

# Expanding Voting Rights to All Citizens in the Era of Mass Incarceration

**In order to strengthen democracy and address significant racial disparities, states must pass reforms establishing universal voting for people impacted by the criminal legal system.**

[5.2 million people](#) in the United States are currently denied access to the vote because of a felony conviction. The number of people disenfranchised has grown, from 1.2 million in 1976, as a product of mass incarceration and supervision. Of people denied the vote, one in four (1,240,000) are currently incarcerated.<sup>1</sup> While many states have [expanded access to the vote](#) for people who have completed their sentences, only DC has joined Maine, Vermont, and Puerto Rico by granting full voting rights to people in prison. In order to strengthen democracy and address significant racial disparities, states must pass reforms establishing universal voting for people impacted by the criminal legal system.

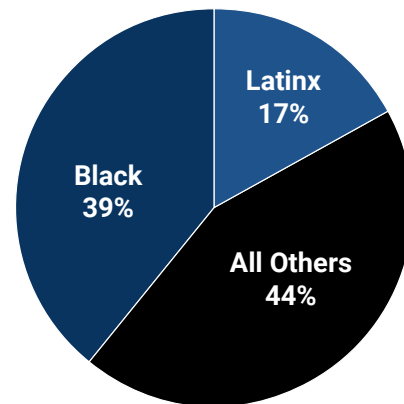
The United States maintains far greater restrictions on voting while in prison than any other democratic country in the world. The Supreme Court of Canada has twice ruled in favor of protecting voting rights for people in prison, stating that the “denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy.”<sup>2</sup> Five years after the fall of Apartheid, the Constitutional Court of South Africa ensured voting rights for people in prison.<sup>3</sup>

## **DISENFRANCHISEMENT BORN OF RACIST LAWS, POLICIES, AND PRACTICES**

The United States has failed to reckon with disenfranchisement’s deep roots in the racist Jim Crow-era. When African Americans gained the right to vote following the Civil War, many states enacted literacy tests, poll taxes, and expanded the number of crimes classified as a felony. Each of these barriers were intended to prevent African Americans from voting. While the federal government officially outlawed some Jim Crow-era tactics in the Voting Rights Act (1965), felony disenfranchisement laws remain with us to this day.

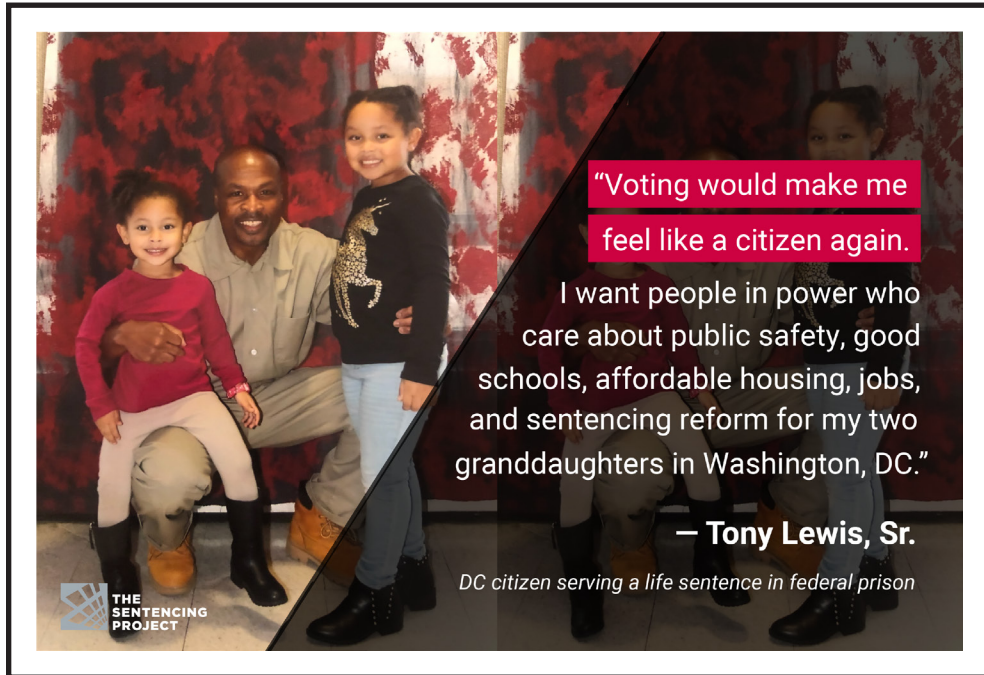
## Disenfranchised People in U.S. Prisons, 2020

Total: 1.2 million



As the United States maintains the highest incarceration rate and largest prison population in the world, outdated and undemocratic voting restrictions continue to dilute political representation. In fact, advocates of disenfranchisement have stated this goal in clear terms. In 2002, during a hearing on the voting rights of people with a prior felony conviction, Senator Mitch McConnell argued that re-enfranchisement would “dilute the vote of law-abiding citizens.”<sup>4</sup> Such positions are not only deeply out of touch with global democratic norms, but are linked to the history of racially-motivated voter suppression.

