



“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder

Testimony of Ryan P. Haygood,
New Jersey Institute for Social Justice
in support of S-2100 before the
New Jersey Senate State Government, Wagering,
Tourism & Historic Preservation Committee

Thursday, January 31, 2019

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Chairman Beach, Vice-Chair Cruz-Perez, and Senators Brown, Stack, and Thompson:

Thank you for the opportunity to submit this testimony to the Senate State Government, Wagering, Tourism & Historic Preservation Committee in support of S-2100, historic legislation that will restore the fundamental right to vote to nearly 100,000 people in prison, on parole, or on probation.

I am Ryan P. Haygood, President and CEO of the New Jersey Institute for Social Justice (the “Institute”). Established twenty years ago by Alan V. and Amy Lowenstein, the Institute is a legal advocacy organization that seeks to ensure that urban residents live in a society that respects their humanity, provides equality of economic opportunity, empowers them to use their voice in the political process, and protects equal justice.

Introduction

At the time of our nation’s founding, New Jersey stood out for having the most expansive voting rights of all 13 states. In 1776, our state’s first constitution allowed some women and free Black men to vote.¹

However, over time, New Jersey erected a wall of democratic exclusion that limited the franchise to white men.

Today, New Jersey stands far behind many of our sister states, despite the ideals of democracy embedded in New Jersey’s first constitution at the time of its founding.

For example, in one of the greatest expansions of democracy in history, Florida voters recently overturned a Jim Crow law and restored the right to vote to 1.5 million people with convictions.

Last year, the Louisiana legislature passed a bill with bipartisan support to restore voting rights to 43,000 people on parole and on probation.

And in New York, Governor Andrew Cuomo signed an executive order restoring the right to vote to 35,000 people on parole.

In all, 23 states have restored the fundamental right to vote to people with convictions over the past 20 years.

Now it is New Jersey's turn.

New Jersey's Historical Foundation of Democratic Exclusion

As we explain in our report *1844 No More: Let Us Vote*,² the story is often told about how racist Southern legislatures built democracies that excluded Black people, other people of color, and women.³ What is less well known is that this history of exclusion also took root deeply in the North,⁴ including right here in New Jersey.

New Jersey was the *first* northern state to restrict the vote to white men.⁵ New Jersey opposed the Emancipation Proclamation,⁶ and it was the *last* northern state to abolish slavery.⁷ Following the Civil War, New Jersey refused to ratify the Reconstruction Amendments.

It is against this racist historical backdrop that New Jersey further restricted access to the ballot box by denying the vote to people with criminal convictions in 1844,⁸ the same year it restricted voting to white men.⁹

New Jersey's decision to maintain this practice in 2019, 175 years later,¹⁰ accomplishes the same racial exclusion that was common in 1844.

The Impact of Article II—Elections and Suffrage, Sec. I, para. 7 of New Jersey's Constitution

Today, New Jersey denies the right to vote to nearly 100,000 people because of a conviction¹¹—more people than reside in New Jersey's capital city of Trenton, and more people than live in Camden, Hoboken, Montclair, and in each of more than 150 other municipalities in New Jersey.¹²

And although Black people comprise just 15 percent of New Jersey's overall population,¹³ they represent more than half of those who have lost their voting rights as the result of a criminal conviction.¹⁴

Indeed, owing to population increases, more Black people in New Jersey are disqualified from voting today than were prohibited from voting in New Jersey prior to the passage of the Fifteenth Amendment.¹⁵ New Jersey continues to deny the right to vote to people with criminal convictions without demonstrating any legitimate public safety purpose.¹⁶

Leading in Racial Inequality: Importing Racial Discrimination into the Electorate

This disparate impact on Black political power is a direct result of New Jersey's decision to connect the fundamental right to vote to its criminal justice system, which is infected with racial discrimination.¹⁷

New Jersey has the shameful distinction of having the highest Black/white adult and youth incarceration disparity rates in America. A Black adult in New Jersey is 12 times more likely to be incarcerated than a

white adult.¹⁸ A Black child is 30 times more likely to be detained or committed than a white child¹⁹—even though Black and white young people²⁰ commit most offenses at about the same rate.²¹

New Jersey's law imports these staggering racial disparities²² from the criminal justice system²³ *into the political process*, accomplishing what now-prohibited poll taxes, grandfather clauses, and literacy tests explicitly sought to do—disproportionately exclude Black people from voting.

