

**The Power of the Executive Order:  
Restoring Voting Rights to People with Felony Convictions in New York**

**Background**

Under current law, New Yorkers convicted of a felony and sentenced to prison lose the right to vote. Voting rights are automatically restored to individuals upon their release from prison or discharge from parole. People on probation and those convicted of misdemeanors *never* lose the right to vote.

As a result of the state's felony disenfranchisement law, over 108,000 New Yorkers are barred from voting. Nearly 43,000 of those individuals are on parole and living in the community, working, paying taxes, and raising families alongside the rest of us. Additionally, New York's law disproportionately impacts the minority community: 80% of those disenfranchised because of a felony conviction are Black or Hispanic.

Moreover, thousands of *eligible* New Yorkers with felony convictions are illegally denied the right to register and vote because of confusion and noncompliance on the part of election officials. Studies in 2003 and 2005 showed that county election officials are unclear about the law, leading to the potential disenfranchisement of eligible voters. A 2006 Brennan Center report revealed that one-third of all counties refused to register people on probation, even though they never lose the right to vote, and another third illegally required individuals to show documentation or proof of their eligibility status.

Because of this persistent misinformation, many New Yorkers with felony convictions do not know whether they are eligible to vote. In 2005, researchers found that about half of New Yorkers surveyed incorrectly thought they were ineligible to vote while on probation and about 30 percent believed they lost their right to vote if they had only been arrested, but not convicted, for a crime. The widespread confusion among impacted individuals and state officials suggests there is a need for a simplified voting system with easier eligibility rules and proper notification procedures.

**The Solution**

To ease the administrative burden of determining the eligibility of people with felony convictions, New York should restore the vote to individuals upon their release from prison. Currently, 15 states and the District of Columbia restore voting rights to people who are not in prison.<sup>1</sup> In these states the very fact that an individual is back in the community signals that he is eligible to vote. Restoring the vote to people who are out of prison also makes sense as a way to prevent further crime and improve the safety of New York neighborhoods. Voting is an important part of making people feel connected to their communities, which in turn helps them avoid falling back into crime. In fact, studies show that, among those who have been arrested, voters are less than half as likely to be re-arrested as non-voters. Reforming New York's law to re-enfranchise people coming out of prison would promote their successful reintegration back into the community. Senate Bill 4643 and Assembly Bill 2445 seek to restore the right to vote to people on parole. Unfortunately neither bill progressed in the legislature this year.

New York should also enact measures to ensure proper compliance with the law. However, the State Senate has failed to act on a bill that would help guarantee that eligible New Yorkers with convictions are able to participate in the electoral process. Drafted in part by the Brennan Center, the New York Voting Rights Notification and Registration Act (SB 1266, AB 2266) would provide clear and systematic notice to individuals of their voting rights as they complete their maximum prison sentences or are discharged from

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<sup>1</sup> Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and South Dakota restore voting rights upon release from prison. In Vermont and Maine, people with felony convictions never lose the right to vote.

parole, require criminal justice agencies to provide assistance with voter registration and voting by absentee ballot, and assure that corrections and elections agencies share the data necessary to verify voter eligibility.

Because legislative attempts at reform have been unsuccessful, we encourage the Executive to restore voting rights to all people on parole. In July 2005, Governor Thomas Vilsack issued an Executive Order restoring the vote to approximately 80,000 Iowans with felony convictions. Similarly, we urge the incoming Governor of New York to use his executive authority to act where the Legislature has failed to do so. By automatically restoring voting rights to people who have been released from prison and are living in the community, the Governor can help enhance New York's democratic system, ease the administrative burden that currently leads to confusion and misinformation, promote broad public safety and future crime prevention, and establish a fair voting process that includes all citizens who have served their prison time.

### **The Authority**

Article 4, Section 4 of New York's Constitution provides, "The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment . . . as he or she may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons." This provision has been interpreted by New York courts to give unreviewable discretion to the Governor to grant clemency. *Matter of Boyd v. Pataki*, 2008 NY Slip Op 5834, \*1-2 (N.Y. App. Div. 3d Dep't 2008) (noting the Governor's clemency power "is not subject to judicial review") (citation omitted); *see also People v. Sean D.*, 2006 NY Slip Op 50212U, \*2 (N.Y. County Ct. 2006). "The governor's power in the matter of granting pardons, reprieves and the like is unlimited. It stems from the Constitution and cannot be curtailed by the Legislature." *Vanilla v. Moran*, 67 N.Y.S.2d 833, 841 (N.Y. Sup. Ct. 1947), *aff'd* 83 N.E.2d 696 (N.Y. 1949); *see also Sturnialo v. Carey*, 394 N.Y.S.2d 137 (N.Y. Sup. Ct. 1977) (denying judicial review to clemency decisions).

This broad executive power to grant clemency includes the power to grant a partial pardon restoring voting rights to all New Yorkers currently on parole. As described by the *Guidelines for Review of Executive Clemency Applications*, a pardon can "relieve a disability imposed upon a judgment of conviction for an offense." Department of Corrections, *Guidelines for Review of Executive Clemency Applications* 1. Currently, individuals on parole can seek to have their rights restored by applying to the Board of Parole, or in certain circumstances to their sentencing court, for a Certificate of Relief from Disabilities or a Certificate of Good Conduct. As provided by statute, this process is a form of clemency that can be granted by the Board alone, without the Governor's approval. However, this process is lengthy and cumbersome, and requires each individual to apply separately. While the clemency guidelines currently suggest, "Absent exceptional and compelling circumstances, a pardon is not available if the applicant has an adequate administrative or other legal remedy," including through Certificates, these guidelines, created by an executive agency, cannot limit the Governor's power to grant clemency.

Finally, while the constitutional provision suggests that the Legislature may have the power to regulate the manner of application for pardons, the Legislature has not yet done so. The only limitation contained in Article 2-A of the Executive Law, governing Reprieves, Commutations and Pardons, requires the Governor to "annually communicate to the legislature, each case of reprieve, commutation or pardon; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve." N.Y. Exec. Law § 17 (2009). While such a report would be lengthy with respect to an executive order restoring the right to vote to all parolees, presumably the generation of such a report would be feasible. *See also* N.Y. Corr. Law art. 11 (empowering Governor to appoint executive clemency hearing officers); *id.* art. 23 (empowering issuance of a Certificate of Relief from Disabilities or a Certificate of Good Conduct).

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