

BRENNAN CENTER FOR JUSTICE

September 13, 2019

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

RE: ACA 6 (McCarty) - SUPPORT

Dear Assembly Member McCarty:

California may be seen as a leader in many areas of progressive reform. But the state is behind almost a third of the country on the issue of restoration of voting rights for people with felony convictions in their past.¹ Though the Legislature has made advances in the recent past, the Constitution prohibits individuals with a felony conviction from voting even after they complete their prison sentences and are discharged to parole.² As a result, about 46,000 Californians living, working, and paying taxes in their communities are denied the right to vote.³ We write in strong support of Assembly Constitutional Amendment 6, which would restore voting rights to people on parole, because it is time for California to abandon its unjust and discriminatory felony disenfranchisement law.⁴

The Brennan Center is a nonpartisan law and public policy institute based in New York City that seeks to improve our systems of democracy and justice. We have a long record of supporting efforts to reform felony disenfranchisement laws at the state and federal levels, including in California.

We support ACA 6 because it will impact California's communities in at least three significant ways: (1) restoring voting rights to people on parole will encourage healthy reentry; (2) eliminating the disparity between various forms of community supervision will reduce confusion and the resulting *de facto* disenfranchisement of even those who are eligible to vote; and (3) reducing disenfranchisement will alleviate the racial disparities that remain a part of California's democracy.

¹ Sixteen states and Washington, D.C. allow everyone not currently incarcerated to vote, including two states (Maine and Vermont) that never take voting rights away. See *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUSTICE (last revised May 31, 2019), https://www.brennancenter.org/sites/default/files/legal-work/2019.5.31_Criminal_Disenfranchisement_Map.pdf.

² CAL. CONST. art. II, §§ 2, 4; CAL. ELEC. CODE § 2101(a).

³ *California's Changing Parole Population*, PUB. POLICY INST. OF CALIFORNIA, <https://www.ppic.org/publication/californias-changing-parole-population/> (last visited Sept. 13, 2019).

⁴ Because the disenfranchisement of Californians on parole is inscribed in the state's Constitution, the restoration of voting rights to otherwise-eligible adults results only from a proposed amendment to the California Constitution.

Encouraging healthy reentry

Voting aids re-entry. Indeed, that is why organizations like the American Probation and Parole Association and the Association of Paroling Authorities International support rights restoration.⁵ Studies have found “consistent differences between voters and non-voters in rates of subsequent arrests, incarceration, and self-reported criminal behavior.”⁶

The California Legislature has in recent years embraced the importance of encouraging health reentry by returning citizens—and acknowledged the important role that voting and civic engagement play in the reentry process. First, through the enactment of the Criminal Justice Realignment Act of 2011,⁷ lawmakers reduced unnecessary incarceration and provided more options for community supervision. Then, by passing AB 2466 in 2016, the Legislature narrowly defined parole and made clear that voting rights should be restored for anyone on any other form of supervision, expanding voting rights restoration to the constitutional limit.

ACA 6 is necessary for finally realizing the legislative goals of these previous acts by welcoming those returning to their communities as full citizens, and encouraging them to engage in their communities in a positive way.

Reducing *de facto* disenfranchisement

California is one of three states that denies the right to vote to people on parole but allows people on probation to vote.⁸ Few people, including election administrators, understand the difference between probation and parole. And as Californians know, those distinctions are becoming increasingly opaque and confusing as new forms of supervision get created.⁹ The result is that eligible voters think that they cannot or refrain from voting out of fear that they may be breaking the law, a phenomenon we call “*de facto* disenfranchisement.”¹⁰ By restoring the right to vote for Californians on parole, ACA 6 would offer a clear, bright-line rule: if you are

⁵ See AM. PROBATION & PAROLE ASS'N, RESOLUTION SUPPORTING RESTORATION OF VOTING RIGHTS (Oct. 17, 2007), available at https://appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IE_NewsRelease&wps_key=a587deaf-9cbf-4efd-bd8d-025c14143f65; ASS'N OF PAROLING AUTHS. INT'L, RESOLUTION ON RESTORING VOTING RIGHTS (Apr. 30, 2008), available at <http://www.apaintl.org/about/resolutions.html>.

⁶ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193 (2004).

⁷ A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011).

⁸ *Criminal Disenfranchisement Laws Across the United States*, *supra* note 1.

⁹ The Criminal Justice Realignment Act of 2011 created two new forms of non-custodial supervision: mandatory supervision (“MS”) and post-release community supervision (“PRCS”). After the Act went into effect, then-Secretary of State Debra Bowen issued a directive that MS and PRCS were respectively “akin to parole” and “functionally equivalent to parole.” *Scott v. Bowen*, BRENNAN CTR. FOR JUSTICE (Aug. 5, 2015), <http://www.brennancenter.org/legal-work/scott-v-bowen>. More than 60,000 people on community supervision were disenfranchised as a result, and a lawsuit was brought challenging the Secretary’s directive. *Id.* A Superior Court determined that MS and PRCS were distinct from parole, and the state appealed. *Id.* But Bowen’s successor ultimately dropped the case, thereby restoring the voting rights of the 60,000 Californians previously disenfranchised by Bowen’s directive. *Id.*

¹⁰ See generally ERIKA WOOD & RACHEL BLOOM, AM. CIVIL LIBERTIES UNION & BRENNAN CTR. FOR JUSTICE, DE FACTO DISENFRANCHISEMENT (2008), <http://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf>.

living in the community, you can vote. Both proposals would also reduce the opportunity for erroneous purges of eligible citizens from the voting rolls.