Restoring the Right to Vote to People with Criminal Convictions in New Jersey: We Are 1844 No More

But today, we aren't judging New Jersey by this shameful past, or on the worst thing it has ever done.

Instead, we are embracing an important opportunity to turn the corner on this shameful history.

To do so, the 1844 No More campaign—a robust coalition that includes impacted voices and system-involved people, community leaders, policy makers, elected officials, faith leaders, and coalition partners—urges the passage of S-2100.

More than 100 organizations, as well as the mayors of major cities—including Newark, Jersey City, and Hoboken—have joined the call to restore voting rights to people in prison, on parole, and on probation in New Jersey.²⁴ The editorial board of the *Times of Trenton*,²⁵ one of the largest media outlets in the state, has also written in support of the campaign.

No person in New Jersey—whether they are in prison, on parole, or on probation—should lose the fundamental right to vote. Restoring voting rights to only those on parole or probation will worsen the racial disparity that already exists. In that case, of those who will continue to be denied the right to vote because they are incarcerated, a staggering 62% will be Black²⁶—in a State where only 15% of the population is Black.

Our collective task, particularly in this difficult national moment, is to reduce barriers to voting and to encourage more people to participate in the political process.²⁷ New Jersey can no longer condition the most fundamental democratic right on involvement in the criminal justice system, an institution infected with racism.

New Jersey has an opportunity to serve as a national bright light for progressive action on building an inclusive democracy.

To do that, we must erase this moral stain on our democracy and join Maine,²⁸ Vermont,²⁹ and most Western democracies, by ending New Jersey's practice of denying voting rights based on a criminal conviction.

We have to declare that we are 1844 no more by passing S-2100.

Appendix A: Signatories to the 1844 No More Campaign

Elected Officials:

Mayor Ras J. Baraka (Newark)
Mayor Ravi S. Bhalla (Hoboken)
Council Member Yvonne Clayton (Asbury Park)
Council Member Matthew Hersh (Highland Park)
Mayor Adrian Mapp (Plainfield)
Governor Jim McGreevey
Mayor Steve Fulop (Jersey City)
Mayor Michael Venezia (Bloomfield)

Organizations

Abbott Leadership Institute
ACLU (National)
ACLU of New Jersey
Action Together New Jersey
Action Together NJ Atlantic & Cape May Counties
African American Chamber of Commerce of New Jersey
American Friends Service Committee Prison Watch
American Probation and Parole Association
Americans for Prosperity-New Jersey
Anti-Defamation League New Jersey Region
Anti-Poverty Network of NJ
Art is For Everyone LLC
Ballots Over Bars
BCT Partners
Bethel AME Church
Big Brothers Big Sisters of Essex, Hudson & Union Counties
Black Lives Matter Morristown
Camden Coalition of Healthcare Providers
Campaign to End the New Jim Crow, Greater Trenton Area
Carthage Investment Group, LLC
Center for Social Justice at Seton Hall University School of Law
Churches Improving Communities
Communications Workers of America, AFL-CIO New Jersey
Daily Kos
Demos
Dominion Behavioral Health, LLC
Drug Policy Alliance
Essex Rising

