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Testimony of

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Before the

New York State Commission on Sentencing Reform

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Good afternoon. My name is Erika Wood and I am the Deputy Director of the Democracy Program at the Brennan Center for Justice at NYU School of Law. I would like to thank the New York State Commission on Sentencing Reform and the New York State Division of Criminal Justice Services for holding this hearing and giving me the opportunity to testify. I commend the Commission for its important policy recommendations. They are important steps towards rectifying the injustices that continue to permeate our criminal justice system.

The Brennan Center for Justice is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. As part of our mission to advance voting rights for all Americans, we lead a national campaign to restore the vote to people with criminal convictions. Today my testimony will focus on the Commission's recommendation to restore voting rights to people on parole.

The National Landscape

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. As a result our democracy is richer, more diverse, and more representative of the people than ever before. 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.¹ 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.² In New York, over 122,000 people are barred from voting, nearly 56,000 of whom are people on parole living in the community.³

Felony disenfranchisement laws vary by state, ranging from Virginia and Kentucky where all felonies result in permanent disenfranchisement, to Vermont and Maine where voting rights are never suspended. The rest of the country falls somewhere in between, forming a patchwork of different laws across the country. The current law in New York disenfranchises people in prison and on parole, while people on probation are allowed to vote.⁴ Thirteen states and the District of Columbia already allow people on parole to vote.⁵

History of Felony Disenfranchisement Laws

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 – the Thirteenth, Fourteenth, and Fifteenth Amendments of the U.S. Constitution – which ended slavery, granted equal citizenship to freed slaves, and prohibited racial discrimination in voting.⁶ Felony disenfranchisement laws were part of an organized effort to maintain white control over access to the polls. At the same time that states were enacting felony disenfranchisement laws, they expanded their criminal codes to punish offenses that they believed freedmen were most likely to commit.⁷ Targeted criminalization and felony disenfranchisement combined to produce the legal loss of voting rights, usually for life, which effectively suppressed the political power of African Americans for decades.⁸

The history of New York's felony disenfranchisement law is consistent with the national narrative. The current law is a relic of a shameful and racist past. In New York, felony disenfranchisement provisions were created in tandem with other

¹ Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 76 (2006).

² *Id.* at 77.

³ *Id.* at 249, tbl. A3.3.

⁴ N.Y. ELEC. L. § 5-106.

⁵ 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* (2007), http://www.brennancenter.org/dynamic/subpages/download_file_48642.pdf.

⁶ Manza & Uggen, *supra* note 1, at 56-57; Angela Behrens, Christopher Uggen & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559, 560-61 (2003); Alec C. Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1087-88.

⁷ Eric Foner, *Reconstruction: America's Unfinished Revolution 1863-1877* 593 (1988); Ewald, *supra* note 6, at 1088-89.

⁸ See *Hunter v. Underwood*, 471 U.S. 222 (1985).

provisions such as literacy tests and property requirements that sought to exclude African Americans from participating in the political process. At the second Constitutional Convention in 1821, delegates met specifically to address Black suffrage. Based on their belief in Blacks' unfitness for democratic participation, the delegates designed new voting requirements aimed at stripping African-American citizens of their right to vote.⁹ The result was Article II of the New York State Constitution which contained new discriminatory suffrage restrictions, including unusually high property requirements for African Americans, as well as the felony disenfranchisement provision. The felony disenfranchisement provision of Article II remains in tact today.

Disproportionate Impact on Minority Communities

The disproportionate racial impact of disenfranchising laws also 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.¹⁰ 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.¹¹ Restoring voting rights to people who are living and working in the community is one important step in the battle to correct centuries of organized efforts to disenfranchise African-American voters.

