



January 27, 2023

Members of the Oregon State Legislature
Senate Committee on Judiciary

Via Online Portal

Re: Support for SB 579 to Restore Voting Rights to Incarcerated Oregonians with Felony Convictions

Dear Chair Prozanski and Members of the Senate Committee On Judiciary,

We write to urge you to support SB 579, a bill to restore the right to vote to Oregonians currently incarcerated for felony convictions. SB 579 will re-enfranchise tens of thousands of people, simplify the current law, and make Oregon a national leader in protecting the right of all its citizens to vote and participate in American democracy.

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. Our Restore Your Vote program helps restore voting rights to people with past convictions by providing direct rights restoration services and empowering community leaders to understand and monitor implementation of rights restoration laws. CLC also works to ensure that eligible incarcerated voters can exercise their right to vote, including by working with jurisdictions to improve their election infrastructure and its accessibility to incarcerated voters. Most recently, CLC worked with Washington, D.C. on the implementation of its universal enfranchisement measure.¹

We strongly support ending Oregon’s disenfranchisement of currently incarcerated people with felony convictions and expanding access to the ballot to eligible incarcerated voters. SB 579 is not just about whether incarcerated Oregonians should be allowed to vote, but whether there is any legitimate reason why an American citizen should be stripped of the right to vote in the first place. We do not believe that there is.

Felony disenfranchisement laws do not serve any legitimate criminal legal purpose: they have no meaningful punitive, deterrent, or restorative value. Indeed, studies actually show that

¹ See Restore the Vote Amendment Act of 2020, Washington, D.C. Bill 23-0324, <https://lims.dccouncil.us/Legislation/B23-0324>.

disenfranchisement *undermines* rehabilitation and hinders re-entry.² Conversely, restoring the right to vote *improves* individuals' connection to and engagement with their communities while incarcerated, as well as their transition back into society post-release.³ As one incarcerated voter in Washington, D.C. explained: “[I]f you’re allowing your incarcerated population to function within this democratic process, you are actually teaching them how to be citizens. . . [O]nce you get into the practice of doing that and once you transition back into society, you will continue that practice.”⁴

Enfranchising incarcerated individuals is important for democratic accountability. Elected officials make consequential decisions every day that directly impact incarcerated voters: legislators make the laws that incarcerated voters are charged with breaking, district attorneys prosecute their cases, state judges adjudicate their cases, and sheriffs and other law enforcement police them on the streets and run the jails and prisons in which they are currently incarcerated. Incarcerated voters' exposure to the criminal justice system gives them a major stake in the outcome of public policy, and their participation is crucial if the ballot box is truly to be a site where we hold our elected officials accountable.

Still, despite these empirical facts and the experiences of incarcerated voters, felony disenfranchisement laws persist and their history explains why. In many states, these laws were enacted after the Civil War and proliferated during the Jim Crow era.⁵ Put simply, felony disenfranchisement exists and continues in the United States because of efforts to suppress voters and communities of color.⁶ Oregon's disenfranchisement scheme still serves that purpose today,

² See, e.g., Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407 (2012); Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004). Felony disenfranchisement not only means that incarcerated people, as a class, are inadequately represented by the political process, it also means that the political power of certain racial and economic groups is diluted due to the number of members who cannot vote. In other words, disenfranchisement not only impacts incarcerated citizens, it disempowers the groups to which they belong. See Christopher Uggen, Jeff Manza, & Angela Behrens, *Felony Voting Rights and the Disenfranchisement of African Americans*, 5 SOULS 48 (2003), http://users.cla.umn.edu/~uggen/Uggen_Manza_Behrens_04_Souls.pdf.

³ See, e.g., Civic Nebraska, *Recidivism & Voting Rights, Case Study: Florida* (Jan. 30, 2019), <https://www.civicebraska.org/wp-content/uploads/2019/02/2019-Florida-recidivism-case-study.pdf>; Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

⁴ Kira Lerner, *What It's Like to Vote From Prison: For the first time D.C. is letting people vote from prison.*, SLATE (Oct. 28, 2020), <https://slate.com/news-and-politics/2020/10/dc-prisoners-voting-first-time-felony-disenfranchisement.html>.