From The Block 2 The Boardroom
Garden State Bar Association
Gloucester County NAACP
Greater Newark LISC
Green Party of New Jersey
Healing Communities USA
Heart-to-Heart
Hudson Civic Action
Independence: A Family of Services
Indivisible Princeton
LatinoJustice PRLDEF
League of Women Voters of New Jersey
Legit Action
Let People Vote-Mercer County
Lutheran Episcopal Advocacy Ministry of New Jersey
Million Hoodies Movement for Justice
MomsRising
Monarch Housing Associates
Mount Zion AME Church
My Brother's Keeper Newark
NAACP (national)
NAACP Legal Defense and Educational Fund
NAACP New Jersey State Conference
National Association of Social Workers-NJ Chapter
National Council of Jewish Women, Essex County
National Council on Alcoholism and Drug Dependence of New Jersey (NCADD-NJ)
National Organization for Women-New Jersey
National Organization for Women-Northern NJ
NeighborCorps Re-Entry Services
New Jersey Annual Conference Committee on Civic Involvement
New Jersey Association of Black Women Lawyers
New Jersey Association on Correction
New Jersey Black Issues Convention
New Jersey Chapters of Delta Sigma Theta Sorority, Incorporated
New Jersey Conference Women's Missionary Society of the African Methodist Episcopal Church
New Jersey Institute for Social Justice
New Jersey Multi-Faith Alliance
New Jersey Policy Perspective
New Jersey Student Power Network
New Jersey Tenants Organization
New Jersey Working Families Alliance
Newark Anti-Violence Coalition

NJ State Industrial Union Council
NJ-08 for Progress
Occupy Bergen County
People Power-Hudson County
Princeton SPEAR (Students for Prison Education and Reform)
Prison Policy Initiative
Public Citizen
Recovery Advisory Group
Re-Entry Coalition of New Jersey
Reform Jewish Voice
Reformed Church of Highland Park
Rutgers Law School International Human Rights Clinic
St. Matthew AME Church
Salvation and Social Justice
Shareef Professional Services, LLC
Sisters United Enterprise
South Jersey Women for Progressive Change
STAND Central New Jersey
Teach for America, NJ Region
The Leadership Conference on Civil and Human Rights
The Meta Theatre Company
The Sentencing Project
Trenton Branch NAACP
Union Baptist Church
Unitarian Universalist Congregation at Montclair
Unitarian Universalist Faith Action NJ
Urban Mental Health Alliance
Volunteers of America Delaware Valley
YAP (national)
Who Is My Neighbor?
Women Who Never Give Up

¹ Jan Ellen Lewis, *Rethinking Women's Suffrage in New Jersey, 1776-1807*, 63 RUTGERS L. REV. 1017, 1019 (2011).

² N.J. INST. FOR SOC. JUSTICE, WE ARE 1844 NO MORE: LET US VOTE (2017), <http://www.njsj.org/1844nomorereport2017>.

³ *Ibid.*

⁴ See, e.g., ERIKA WOOD, LIZ BUDNITZ & GARIMA MALHOTRA, BRENNAN CENTER FOR JUSTICE, JIM CROW IN NEW YORK (2009), <https://www.brennancenter.org/publication/jim-crow-new-york>.

⁵ ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 320 (Table A5) (rev. ed. 2009).

⁶ GILES R. WRIGHT, AFRO-AMERICANS IN NEW JERSEY: A SHORT HISTORY 29 (1989).

⁷ JAMES J. GIGANTINO II, THE RAGGED ROAD TO ABOLITION: SLAVERY AND FREEDOM IN NEW JERSEY, 1775-1865 235 (2014).

⁸ KEYSSAR, *supra* note 5, at 360 (Table A15).

⁹ *Id.* at 320 (Table A5).

¹⁰ Specifically, New Jersey law states, “[n]o person shall have the right of suffrage . . . [w]ho is serving a sentence or is on parole or probation as a result of a conviction of any indictable offense under the laws of this or another state or of the United States.”

N.J. STAT. ANN. § 19:4-1(8) (West 2017). An “indictable offense” is defined as a crime of the first through the fourth degree, roughly what other states consider a felony. See N.J. STAT. ANN. §§ 2C:1-4; 2C:43-1 (West 2017). New Jersey’s Elections Code allows a court to impose disenfranchisement as an additional punishment on anyone convicted of an elections offense. N.J. STAT. ANN. § 19:34-46 (West 2017). Whether to impose disenfranchisement and for how long are in the complete discretion of the court. *Id.* This statute appears to be seldom, if ever, used and of questionable constitutionality. See *In re Evans*, 227 N.J. Super. 339, 349-50 (1988).