No one is more aware of this reality than people in prison. Tony Lewis, Sr., a Washington, DC resident who had his voting rights restored in 2020, remarked, “A lot of Black people have been beaten and killed for this right to vote.” When asked about how he would feel casting his first vote from prison he responded, “still being a citizen of our community Washington, DC, and to know that I have a say, that’s just going to be such



an amazing feeling...something that I never expected to see or experience while being incarcerated.”<sup>5</sup> Restoring voting rights is an essential step to ensuring racial equality and strengthening democracy.

## **UNIVERSAL SUFFRAGE PROMOTES RACIAL EQUITY AND STRENGTHENS DEMOCRACY**

Felony disenfranchisement weakens the political power of communities of color, even among people who do not have a felony conviction.<sup>6</sup> Nationally, 39% of people disenfranchised in prisons are African American, whereas African Americans make up 13% of the nation’s population. This disparity diminishes the voting power of the Black electorate as a whole. Establishing universal voting would prevent [racial disparities](#) in the criminal legal system from causing disparities in political representation.

People in prison are counted when drawing electoral districts that determine political representation, even though most lack the right to vote. In many states, people in prison are counted in the jurisdiction where they are incarcerated, rather than the jurisdiction they call home. This process, known as prison gerrymandering, has significant ramifications on the distribution of political power.<sup>7</sup> By restricting the franchise, states deny fundamental democratic rights and representation that are otherwise guaranteed to all citizens.

Disenfranchisement should not be seen as a just punishment for any crime. In the United States, people in prison continue to hold other fundamental constitutional rights — such as the right to get married or divorced, or to buy or sell property — and can exert their political opinions through public writing, letters, and phone calls.<sup>8</sup> And any limitation on those core rights are generally only justified due to security concerns. Such security concerns are not implicated in the exercise of democratic rights.

Voting rights should not be suspended while someone is being held accountable for a criminal offense, just as voting rights are not suspended for people in our country who violate our norms of conduct or engage in other activity that society does not condone, such as avowed racists, misogynists, or homophobes.<sup>9</sup> We may deeply disapprove of an individual’s actions or beliefs but nonetheless we do not, in other circumstances, use a character test to determine who has the right to vote in a democratic society.

In a democracy, everyone has the right to vote whether or not we like them or their conduct. Once we decide one group of citizens is unworthy of the vote — that opens the door to the next group, and the next group until democracy ceases to exist.

## EXPANDING VOTING RIGHTS SUPPORTS PUBLIC SAFETY & CIVIC ENGAGEMENT

Disenfranchisement is also counterproductive to public safety. Access to the vote promotes full citizenship and decreases the marginalization of returning citizens. Around 95% of incarcerated people will return home someday and research suggests that people with strong community connections, which can be promoted through electoral participation, are less likely to reoffend.<sup>10</sup>

Disenfranchisement has no deterrent effect on crime.<sup>11</sup> While the effectiveness of most sanctions is at least partially measured by how well they discourage future crimes from occurring, disenfranchisement has no such effect. Many people are not even aware that they lose the right to vote when they are sentenced, largely due to the complexity of state disenfranchisement laws and the failure of states to notify potential voters of their eligibility. If the goal of criminal sanctions is to ensure public safety, then disenfranchisement has proven to be ineffective.

Reinstating access to the vote inside prisons would also expand our ability to respond to very real issues of abuse and unconstitutional treatment that continue to take place in prisons and jails. Removing barriers to suffrage can be seen as an investment in democracy and public safety.