⁵ Jennifer Rae Taylor, *Jim Crow's Lasting Legacy at the Ballot Box*, THE MARSHALL PROJECT (Aug. 20, 2021), <https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>.

⁶ Oregon first disenfranchised people in prison beginning in 1857, “during a time of forced labor, exclusion laws, lashings, lynching, and policies designed solely to benefit white men and oppress people of color.” Kira Lerner, *Oregon Bill Would Enable People to Vote From Prison*, THE APPEAL (Jan. 25, 2021), <https://theappeal.org/politicalreport/oregon-voting-bill-disenfranchisement/> (quoting Anthony Richardson, an advocate incarcerated at the Oregon State Correctional Institution in Salem); see also Or. Const. art. II,

disenfranchising Black citizens at five times the rate and Latino citizens at two times the rate of the general population.⁷ Felony disenfranchisement and its racist roots are a stain on our democracy. SB 579 will erase this exclusionary electoral feature and restore the right to vote to more than 15,000 Oregonians.⁸

A system of universal enfranchisement also protects against *de facto* disenfranchisement —i.e., the process by which confusion and misinformation around voting after a felony conviction leads many people with past convictions—and election officials—to believe wrongly that they cannot vote, even if they are eligible.⁹ In so doing, SB 579 will also create a simple, bright line rule that improves election administrability, as it stands to reason that a system disenfranchising no one will be easier to administer than a system disenfranchising a select few.

SB 579 will also fight *de facto* disenfranchisement by increasing access to the ballot box for incarcerated voters. The majority of voters in Oregon’s jails are awaiting trial,¹⁰ often held because they cannot afford bail, and are almost all eligible to vote under Oregon law.¹¹ But despite their eligibility and a Supreme Court case confirming they cannot be disenfranchised just because of their incarceration status,¹² very few voters are able to actually cast ballots. Jail-based disenfranchisement is not the result of one bad law, but rather a complicated, convoluted net of practical barriers that deprive eligible, incarcerated voters of their constitutional right to vote.¹³ Lack of access to internet, phones, and other modes of communication deprive incarcerated people of vital election information. Individuals often cannot access identification cards, pens, and postage needed to complete election materials. Importantly, misinformation about felony disenfranchisement is widespread, and many detained people and jail officials alike do not even know that incarcerated people are eligible to vote.

Jail-based disenfranchisement is particularly harmful because jailed voters are a microcosm of historically marginalized voters. Voters in jail are disproportionately people of color, low-income, unhoused, or have disabilities. In 2015, Black people made up nine percent of Oregon’s jail

§ 3 (1857); George Brooks, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 Fordham Urban L.J. 101 (2005).

⁷ The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* at 16-18 (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/#III.%20Disenfranchisement%20in%202020>.

⁸ *See id.* at 16.

⁹ *See* Erika Wood & Rachel Bloom, *De Facto Disenfranchisement*, Am. Civil Liberties Union & Brennan Ctr. for Justice 2-5 (2008), <https://www.aclu.org/other/de-facto-disenfranchisement>.

¹⁰ Vera Institute of Justice, *Incarceration Trends in Oregon* at 1 (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-oregon.pdf> (finding 63% of the people detained in Oregon’s local jails are pre-trial).

¹¹ Or. Rev. Stat. § 137.281.

¹² *See O’Brien v. Skinner*, 414 U.S. 524, 534 (1974).

¹³ *See* Madeleine Carlisle and Lissandra Villa, *Most of the 750,000 People in U.S. Jails Are Eligible to Vote. These Advocates Are Fighting to Get Them Registered*, TIME (Sept. 11, 2020), <https://time.com/5887658/voting-in-jail-2020-election/>.

population, despite representing only two percent of the state’s population.¹⁴ By dismantling barriers to voting for those in jail, SB 579 will help establish a more representative democracy that is accountable to all Oregon’s citizens.