The disproportionate rates of incarceration have caused New York's disenfranchised population to be overwhelmingly composed of people of color. Nearly 87% of those disenfranchised under New York's law are African-American or Latino.¹² In contrast, probationers in New York, who never lose their right to vote, are 51% white.¹³

Moreover, because 80% of New York's prison population hails from a handful of communities in New York City,¹⁴ the voting strength of certain minority communities is decimated by current disenfranchising policies. Not only do these communities lose voting strength when residents are incarcerated upstate, but the political strength of the entire community continues to be crippled even after people return from prison because community members who are on parole are not eligible to vote. It is a simple equation – communities with high rates of people with felony convictions have fewer votes to cast. Consequently, all residents of these communities, not just those with convictions, become less influential than residents of more affluent communities from which fewer people are sent to prison.

⁹ First Amended Complaint, *Hayden v. Pataki*, No. 00 Civ. 8586, 2004 U.S. Dist. LEXIS 10863 (S.D.N.Y. June 14, 2004), ¶¶ 46-47 [hereinafter *Hayden Complaint*] available at http://brennancenter.org/dynamic/subpages/download_file_8936.pdf

¹⁰ The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (April 2007), <http://sentencingproject.org/pdfs/1046.pdf>.

¹¹ *Id.*

¹² *Hayden Complaint*, *supra* note 9, at ¶ 64.

¹³ *Id.* at ¶ 65.

¹⁴ *Id.* at ¶ 70.

Voting Rights and Re-Entry

The Commission's report recognizes that effective re-entry practices reduce recidivism and thus protect public safety. The Commission concludes that fostering civic participation is one way to facilitate the re-entry process, and that restoring the right to vote to people on parole is fundamental to that participation.¹⁵ The Commission's recommendation is consistent with a growing belief among law enforcement leaders nationally.

Officials with deep experience in law enforcement have begun speaking out against disenfranchisement, not only because they believe in democracy but also because they are committed to protecting public safety. They recognize that bringing people into the political process makes them stakeholders, which helps steer former offenders away from future crimes. While it is difficult to prove that restoration of the franchise directly reduces crime rates, allowing voting after release from incarceration affirms the returning community member's value to the polity, encourages participation in civic life, and thus helps to rebuild the ties to fellow citizens that motivate law-abiding behavior.¹⁶

Moreover, there is absolutely no credible evidence showing that continuing to disenfranchise people after release from prison serves any legitimate law enforcement purpose. This is not surprising. Criminal justice experts typically point to four accepted purposes of criminal penalties: incapacitation from committing new crimes, deterrence, retribution, and rehabilitation.¹⁷ Post-incarceration disenfranchisement does not further any of these goals.

❖ Incapacitation, Deterrence, Retribution

Under the incapacitation theory, the right to vote would be denied as a means of preventing crime related to voting. But states are hard pressed to identify evidence that people with felony convictions are prone to commit offenses affecting the integrity of elections, and there is no evidence that people on parole have a greater propensity for voter fraud in the states where they are entitled to vote.

¹⁵ New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal for Reform* 52 (2007).

¹⁶ Measuring the causal relationship between voting rights and criminal behavior is difficult. But the one published study tracking the relationship between voting and recidivism did find "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior." Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 213 (2004). In fact, the study found that the former offenders who voted were half as likely to be re-arrested as those who did not. *Id.* at 205.

¹⁷ Brief for The National Black Police Association et al. as Amici Curiae Supporting Appellants, *Farrakhan v. Gregoire*, No. CV-96-076 (filed Dec. 11, 2006), available at http://brennancenter.org/dynamic/subpages/download_file_47026.pdf

Similarly, there is no basis for concluding that continuing to disenfranchise people after release from prison serves to deter them from committing new crimes. Deterrence flows from the other penal consequences of a felony conviction, namely a term of incarceration and significant fines. It is unlikely that a person who is not dissuaded by the prospect of a prison sentence will be deterred by the threat of losing his right to vote.

The law enforcement community and society at large now recognize that a punishment can be morally justified as retribution only if it is proportionate in severity and duration to the crime in question. Continuing to disenfranchise people who have been released from prison is unjustifiably severe. To deny the vote to individuals who are out of prison is to disregard the assessment of the sentencing judge or jury and the corrections officials who, after careful review of each individual's circumstances, deemed them fit to reenter society.