¹¹ CHRISTOPHER UGGEN, RYAN LARSON, & SARAH SHANNON, THE SENTENCING PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT 15 (Table 3) (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

¹² See TOGETHER WE TEACH, POPULATIONS OF NEW JERSEY CITIES, <http://www.togetherweteach.com/TWTIC/uscity-info/30nj/njpopr/30njpr.htm> (citing 2010 data from the U.S. Census Bureau) (last visited Oct. 16, 2017).

¹³ U.S. CENSUS BUREAU, QUICKFACTS: NEW JERSEY, <https://www.census.gov/quickfacts/fact/table/NJ/RHI725216> (last visited Aug. 11, 2017).

¹⁴ UGGEN ET AL., *supra* note 11, at 15-16 (Tables 3-4), analysis by Scott Novakowski.

¹⁵ N.J. INST. FOR SOC. JUSTICE, WE ARE 1844 NO MORE: LET US VOTE (2017), <http://www.njisj.org/1844nomorereport2017>.

¹⁶ Felony disenfranchisement laws serve no legitimate public safety or rehabilitative purpose.

Denying a person the right to vote—stigmatizing them and excluding them from their communities—does not rehabilitate a person. Being actively engaged in one’s community and establishing an identity as a law-abiding citizen is central to successful rehabilitation.¹⁶ In fact, a growing body of research indicates that disenfranchisement likely hinders rehabilitation and increases the likelihood of recidivism. See, e.g., Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKLEY LA RAZA L. J. 407 (2015), <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1252&context=blrlj>; Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193 (Fall 2004); FLORIDA PAROLE COMMISSION, STATUS UPDATE: RESTORATION OF CIVIL RIGHTS’ (RCR) CASES GRANTED, 2009 AND 2010 (2011), http://thecrimereport.s3.amazonaws.com/2/4a/4/1150/blog_mansfield_florida_parole_commission_report.pdf.

¹⁷ See *generally*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (rev. ed. 2012).

¹⁸ ASHLEY NELLIS, THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISON 17 (Table D) (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

¹⁹ THE SENTENCING PROJECT, BLACK DISPARITIES IN YOUTH INCARCERATION 1 (2017), <http://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf>.

²⁰ JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 6 (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

²¹ See, e.g., ACLU OF NEW JERSEY, SELECTIVE POLICING: RACIALLY DISPARATE ENFORCEMENT OF LOW-LEVEL OFFENSES IN NEW JERSEY 20 (2015), https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf (finding dramatic racial disparities in arrests for low-level offenses such as marijuana possession, disorderly conduct, defiant trespass, and loitering, in the cities of Elizabeth, Jersey City, Millville, and New Brunswick); Jay Scott Smith, *Do Cops Target Blacks? FBI Stats Show Arrest Disparity*, ASBURY PARK PRESS (Nov. 18, 2014), <https://www.app.com/story/news/investigations/2014/11/18/racial-arrest-disparity-nj/19247461/> (finding that while Black residents make up less than 15% of shore communities in Monmouth and Ocean Counties, they account for 44% of arrests in those towns); and ACLU OF NEW JERSEY, UNEQUAL AND UNFAIR: NEW JERSEY’S WAR ON MARIJUANA USERS 6, 9 (2017), https://www.aclu-nj.org/files/6614/9744/1887/2017_06_14_mj_rpt.pdf. (finding Black New Jerseyans were three times as likely as their white peers to be arrested for marijuana possession in 2013, even though rates of marijuana use are the same for white and Black people).

