



July 21, 2020

Via Electronic Mail

Re: Letter of Support for of S1931-Comrie/A4987-O'Donnell to Restore Voting Rights for Persons While on Probation or Parole

Dear New York State Legislators:

LatinoJustice PRLDEF¹ (“LatinoJustice”) respectfully submits this letter in support of Senator Comrie and Assemblyman O’Donnell’s bill (SB1931/AB4987) to restore voting rights to individuals on probation or parole. Felony disenfranchisement undermines the goal of one person one vote and has unequivocally and disproportionately impacted otherwise eligible Latinx and Black voters. Historically, Latinx and Black people receive harsher penalties than their white peers for identical offenses, including but not limited to longer probation or parole sentences. Indeed, statistics confirm that Latinx and Black people receive the harshest punishments, and the disparities continue to grow.² This bill furthers the ideals of American democracy and represents an opportunity for New York to rectify the worst harms of statutory disenfranchisement on persons with felony convictions, particularly as they have negatively affected Latinx and Black communities in the State.

For almost five decades, LatinoJustice has been committed to voting rights, criminal justice reform and the intersectionality of democracy and justice reform as applied to the greater pan-Latinx communities in the United States. LatinoJustice has a long track record of advocating for and supporting the right to vote for people who are formerly incarcerated and otherwise disqualified from voting because of criminal convictions. LatinoJustice has consistently been at the forefront of those efforts nationally and particularly here in New York State where we litigated to uphold a related voting rights reform: the elimination of “prison gerrymandering” whereby state prisoners were improperly counted as residents of their prison towns, rather than their home districts, for state legislative redistricting purposes.³ More recently, through our Southeast Regional Office in Orlando, Florida, LatinoJustice led Latinx advocacy⁴ for the

¹ Formerly, the Puerto Rican Legal Defense and Education Fund (PRLDEF).

² See <https://theappeal.org/people-of-color-receive-the-harshest-punishments-and-the-disparities-are-growing/> noting: Black people in 2016 (the most recent year for which Bureau of Justice Statistics figures are available) were still more than five times as likely as whites to be in prison and 3.8 times as likely to be in jail. Among all categories of Black and Latinx people under correctional control or supervision, only the rates of Latinx people on probation are equivalent to those of white people.) (last visited, July 16, 2020).

³ Little, v. NYS Task Force on Demographic Research & Reapportionment (“LATFOR”) at (https://www.prisonersofthecensus.org/little/Decision_and_Order.pdf).

⁴ See <https://www.latinojustice.org/en/news/advocates-around-florida-host-community-fairs-help-restore-voting-rights-people-eligible-under>

passage of Amendment 4 to Florida’s constitution – a public referendum that in November 2018 successfully expanded the franchise to a pool of 1.5 million citizens, perhaps the largest expansion of the franchise in America since the passage of the Voting Rights Act of 1965.

New York’s history in providing individuals with *restricted* access to the franchise has been mired in racial and ethnic discrimination, having restricted access in a manner which has disproportionately impacted Black, Latinx, and other ethnic minority communities. Evidence of racial and ethnic animus in New York law dates back to 1777, when the framers of the New York State’s first constitution established voting rights only to free men and property holders, a position at the time exclusively held by white men. In 1821, New York took further steps to disenfranchise racial and ethnic minorities by amending its constitution to include an “infamous crime” disqualification.⁵ The “infamous crime” amendment disqualified individuals convicted of “any infamous crime” from voting. The amendment has served as New York’s first and primary legal basis for the denial of voting rights of individuals convicted of felonies in the state and the provision remains in effect today, through our State Constitution.

In its current form, New York’s felony disenfranchisement provisions are interpreted to include all felonies, *i.e.*, crimes that may result in jail sentences of one year or more. The brunt force of this law is borne by Black and Latinxs as Black adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely.⁶ Further, as of 2001, one of every three Black males born in that year could expect to go to prison in his lifetime, as could one of every six Latinxs—compared to one of every seventeen white males.⁷ These statistics illustrate that historically these laws have disproportionately impacted Black and Latinx communities as they have consistently been denied access to the franchise under the color of New York state law. If this goes unchanged New York felony disenfranchisement laws will continue to disenfranchise many Black and Latinxs.