❖ Rehabilitation

Law enforcement officials recognize that voting rights and rehabilitation are closely connected. The American Probation and Parole Association recently passed a resolution calling for restoration of voting rights upon completion of prison, finding that "disenfranchisement laws work against the successful reentry of offenders."¹⁸ A copy of this resolution is attached to my testimony and is available on the APPA website.¹⁹

Many local law enforcement officials agree. Writing in support of Rhode Island's recent successful referendum establishing automatic post-incarceration voting rights restoration, Providence Police Chief Dean Esserman explained: "Denying the vote to people who have completed their prison sentence disrupts the reentry process and weakens the long-term prospects for sustainable rehabilitation."²⁰ Similarly, a Kentucky prosecutor seeking to change his state's archaic disenfranchisement laws wrote: "Voting shows a commitment to the future of the community."²¹ In testimony before the Maryland Legislature, a member of the National Black Police Association testified that rights-restoration "promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods safer."²²

¹⁸ American Probation and Parole Ass'n, *Resolution Supporting Restoration of Voting Rights* (Oct. 17, 2007), available at http://www.appa-net.org/newsreleases/2007/APPA_Voting_Rights_Release.pdf

¹⁹ See http://www.appa-net.org/newsreleases/2007/APPA_Voting_Rights_Release.pdf

²⁰ Dean Esserman & H. Philip West, *Yes on Question 2 – Freed Felons Should Have a Voice*, PROVIDENCE JOURNAL, Sept. 25, 2006, at C4.

²¹ R. David Stengel, *Let's Simplify the Process for Disenfranchised Voters*, CENTRAL KENTUCKY NEWS-JOURNAL, Jan. 28, 2007, available at

<http://www.cknj.com/articles/2007/01/28/opinion/02editorial.txt>

²² *Voter Registration Protection Act: Hearing on S.B. 488 Before the S. Comm. on Education, Health & Environmental Affairs*, 2007 Leg., 423rd Sess. (Md. 2007) (written testimony of Ron Stalling, National Black Police Assoc.),

http://www.brennancenter.org/dynamic/subpages/download_file_48135.pdf

Administrative Confusion

Laws that continue to disenfranchise people after release from prison often lead to widespread confusion among both elections officials and the public. This is certainly the case in New York. Thousands of *eligible* New Yorkers with felony convictions have been illegally denied the right to register and vote because of confusion and noncompliance on the part of elections officials. Studies in 2003 and 2005 showed that county election officials are unclear about the law, leading to the potential disenfranchisement of eligible voters.²³ 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.²⁴

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% believed they lost their right to vote if they had only been arrested, but not convicted, for a crime.²⁵ Nearly 30% of people with felony convictions in New York thought they would never be eligible to vote again.²⁶ 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 towards restoring the right to vote to people with felony convictions. Some recent, important reforms include:

- **Iowa** – On Independence Day, July 4, 2005, Governor Tom Vilsack signed an executive order restoring voting rights to 80,000 Iowa citizens who had completed their sentence.
- **Rhode Island** – On Election Day 2006, Rhode Island voters were the first in the country to approve a state constitutional amendment authorizing automatic restoration of voting rights to people as soon as they are released from prison.

²³ Brennan Center for Justice at NYU School of Law & Demos: A Network for Ideas and Action, *Board of Elections Continues Illegally to Disenfranchise Voters with Felony Convictions* (Mar. 2006), http://www.brennancenter.org/dynamic/subpages/download_file_34665.pdf

²⁴ *Id.*

²⁵ Ernest Drucker and Ricardo Barreras, The Sentencing Project, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* 8 (2005), available at http://www.sentencingproject.org/Admin/Documents/publications/fd_studiesvotingbehavior.pdf.

²⁶ *Id.* at 9.

