increasing scrutiny, the needle has moved towards acknowledging the rights of people who have been involved in the criminal legal system. Practices like [solitary confinement](#) are slowly being acknowledged as torture and limited in use, while campaigns against the [prison industrial complex](#) which profits from our system of punishment are being waged on

¹ Uggen, Chris, Larson, Ryan, Shannon, Sarah, “Six million lost voters: State Level Estimates of Felony Disenfranchisement, 2016,” October 6, 2016, Sentencing Project. Retrieved from: <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

² Arnold, Allen, “District of Columbia Could Restore Voting Rights to Felon in Prison,” June 4, 2016, *Huffington Post*. Retrieved from: https://www.huffpost.com/entry/dc-felony-voting-rights_n_5cf6e0bde4b059c99ebf19c0

multiple fronts [in states across the country](#).³⁴ On the issue of voting rights, [seventeen states](#) including the District of Columbia have gone so far as to automatically restore the right to vote upon release from prison, while others have passed legislation to re-enfranchise those on probation, on parole, or both.⁵

The typical arguments for these reforms invariably come down to stressing that people who are formerly incarcerated have “paid their debts” to society and therefore should be given back their right to vote, while also pointing out that research has shown a positive correlation between re-enfranchisement and reduced recidivism, suggesting that restoring this civil right helps to positively integrate people back into their communities.⁶

Arguments like these, while undoubtedly important to underscore the benefits to the community as well as serve as an indicator of the profound effect of rights restoration on the individual psyche, ignore a critical truth: felony disenfranchisement laws were created for the [explicit purpose](#) of [disenfranchising newly emancipated black \(male\) voters](#). These laws were never about punishment, they were always about suppressing the black vote.⁷⁸ We don’t need to rely just on scholarship for this. In state after state, historical record tells us so. Consider the example from [neighboring Virginia](#):

In 1902, Virginia sought to expand restrictions to the right to vote in the state constitution by strengthening felony disenfranchisement provisions, as well as poll taxes and literacy tests. Carter Glass, a Virginia state senator is quoted as saying these amendments would “eliminate the darkey as a political factor in this state in less than five years, so that in no single county of the Commonwealth will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”⁹

New York State provides a number of references as well, despite the tendency in the minds of the public to think of New York and the North as solely the home of abolition then, and progressive, inclusive democracy now. [Delegate Samuel Young](#) spoke on the issue of granting suffrage to non-propertied black

³ Wysktra, Stephanie, “The Case Against Solitary Confinement,” April 17, 2019, Vox Magazine. Retrieved from: <https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform>

⁴ Wagner, Peter, “Iowa Governor Pledges to Address Cost of Prison and Jail Phone Calls,” December 28, 2015, Prison Policy Initiative. Retrieved from: <https://www.prisonpolicy.org/blog/2015/12/28/iowa-governor/>

⁵ Chung, Jean, *Felony Disenfranchisement: A Primer*, June 27, 2019, Sentencing Project. Retrieved from: <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>

⁶ Klas, Mary Ellen, “Price tag for restricting felon’s rights after prison put at more than \$365 million a year,” originally published May 21, 2018, updated July 5, 2019, *Miami Herald*. The *Herald* article notes that of those Floridians whose rights were restored upon release from prison, “less than one percent of them returned to crime.” These findings are disputed of course. Governor Scott claims the recidivism rate has been on a steady decline for some years. Retrieved from: <https://www.miamiherald.com/news/politics-government/election/article211408754.html>

⁷ Taylor, Jennifer Rae, “Jim Crow’s Lasting Legacy at the Ballot Box,” August 20, 2018, *The Marshall Project*. Retrieved from: <https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>

⁸ Holloway, Pippa, ‘A Chicken-Stealer Shall Lose His Vote’: Disfranchisement for Larceny in the South, 1874-1890 (November 18, 2009). *Journal of Southern History*, Vol. 75, No. 4, pp. 931-962, November 2009. Available at SSRN: <https://ssrn.com/abstract=1508526>

⁹ New York Times Editorial Board, “Virginia’s Century-Old Mentality on Race,” July 30, 2016, *The New York Times*. Retrieved from: <https://www.nytimes.com/2016/07/31/opinion/sunday/virginias-century-old-mentality-on-race.html>

men at the New York State Constitutional Convention of 1821, arguing that, “The minds of the blacks are not competent to vote.”¹⁰

In light of this history, as Professor Charles Ogletree writes, “When a law can be traced clearly to a racially discriminatory start-point, the burden of proving absence of racial taint in the current operation of the law should fall on those who seek to justify its continued existence.”¹¹ Demos would argue that with respect to laws whose origins and impact are so clearly racial, the burden both inside of the courtroom and inside of the legislature should in fact be on those who want to maintain these laws to prove that they (the laws) are *not* racist and doing disproportionate harm to the equal representation of black and brown communities.

At Demos, we are committed not only to creating a just and equitable world, but to telling the truth about that world. If we do not center the reasons for the creation of felony disenfranchisement laws in the discussion to abolish it, then we are missing the whole point. The root, we would also argue, cannot be separated from the tree. What we are discussing is the repeal of laws that never had any legitimate basis to begin with and has caused untold harm to the strength of our democracy. It is with that frame in mind that we should fight to end this shameful and violent practice.

