

**Written Testimony of  
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Brennan Center for Justice at NYU School of Law  
Before the  
Wisconsin Senate Committee on Labor, Elections and Urban Affairs  
Submitted October 13, 2009**

I write on the behalf of the Brennan Center for Justice at NYU School of Law in support of Senate Bill 240, the Wisconsin Democracy Restoration Act. Thank you for accepting my written testimony. I regret that I am not able to attend today's hearing in person.

The Brennan Center is a non-partisan, not-for-profit, public policy and law institute that focuses on issues of democracy and justice. The Brennan Center's Right to Vote project works exclusively on restoring voting rights to persons with criminal convictions by engaging in litigation, legislative and administrative advocacy, and public education nationwide at the federal and state level.

We have been working with local partners in Wisconsin on the passage of Senate Bill 240. This long overdue reform would restore voting rights to more than 37,000 Wisconsin citizens and make Wisconsin's felony disenfranchisement laws more just, less discriminatory, and easier to administer.

**The Current Law**

The right to vote forms the core of American democracy. Our history is marked by successful struggles to expand the franchise, to include those previously barred from the electorate because of race, class, or gender. There remains, however, one significant blanket barrier to the franchise. 5.3 million American citizens are not allowed to vote across the country because of a felony conviction. As many as 4 million of these people live, work and raise families in our communities, but because of a conviction in their past they are still denied the right to vote.<sup>1</sup>

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<sup>1</sup> Erika Wood, *Restoring the Right to Vote 2* (2009), available at [http://www.brennancenter.org/content/resource/restoring\\_the\\_right\\_to\\_vote/](http://www.brennancenter.org/content/resource/restoring_the_right_to_vote/); see also Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 76 (2006).

Currently Wisconsin law disenfranchises people while in prison and during the time that they are living in the community under probation or parole supervision.<sup>2</sup> In Wisconsin, 62,343 individuals are ineligible to vote because of a conviction.<sup>3</sup> More than half of these individuals are out of prison, and living in the community.<sup>4</sup>

S.B. 240 seeks to change the law to restore voting rights to people who are on probation and parole. Fifteen states and the District of Columbia currently allow people on parole and probation to vote, including Wisconsin neighbors Illinois, Indiana, Michigan and Ohio.<sup>5</sup>

### **Disproportionate Impact on Minority Communities**

Felony disenfranchisement laws in the United States are deeply rooted in the troubled history of American race relations. In the late 1800s these laws spread as part of a larger backlash against the adoption of the Reconstruction Amendments.<sup>6</sup> Many criminal disenfranchisement laws were enacted right alongside poll taxes and literacy tests as part of an organized effort to prevent African Americans from voting.<sup>7</sup>

The disproportionate racial impact of these laws continues to this day. Nationwide, 13% of African-American men have lost the right to vote, a rate that is seven times the national average.<sup>8</sup> Given current rates of incarceration, three in ten of the next generation of African-American men across the country can expect to lose the right to vote at some point in their lifetime.<sup>9</sup>

Disproportionate rates of incarceration have caused Wisconsin's disenfranchised population to be overwhelmingly composed of people of color. While African Americans only make up 6% of Wisconsin's population,<sup>10</sup> nearly 40% of those disenfranchised in Wisconsin are African-American.<sup>11</sup> In all, 11% of Wisconsin's African-American community is currently disenfranchised.<sup>12</sup>

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<sup>2</sup> Wis. Stat. §§ 6.03 (1)(b), 304.078 (3).

<sup>3</sup> Manza & Uggen, *supra* note 1, at 250, Table A3.3. This data was gathered in 2004.

<sup>4</sup> *Id.*

<sup>5</sup> Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah all restore voting rights upon release from prison. See *Brennan Center for Justice, Criminal Disenfranchisement Laws Across the United States* (2009), [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_48642.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_48642.pdf). Maine and Vermont do not disenfranchise anyone with a felony conviction. *Id.*

<sup>6</sup> See Wood, *supra* note 1, at 6.

<sup>7</sup> *Id.*

<sup>8</sup> The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (April 2007), <http://sentencingproject.org/pdfs/1046.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Wisconsin State and Country Quick Facts, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/55000.html>.

<sup>11</sup> Manza & Uggen, *supra* note 1, at 250, 253, Table A3.3 and Table A3.4.

<sup>12</sup> *Id.* at 253, Table A3.4.