- **Florida** – In April 2007, Governor Charlie Crist issued new clemency rules ending that state’s policy of permanent disenfranchisement for all felony offenders.
- **Maryland** – Also in April 2007, Maryland Governor Martin O’Malley signed a law streamlining the state’s complicated restoration system by automatically restoring voting rights upon completion of sentence.

The public also supports restoring voting rights. A 2002 telephone survey of 1,000 Americans found that substantial majorities (64 percent and 62 percent, respectively) supported allowing people on probation and parole to vote.²⁷ A 2006 survey found that 60 percent of Americans think the right to vote is an important factor in a person’s successful reintegration into society after incarceration.²⁸ And the Election Day victory in Rhode Island demonstrates that the voting public supports voting by all people who are living and working in the community.

Several national organizations representing law enforcement officials and legal professionals recognize the fundamental unfairness of continuing to exclude people from the franchise when they reenter the community. Organizations that support automatic post-incarceration restoration of voting rights include:

- American Bar Association,
- American Law Institute,
- American Probation and Parole Association,
- National Black Police Association,
- National Conference of Commissioners on Unified State Laws, and
- National Organization of Black Law Enforcement Executives.

The mainstream media also understands the importance of restoring voting rights. Dozens of papers and magazines across the country have run editorials urging restoration of voting rights including *Newsweek*, *Forbes*, and the *New York Times*.²⁹ In the last two years alone the *New York Times* has published fifteen editorials calling for an end to felony disenfranchisement laws.³⁰

²⁷ Jeff Manza, Clem Brooks & Christopher Uggen, *Public Attitudes Towards Felon Disenfranchisement in the United States*, 68 PUB. OP. Q. 275, 280-82 (2004).

²⁸ *Attitudes of US Voters toward Prisoner Rehabilitation and Reentry Policies* National Council on Crime & Delinquency (April 2006), based on results of Zogby International Poll Available at: http://www.facesandvoicesofrecovery.org/pdf/Zogby_poll.pdf

²⁹ Editorial, *Enfranchising Ex-Felons Ignites Debate*, FORBES, May 10, 2007, available at http://www.forbes.com/business/2007/05/09/felons-voting-rights-biz-cx_0510oxford.html;

³⁰ Editorial, *Extending Democracy to Ex-Offenders*, N.Y. TIMES, June 22, 2005; Editorial, *Playing Games with Voting Rights*, N.Y. TIMES, Sept. 14, 2005; Editorial, *Voting Rights, Human Rights*, N.Y. TIMES, Oct. 14, 2005; Editorial, *Restoring the Right to Vote*, N.Y. TIMES, Jan. 10, 2006; Editorial, *Voting Rights Under Siege*, N.Y. TIMES, Feb. 10, 2006; Editorial, *Dickensian Democracy*, N.Y. TIMES, Feb. 27, 2006; Editorial, *Go Away: You Can’t Vote*, N.Y. TIMES, March 25, 2006; Editorial, *Prisoners and Human Rights*, N.Y. TIMES, July 31, 2006; Editorial, *Denying the Vote*, N.Y. TIMES, Sept. 11, 2006; Adam Cohen, Editorial Observer, *American Elections and the Grand Old Tradition of*

The Governor's Authority

Our research indicates that Governor Spitzer has the authority to restore voting rights to people on parole through his clemency powers under Article 4, Section 4 of the New York Constitution. A brief memo outlining our analysis is attached to my testimony and is available on our website.³¹

Conclusion

Restoring voting rights to people on parole will enhance New York's democratic system, advance civil rights, promote broad public safety and future crime prevention, ease administrative burden, and establish a fair voting process that includes all citizens who have served their prison time. We encourage the Governor to use his broad clemency powers to take this important step for democracy.

Thank you and I welcome your questions.