²² Black people in New Jersey are also more likely to be imprisoned for longer periods of time than white people. For example, while making up about 60 percent of New Jersey’s prison population, NELLIS, *supra* note 19, at 16 (Table A), almost 70 percent of people serving sentences of life without parole are Black. ASHLEY NELLIS & RYAN S. KING, THE SENTENCING PROJECT, NO EXIT: THE EXPANDING USE OF LIFE SENTENCES IN AMERICA 15 (2009), <https://www.sentencingproject.org/wp-content/uploads/2016/01/No-Exit-The-Expanding-Use-of-Life-Sentences-in-America.pdf>.

²³ A 2014 investigation by the U.S. Department of Justice found that almost 81 percent of the Newark Police Division’s (“NPD”) stops and almost 80 percent of its arrests were of Black residents, even though Newark’s population is only about 54 percent Black. CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE & U.S. ATTORNEY’S OFFICE DIST. OF N.J., INVESTIGATION OF NEWARK POLICE DEPARTMENT 16,

20-21 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf. The DOJ report further noted that these racial disparities persisted both in areas of the city with high and low concentrations of Black residential populations. *Id.* at 16. In all, Black people in Newark were 2.7 times more likely to be subject to a search by NPD, 3.1 times more likely to be frisked, and 2.6 times more likely to be arrested by NPD than white people in Newark. *Id.* at 20-21. The investigation also found that Black people were 85 percent of those stopped because an NPD officer subjectively determined them to be a “suspicious person,” a conclusory phrase that requires no further justification for the stop. *Id.* at 19. See also, ACLU OF NEW JERSEY, *supra* note 22.

²⁴ See N.J. INST. FOR SOC. JUSTICE, *Sign-On to Restore Voting Rights to People with Convictions*, http://www.njisj.org/sign_on_to_restore_voting_rights_to_people_with_convictions (last visited June 12, 2018).

²⁵ Editorial, *1 Ancient Law is Stopping Thousands of People from Voting*, TIMES OF TRENTON (Mar. 5, 2018), http://www.nj.com/opinion/index.ssf/2018/03/1_ancient_law_is_stopping_thousands_of_people_from.html.

²⁶ N.J. DEP’T OF CORR., *Offenders in New Jersey Correctional Institutions on January 2, 2018, by Race/Ethnic Identification*, https://www.state.nj.us/corrections/pdf/offender_statistics/2018/By%20Race%20Ethnicity%202018.pdf

²⁷ See Ryan P. Haygood, *The Past as Prologue: Defending Democracy Against Voter Suppression Tactics on the Eve of the 2012 Elections*, 64 RUTGERS L. REV. 1019 (2012).

²⁸ In both Maine and Vermont, the right to vote is never denied as the result of a criminal conviction. See ME. CONST. art. II, § 1 (granting the right of suffrage to citizens 18 or older with residency in Maine); ME. REV. STAT. ANN. tit. 21-A, § 111 (listing statutory qualifications to vote); 29-250-505 ME. CODE R. § 2 (Prohibiting the removal of a registrant’s name from the voter list because of a criminal conviction in any court); VT. STAT. ANN. tit. 17, § 2121 (West 2018) (listing the statutory qualifications to vote). In both states, people in prison vote in their home districts by using a mail-in absentee ballot. ME. REV. STAT. ANN. tit. 21-A, § 112 (2017) (“A person incarcerated in a correctional facility may apply to register to vote in any municipality where that person has previously established a fixed and principal home to which the person intends to return.”); VT. STAT. ANN. tit. 17, § 2122(a) (West 2018); VT. STAT. ANN. tit. 17, § 2531 (West 2018). Both states require that incarcerated people be counted as residents of their home districts rather than at the prison for the purposes of drawing district lines. See ME. REV. STAT. ANN. tit. 21-A, § 112 (2017); Vt. Stat. Ann. tit. 17, § 2122(a) (West 2018). We also urge New Jersey to adopt such a common sense reform. Legislation to end prison-based gerrymandering passed both houses of the legislature last year, only to be vetoed by former Governor Chris Christie. That bill has been introduced this year as S-758/A-1987.

²⁹ See note 29.