## **Administrative Confusion**

Laws that continue to disenfranchise people after release from prison often lead to widespread confusion among both elections officials and the public. Election officials receive little or no training on these laws, and there is little or no coordination or communication between election offices and the criminal justice system. The confusion illegally disenfranchises *eligible* voters and exposes to prosecution *ineligible* voters who mistakenly believe they were entitled to vote.<sup>13</sup>

Such confusion has been documented in Wisconsin. For example, in 2004, there were numerous inflated claims of election fraud, including allegations that people on probation and parole had voted illegally. Elizabeth Mitchell-Frazier faced felony charges alleging that she had voted while on probation for a felony conviction.<sup>14</sup> A year later, the charges were dropped when Ms. Mitchell-Frazier proved that she had been convicted only of a misdemeanor.<sup>15</sup> Kimberly Prude mistakenly believed she was eligible to vote. As a result, she spent more than a year in prison after being prosecuted for voting while on probation. After hearing Reverend Al Sharp speak at a rally, Ms. Prude was inspired and marched along fellow Wisconsin citizens, believing that she was eligible to vote since she was not in prison. Although Ms. Prude's original crime was not serious enough to warrant a prison sentence, her mistaken belief that she was eligible to vote landed her behind bars.<sup>16</sup>

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.

## **National Momentum**

Nationwide, governors, legislators and voters have taken bold steps to restore voting rights to people with criminal convictions. Since 1997, 20 states have restored voting rights or eased the restoration process.<sup>17</sup>

Support for restoring voting rights to people who are released from prison is also growing among law enforcement and criminal justice professionals who recognize that restoring voting rights is important for our democracy, and for protecting public safety.<sup>18</sup> They believe that

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<sup>13</sup> See Erika Wood & Rachel Bloom, *De Facto Disenfranchisement* (2008), available at [http://www.brennancenter.org/content/resource/de\\_facto\\_disenfranchisement/](http://www.brennancenter.org/content/resource/de_facto_disenfranchisement/).

<sup>14</sup> Reid J. Epstein, *Woman Accused of Voter Fraud in Waukesha County*, Milwaukee J. Sentinel, Oct. 14, 2005, at B3, available at <http://www.jsonline.com/story/index.aspx?id=363323>.

<sup>15</sup> Laurel Walker, *Bucher Striking Out so Far on Voter Fraud*, Milwaukee J. Sentinel, Nov. 30, 2005, at B1, available at <http://www.jsonline.com/story/index.aspx?id=374426>. See also Wood, *supra* note 1, at 15.

<sup>16</sup> Bill Glauber, *Her First Vote Put Her in Prison*, Milwaukee Journal Sentinel, May 21, 2007, at A1, available at <http://www.jsonline.com/story/index.aspx?id=608187>; Eric Lipton, et al., *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. Times, April 12, 2007, at A1. See also Wood, *supra* note 1, at 15.

<sup>17</sup> See Ryan S. King, The Sentencing Project, *Expanding the Vote, State Felony Disenfranchisement Reform, 1997-2008* (Sept. 2008), available at [http://www.sentencingproject.org/doc/publications/fd\\_statedisenfranchisement.pdf](http://www.sentencingproject.org/doc/publications/fd_statedisenfranchisement.pdf).

<sup>18</sup> For more information about the law enforcement and criminal justice coalition, visit: [http://www.brennancenter.org/content/pages/law\\_enforcement\\_criminal\\_justice\\_advisory\\_council](http://www.brennancenter.org/content/pages/law_enforcement_criminal_justice_advisory_council).

bringing people into the political process makes them stakeholders, which helps steer individuals away from future crimes. Branding people as political outsiders by barring them from the polls disrupts re-entry into the community. Restoring the right to vote invests individuals in our democracy and sends the message that people are welcomed back as integral members of their home communities. Organizations that support restoring the right to vote to people on probation and parole include the American Probation and Parole Association, Association of Paroling Authorities International, National Black Police Association and The Police Foundation.

The problem has garnered attention at the federal level as well. Wisconsin Senator Russ Feingold recently introduced Senate Bill 1516, federal legislation that would restore voting rights in federal elections to individuals upon release from prison in federal elections.<sup>19</sup> This legislation is gaining steady support in Congress and across the country. A growing and diverse coalition including civil rights organizations, criminal justice reform advocates, law enforcement professionals and religious leaders has formed based on a shared understanding that restoring voting rights to people in the community not only strengthens our democracy, it helps prevent recidivism, and is true to the fundamental principles of redemption and forgiveness. Wisconsin's Democracy Restoration Act parallels Senator Feingold's federal bill.

### **Legislative Solution**

The Wisconsin Democracy Restoration Act would make our democracy richer, more diverse, and more representative of all people than ever before. It would also create a simple bright-line rule: if you are out of prison, you can vote, which would help eliminate widespread and persistent confusion among elections and criminal justice officials and the public. Most importantly, the bill would give a voice back to thousands of Wisconsin's citizens. We urge you to pass Senate Bill 240.

Thank you for your consideration of this important bill. Please feel free to contact me at 212-992-8638 or [erika.wood@nyu.edu](mailto:erika.wood@nyu.edu) if you have any questions.

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<sup>19</sup> For more information on the federal Democracy Restoration Act, visit [www.brennancenter.org/dra](http://www.brennancenter.org/dra).