Disenfranchisement, N.Y. TIMES, Oct. 8, 2006; Editorial, *Building Better Citizens*, N.Y. TIMES, Oct. 28, 2006; Editorial, *Ending the Prison Windfall*, N.Y. TIMES, Jan. 17, 2007; Editorial, *Free to Vote in Florida*, N.Y. TIMES, March 6, 2007; Editorial, *A Step for Voting Rights*, N.Y. TIMES, March 30, 2007; Editorial, *Still Waiting in Florida*, N.Y. TIMES, Oct. 12, 2007.

³¹ See http://brennancenter.org/dynamic/subpages/download_file_48255.pdf

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ATTACHMENT 1

**American Probation & Parole Association
Resolution Supporting Restoration of Voting Rights**



American Probation and Parole Association

c/o The Council of State Governments
P.O. Box 11910
Lexington, KY 40578-1910

Association contact: Diane Kincaid, Public Relations Coordinator
dkincaid@csg.org or (859) 244-8196
FOR IMMEDIATE RELEASE – October 17, 2007

Resolution Supporting Restoration of Voting Rights Released

The American Probation and Parole Association (APPA) has released a new resolution calling for the restoration of voting rights upon completion of an offender's prison sentence and advocates no loss of voting rights while on community supervision. The resolution was passed by APPA's Board of Directors in September 2007.

Voting is an integral part of community participation in democratic societies and is one of vital importance in building truly representative governments. When large sectors of the population are prevented from voting, a democracy cannot function as it should.

These facts are cited by The Sentencing Project¹ and underline some of the reasoning behind APPA's current stance on the issue:

- 48 states and the District of Columbia prohibit inmates from voting while incarcerated for a felony offense.
- Only two states - Maine and Vermont - permit inmates to vote.
- 35 states prohibit felons from voting while they are on parole and 30 of these states exclude felony probationers as well.
- Two states deny the right to vote to all ex-offenders who have completed their sentences. Nine others disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Delaware and Wyoming, and two years in Nebraska).
- Each state has developed its own process of restoring voting rights to ex-offenders but most of these restoration processes are so cumbersome that few ex-offenders are able to take advantage of them.

As a result:

- An estimated 5.3 million Americans, or one in forty-one adults, have currently or permanently lost their voting rights as a result of a felony conviction.

APPA's resolution is as follows:

WHEREAS, many citizens who have been convicted of felonies and have completed their sentences, including community supervision, do not have the right to vote; and

WHEREAS, many states have some restrictions on voting privileges for felons; and

WHEREAS, the loss of the right to vote is not based on a need to protect the integrity of the electoral process and the justice system; and

WHEREAS, disenfranchisement of felons is disproportionately affecting an increasingly large segment of the population and their families; and

WHEREAS, disenfranchisement laws work against the successful reentry of offenders;

THEREFORE, BE IT RESOLVED that the American Probation and Parole Association advocates the restoration of voting rights upon completion of an offender's prison sentence and advocates no loss of voting rights while on community supervision.

For questions regarding APPA's resolution, please contact Diane Kincaid at (859) 244-8196 or dkincaid@csg.org.

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¹ http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cfd_bs_fdlawsinus.pdf

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ATTACHMENT 2

Brennan Center Analysis
The Power of the Executive Order

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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 122,000 New Yorkers are barred from voting. Nearly 56,000 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 Black community: about 65% of those disenfranchised because of a felony conviction are Black.

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, 12 states restore voting rights upon release from prison.¹ In states with post-incarceration restoration, the very fact that an individual is back in the community signals that he is eligible to vote. Election officials can delete from the rolls the names of people who have been convicted of a felony and sentenced to prison, and once those individuals are released and present themselves to register, they can without a doubt be presumed eligible.

Restoring the vote post-incarceration 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.

New York should also enact other 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 (AB 11652) would have provided clear and systematic notice to

¹Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and South Dakota. In Vermont and Maine, people with felony convictions never lose the right to vote.

individuals of their voting rights as they complete their maximum prison sentences or are discharged from parole, required criminal justice agencies to provide assistance with voter registration and voting by absentee ballot, and assured 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. "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* 2. 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 (2006). 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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