## IMPLEMENTING VOTING IN PRISONS & JAILS IS ALREADY HAPPENING

Universal suffrage reforms can look to existing models in prisons and jails to ensure access to the vote behind bars. In DC, recent legislation extending the right to vote to all people in prison requires that the jurisdiction provide voter registration forms, a voter guide, and educational materials to all eligible voters in advance of registration or absentee ballot submission deadlines.<sup>12</sup> In Maine, officials visit the Maine State Prison each year to update voter registrations and provide the necessary forms to request an absentee ballot. Voters are then mailed absentee ballots from town clerks based on where they previously resided. Matthew Dunlap, Maine's former Secretary of State, has stressed the role universal voting has in upholding the essential rights of citizens and fostering connections outside of prisons, explaining that voting, "is a process that should belong to every American citizen. And in no small way it helps keep [people in prison] connected to the real world."<sup>13</sup>

Similar efforts are underway in some local jails. In Illinois, recent legislation brought same-day registration and polling machines to the Cook County Jail.<sup>24</sup> Illinois's reform addresses the *de facto* disenfranchisement even eligible voters face while incarcerated because of obstacles to securing registration materials or absentee ballots. Eligible voters also generally lack internet access or another way to easily contact a state's board of elections to raise specific questions about the voting process. Establishing polling places within prisons and jails would ease these common barriers to voting.

## RESTORING THE VOTE TO ALL PEOPLE IMPACTED BY THE CRIMINAL LEGAL SYSTEM STRENGTHENS OUR DEMOCRACY

Over the last 25 years, half of states have [passed reforms to limit felony disenfranchisement](#) in an effort to address this byproduct of mass incarceration. These reforms have resulted in almost 1 million people re-gaining the right to vote since 2016, but have frequently excluded people in prison.<sup>15</sup> Such reforms falsely suggest that people in prison are qualitatively different from those who face other sanctions. Sentences for many crimes can vary from prison, jail, or community supervision. The loss of voting rights reflects a difference in sentence, not necessarily in behavior. Judges and juries are tasked with applying the criminal law; they should not have the additional, unchecked power to decide which citizens get to participate in our democracy and which get excluded.

Some may argue against expanding voting rights because they fear that people in prison, who are overwhelmingly poor and people of color, may not vote for their candidates. This is fundamentally an anti-democracy argument that seeks to deny votes rather than win them. Such justifications for limiting democracy should not stand in a society concerned with preserving and protecting its democratic form of government - as opposed to one that promotes tyranny, oligarchy, or autocracy. It is also the case that the political views of people in prison tend to mirror their non-incarcerated peers, suggesting that expanding voting rights cannot legitimately be opposed on partisan grounds.<sup>16</sup>

Just as the United States moved away from other barriers to voting, such as literacy tests and poll taxes, we should eliminate the supposed character test that denies the vote to incarcerated people by enacting universal suffrage.

## ENDNOTES

1. Chris Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava. 2020. "[Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction](#)." Washington: Sentencing Project.
2. *Sauvé v. Canada*, [2002] 3 S.C.R. 519, para. 44 (Can.); *Sauvé v. Canada*, [1993] 2 S.C.R. 438 (Can.).
3. Constitutional Court of South Africa. 1999. [Case CCT 8/99](#).
4. Jeff Manza, Clem Brooks, and Christopher Uggen. 2003. "[Civil Death or Civil Rights? Public Attitudes Towards Felon Disenfranchisement in the United States](#)." 36(1), 193-216.
5. "[Free the Vote](#)." 2020. The Sentencing Project.
6. Marc Mauer. 2011. "[Voting Behind Bars: An Argument for Voting by Prisoners](#)." *Howard Law Journal*, 54(3), 561.
7. [Prison Gerrymandering Project](#). 2020. Prison Policy Initiative.
8. *Turner v. Safley*, 482 U.S. 78 (1987)
9. Marc Mauer. (2019, May 6). [Opinion: Prisoners Should Be Allowed to Vote](#). *Northwest Florida Daily News*.
10. Christopher Uggen and Jeff Manza. 2004. "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample." *Columbia Human Rights Law Review*, 36(1), 193-216.
11. Christopher Poulos. 2019. [The Fight Against Felony Disenfranchisement](#). *Harvard Law and Policy Review Blog*.
12. The District of Columbia. [Restore the Vote Amendment](#). 2020.
13. Daniel Nichanian. (2019, May 2). "[A Sliver of Light": Maine's Top Election Official on Voting From Prison](#)." *The Appeal*.
14. Sam Kuhn, Hannah Gross, Alex Fay, Kate Levien, Giovanna Robledo, Amy Eppler-Epstein, and Van Augur. 2020. "[Improving Access to Voting in Connecticut Prison and Jails](#)." Connecticut: Connecticut Sentencing Commission.
15. Chris Uggen, et al. 2020.
16. Van R. Newkirk III. (2016, March 9). [Polls for Prisons: Incarcerated People Voted in Primaries in Vermont, Puerto Rico, and Maine. Why Can't They Vote Anywhere Else?](#) *The Atlantic*; Nicole Lewis, Aviva Shen and Anna Flagg. (2020, March 13). [What Do We Really Know About the Politics of People Behind Bars?](#) *The Marshall Project*.