A Human Rights Intervention

Despite significant hurdles, people behind bars as well as those who have been released have always been fighting for their rights. From the [infamous “Angola Three”](#) who fought for the rights of fellow prisoners to the [political organizing and PAC formation](#) by incarcerated leaders in Massachusetts, people in prison have taken considerable risks and used their talents to fight for everything from improved conditions inside, to having a stake in the communities their families live in and to which they will eventually return.^{12,13} The restoration of voting rights for incarcerated residents from the District of Columbia, who are often housed in federal prisons [far from their families](#) could enable residents not only to continue to weigh in on the laws, policies, and elected officials that shape life in the District, but it would increase their ability to advocate for themselves.¹⁴ Without close family or friends nearby, individuals from the District who are incarcerated cannot draw on the help of loved ones on the outside to help bring attention to conditions that are often beyond the comprehension of the public, such as the

¹⁰ Wood, Erika, Budnitz, Liz, Malhotra, Garima, “Jim Crow in New York,” 2009, *Brennan Center for Justice*. The report can be found here: https://www.brennancenter.org/sites/default/files/2019-08/Report_JIMCROWNY_2010.pdf

¹¹ *Ibid.*

¹² Aviv, Rachel, “How Alfred Woodfox Survived Solitary,” Jan. 8, 2017, *The New Yorker Magazine*. Retrieved from: <https://www.newyorker.com/magazine/2017/01/16/how-albert-woodfox-survived-solitary>

¹³ Nichanian, Daniel, “Massachusetts Lawmakers Consider Voting Rights, but Organizers Are Not Waiting,” Feb. 7, 2019, *The Appeal*. Retrieved from: <https://theappeal.org/politicalreport/massachusetts-lawmakers-consider-restoring-voting-rights-but-organizers-are-not-waiting/>

¹⁴ Austermuhle, Martin, “D.C. Inmates Serve Time Hundreds of Miles From Home. Is it Time to Bring Them Back?” Aug. 10, 2017, *WAMU*.

exploitation of prison labor, extreme temperatures, violence, and generally deplorable living conditions.¹⁵

Arguing for the restoration of voting rights to the incarcerated population as a human rights intervention does not negate the work they have done and continue to do in leading the charge on reforming our laws and policy. What it does is recognize their constitutional right to a voice in our society and to trigger the same kind of accountability that elected officials feel to non-incarcerated citizens to the millions of people inside our prisons.

Accountability for Actors in the Criminal Legal System

The restoration of voting rights to those who are incarcerated could also bring about much-needed reforms to our criminal legal system. Prosecutors have been [widely acknowledged](#) as the most powerful people in the criminal legal system.¹⁶ However, as a result of a [Supreme Court decision](#) four decades ago which gives them absolute immunity “for acts committed in their prosecutorial role” there is literally no way to hold them accountable for misconduct, *except* for the ballot box.¹⁷ [Prosecutorial misconduct](#) is a leading factor in wrongful convictions, but their impact on the wrongly convicted is just the tip of the iceberg.¹⁸ For instance, until this year, prosecutors in the borough of Manhattan could legally withhold evidence from defense counsel until the very day of trial, a practice known as the “[blindfold law](#)” which prosecutors regularly chose to engage in.¹⁹ Within such a system, the right to a fair trial is virtually non-existent.

People outside of the criminal justice system rarely know about the abuses committed by prosecutors. On shows like, “Law and Order,” police and prosecutors are the heroes, and heroes are never wrong, and certainly never unethical. As elected officials, they are additionally powerful because of the votes they can bring. Therefore, imagine how differently they might operate – from charging to plea deals to fulfilling their Brady obligations to share all relevant evidence with defense counsel - if they knew defendants would not be effectively silenced upon incarceration? One could argue the same applies to elected Judges and Sheriffs, both major stakeholders in the criminal justice system who incur little scrutiny while wielding enormous power.

District of Columbia in a unique position to lead

Felony disenfranchisement laws in the U.S. are a deep stain on our integrity and our morality as a people. They are inconsistent with our values as a democratic society. They are rooted in racism and oppression. They do nothing to improve public safety and, in fact, deny society, especially directly impacted communities, the myriad benefits that come from full civic engagement. As the home of the

¹⁵ Morning Edition, “U.S. Prison Inmates Strike Over Living Conditions,” August 21, 2018, NPR News. Retrieved from: <https://www.npr.org/2018/08/21/640437993/u-s-prison-inmates-to-strike-over-poor-living-conditions>

¹⁶ Reese, Hope, “The Growing Power of Prosecutors,” May 2019, *Longreads*. Retrieved from: <https://longreads.com/2019/05/03/the-growing-power-of-prosecutors/>

¹⁷ Sarma, Bidish, “After 40 Years, Is it Time to Reconsider Absolute Immunity for Prosecutors?” July 19, 2016, American Constitution Society Law Blog. Retrieved from: <https://www.acslaw.org/expertforum/after-40-years-is-it-time-to-reconsider-absolute-immunity-for-prosecutors/>

¹⁸ The Editorial Board, “Rampant Prosecutorial Misconduct,” June 4, 2014, *The New York Times*. Retrieved from: <https://www.wnyc.org/story/unmasking-new-york-states-blindfold-law/>

¹⁹ *The Leonard Lopate Show*, “Unmasking New York State’s ‘Blindfold Law’,” June 22, 2017, *WNYC*. Retrieved from: <https://www.wnyc.org/story/unmasking-new-york-states-blindfold-law/>

highest incarceration rate in the country—and the seat of our nation’s capital—DC can and should play a leading role in pushing the nation to end this painful and violent practice of excluding people from our democracy. Please show leadership by abolishing our felony disenfranchisement law and expanding voting rights to Washingtonians whose rights have been taken away once and for all.