Because voters in jail cannot access election information and materials on their own, SB 579’s provisions requiring proactive distribution of these resources have the potential to transform voting access for Oregon’s incarcerated voters. Affirmative outreach is a gamechanger for jail- and prison-based disenfranchisement. For example, in Navajo County, Arizona, only three people in jail made written requests to vote in the 2020 general election; but when staff proactively asked each individual, 67 people indicated they wanted to vote.¹⁵ Proactive engagement with voters helps combat misinformation and streamlines the voting process. By requiring elections and corrections officials to establish procedures for all incarcerated voters to receive the necessary elections materials, SB 579’s provisions reflect this best practice in combatting jail- and prison-based disenfranchisement.

Oregon is already well-equipped to administer elections that afford a voice to all voters. In particular, because Oregon already has a universal vote-by-mail system, it should be no more difficult to provide a ballot to an incarcerated voter than to any other. This point is borne out in other jurisdictions: Maine—a state that has always embraced universal enfranchisement—and Washington D.C. both conduct their prison voting programs entirely by mail.¹⁶ Further, some Oregon counties have already piloted programs to serve eligible voters who are incarcerated in county jails, a similarly marginalized and even more transient population of would-be voters.¹⁷ These jurisdictions may, in turn, serve as models for other counties and correctional facilities to follow.

¹⁴ Vera Institute of Justice, *Incarceration Trends in Oregon* at 2 (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-oregon.pdf> (finding 63% of the people detained in Oregon’s local jails are pre-trial).

¹⁵ The Arizona Coalition to End Jail-Based Disenfranchisement, *Unlock the Vote Arizona, Part 3: Jail-Based Voting in Arizona’s November 2020 General Election* 14 (2021), <https://www.votefromjail.org/wp-content/uploads/2021/05/General-Election-JBV-Report-1.pdf>.

¹⁶ See Daniel Nichanian, “*A Sliver of Light*”: Maine’s Top Election Official on Voting From Prison, *THE APPEAL* (May 2, 2019), <https://theappeal.org/politicalreport/matthew-dunlap-on-voting-in-maine-interview/> (describing Maine’s effective use of existing absentee voting procedures to serve incarcerated voters); Washington, D.C. Bill 23-0324 (providing a process to mail all necessary election materials to DC residents in Bureau of Prison facilities).

¹⁷ See, e.g., Multnomah Co., *Voter education and outreach in Multco includes those currently or previously incarcerated* (Oct. 7, 2020), <https://multco.us/multnomah-county/news/voter-education-and-outreach-multco-includes-those-currently-or-previously> (describing partnership between Multnomah County Sheriff’s Office and county election officials to assist individuals incarcerated for misdemeanors to vote from jail); see also Maggie Vespa, “*You have the right*”: Portland’s homeless registered, encouraged to vote in unprecedented push, *KGW* (Oct. 28, 2020), <https://www.kgw.com/article/news/local/homeless/portland-homeless-register-vote-2020-election/283-9d83c560-fcde-4183-9bae-2593cc9c6ec2> (describing outreach by the Portland City and Multnomah County Joint Office of Homeless Services to help people without a permanent address vote—including incarcerated voters in the county jail).

In sum, SB 579 is Oregon's opportunity to join a growing vanguard of states that are restoring voting rights to citizens with past convictions,¹⁸ and to become a national leader on the issue. SB 579 will eliminate completely the outdated, discriminatory, and anti-democratic practice of felony disenfranchisement, solidify ballot access for incarcerated voters, and affirm Oregon's commitment to the principle that democracy works best when all eligible voters can participate. We urge you to take this important step.

Sincerely,

Alexandra Copper
Legal Counsel, Litigation
acopper@campaignlegalcenter.org
(619) 248-4903

Blair Bowie
Senior Legal Counsel, Restore Your Vote
Manager
(202) 736-2201

Danielle Lang
Senior Director, Voting Rights
dlang@campaignlegalcenter.org
(202) 856-7911

Campaign Legal Center
1101 14th St. NW, 4th Fl.
Washington, DC 20005

¹⁸ See National Conference of State Legislatures, *Felon Voting Rights* (Jan. 8, 2021), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.