Reducing racial disparities in voting rights

Because of racial disparities in incarceration rates, the disenfranchisement of Californians on parole has a disproportionate impact on communities of color. Indeed, three out of four men released from prison in the state are either Black, Latino, or Asian American.¹¹ And Black adults made up 26 percent of California's parole population at the end of 2016, but only six percent of the state's total adult population.¹² As a result, Black adults in California are more than four times as likely to be disenfranchised than non-Black adults.¹³

This disparate impact should come as no surprise given the history of the provision. California's current Constitution was originally ratified in 1879, just 9 years after California refused to ratify the Fifteenth Amendment, which prohibited racially discriminatory voting laws. Nonetheless, as originally drafted, the Constitution rather brazenly embraced racism in the same figurative breath with which it provided for permanent felony disenfranchisement, stating that "no native of China, no idiot, insane person, or person convicted of any infamous crime" could vote.¹⁴

The Constitution was amended in 1974 to end permanent disenfranchisement, but the discriminatory effects of felony disenfranchisement persist. It is well past time that California amend its constitution again.

Conclusion

Without freeing itself from the strictures of an outdated constitution, California is sure to fall even further behind on this issue as the rest of the country moves forward. Building on a trend that stretches back two decades, three states took major action to restore voting rights to more than a million citizens in 2018.¹⁵ This year, rights restoration continued to gain momentum. Colorado¹⁶ and Nevada¹⁷ enacted laws restoring voting rights to residents upon release from prison.¹⁸ In Iowa, one of only two states left with permanent disenfranchisement for all people with felony convictions, Governor Kim Reynolds announced her support for a constitutional amendment to put an end to that practice.¹⁹ And in Kentucky, the other state that permanently disenfranchises returning citizens, a poll found that almost two-thirds of residents

¹¹ Janai Nelson, *Restore Voting Rights for Low-Level Felons in California*, L.A. TIMES (Sep. 16, 2016), <https://www.latimes.com/opinion/op-ed/la-oe-nelson-voting-law-20160916-snap-story.html>.

¹² *California's Changing Parole Population*, *supra* note 3.

¹³ See MORGAN MCLEOD, THE SENTENCING PROJECT, EXPANDING THE VOTE: TWO DECADES OF FELONY DISENFRANCHISEMENT REFORM, at 16 (2018), available at <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf>.

¹⁴ CAL. CONST., art. II, § 1 as ratified 1879.

¹⁵ MCLEOD, *supra* note 13.

¹⁶ H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

¹⁷ A.B. 431, 80th Leg., 1st Reg. Sess. (Nev. 2019).

¹⁸ See *Criminal Disenfranchisement Laws Across the United States*, *supra* note 1.

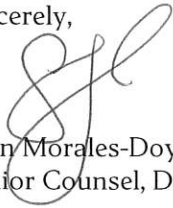
¹⁹ Brianne Pfannenstiel, *Gov. Kim Reynolds to Propose Constitutional Amendment Lifting Felon Voting Ban in Condition of the State*, DES MOINES REGISTER (Jan. 15, 2019), <https://www.desmoinesregister.com/story/news/politics/2019/01/15/kim-reynolds-felon-voting-rights-constitutional-amendment-lift-ban-iowa-legislature-proposal-2019/2572308002/>.

are in favor of rights restoration.²⁰ Several states also considered bills this year that would restore voting rights to people previously convicted of a felony.²¹

Rights restoration has also become part of the national dialogue, with all major 2020 Democratic candidates for president taking a position on the issue.²² The House of Representatives also passed H.R. 1, which would require all states to automatically restore voting rights in federal elections upon release from prison under the Democracy Restoration Act (the “DRA”).²³ The DRA has also been introduced as a standalone bill in both chambers of Congress.²⁴

ACA 6 will bring California to the front of the pack, while encouraging civic participation, reducing harm caused by a confusing law, and correcting historical injustices. For these reasons, the Brennan Center strongly urges the Senate to pass this important legislation.

Sincerely,



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Senior Counsel, Democracy Program

cc: Members and Committee Staff, Senate Elections & Constitutional Amendments

²⁰ Joe Sonka, *Poll: Two-Thirds of Kentuckians Support Automatic Restoration of Voting Rights for Felons*, INSIDER LOUISVILLE (Jan. 22, 2019), <https://insiderlouisville.com/government/poll-two-thirds-of-kentuckians-support-automatic-restoration-of-voting-rights-for-felons/>.

²¹ *Voting Laws Roundup 2019*, BRENNAN CTR. FOR JUSTICE (July 10, 2019), <https://www.brennancenter.org/analysis/voting-laws-roundup-2019>.

²² Nicholas Riccardi, *2020 Democrats Confronting Debate Over Letting Felons Vote*, WASH. POST (Apr. 24, 2019), https://www.washingtonpost.com/politics/2020-democrats-confronting-debate-over-letting-felons-vote/2019/04/24/4d0c9eb4-66ac-11e9-a698-2a8f808c9cfb_story.html?utm_term=.100439b503aa.

²³ Office of the Clerk, *Final Vote Results for Roll Call 118*, U.S. House of Representatives (Mar. 8, 2019), <http://clerk.house.gov/evs/2019/roll118.xml> [<https://perma.cc/YY6R-MUT2>].

²⁴ H.R. 196, 116th Cong. (2019); S. 1068, 116th Cong. (2019).