S1931/A4987 represents New York’s acknowledgement of the historical underpinnings of oppression and racism inherent in our laws and its commitment to abolishing the felony disenfranchisement provisions that have suppressed the political voices of Black and Latinxs for centuries. S1931/A4987 is a necessary first step to begin the healing process and promote full participation in the political process.

The bill however should be amended to extend voting rights to present and future incarcerated individuals. It is also imperative that the legislature incorporates language that provides affected individuals with an infrastructure to meaningfully participate in the political process. Currently, S-1931 provides that:

⁵ Felons and the Right to Vote, Cartagena, Nelson, and Gibbs at (<https://www.gothamgazette.com/open-government/1722-felons-and-the-right-to-vote>)

⁶ U.S. Bureau of Justice Statistics, *Prisoners in 2016*, 8 tbl.6 (Jan. 2018).

⁷ Marc Mauer, *Addressing Racial Disparities in Incarceration*, 91 supp. 3 *The Prison Journal* 87S, 88S (Sept. 2011).

“No person who has been convicted of a felony and sentenced to a period of imprisonment for such felony pursuant to the laws of this state, shall have the right to register for or vote at any election **while he or she is incarcerated for such felony**... No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, and sentenced to a period of imprisonment for such felony, shall have the right to register for or vote at any election **while he or she is incarcerated for such felony**... No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of 18 this state, and sentenced to a period of imprisonment for such felony, shall have the right to register for or vote at any **while he or she is incarcerated for such felony**.”

Under the current bill, individuals who are currently incarcerated or will be incarcerated at some future time are still disenfranchised. This limitation is clearly inconsistent against the expansion reform intent and spirit of S1931/A4987 which seeks to bring some sense of closure to this abhorrent, racist and ineffective practice of voter disenfranchisement in New York. Full restoration of voting rights requires New York to adopt language inclusive of *ALL* individuals who are currently impacted and could be impacted in the future by New York’s criminal disenfranchisement provisions.

Neighboring jurisdictions have undertaken similar restorative justice processes and provide a roadmap for full restoration⁸. For example, in the District of Columbia City Council, bill B23-0774⁹ restores the franchise to currently incarcerated individuals as well as formerly incarcerated individuals. This expansion of the franchise incorporates the entire disenfranchised population while also providing “to every qualified elector in the Bureau of Prisons’ care or custody,” a voter registration form, a voter guide, educational materials about the importance of voting and the right of an individual currently incarcerated or with a criminal record to vote in the District, along with an absentee ballot.¹⁰ As advocates for change we must continue to push the conversation and rule of law forward to represent the values we hold dear. It is upon these values that we recommend the adoption of language in S-1931 with our proposed amendment to ensure that the right to vote is restored for all individuals regardless of a conviction, past, present or future while also providing these individuals with the tools to meaningfully participate in that process.

Resolving the issue of voter disenfranchisement in the State of New York requires sweeping reforms that attack the root causes of the larger disease of inequity embodied by our criminal justice and legal system, rather than piecemeal treatment of the symptoms. It is crucial, then, that New York fully commits to restoring the voting rights of the entire disenfranchised population as well as those that could be impacted in the future. Anything less than a full

⁸ https://www.njleg.state.nj.us/2018/Bills/A9999/5823_I1.PDF

⁹ B23-0774 Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, at

(<https://lims.dccouncil.us/Legislation/B23-0825>).

¹⁰ *Id.*

commitment to ending the practice of felony disenfranchisement prevents S1931/A4987 from achieving its desired goal by ensuring that the class of disenfranchised individuals remains open.

It is way past the time to restore the vote in New York to persons on probation or parole. Redemption and restoration are key values that New York holds, and they will be underscored when voice and political agency is made available to all eligible citizens, including persons who have served their time. Enacting S1931/A4987 with the proposed amendments we have suggested will create more accessibility to the franchise.

Thank you for your consideration of the concerns we raise in this letter. Please do not hesitate to contact us at 212.219.3360 should you have any questions or need any additional information.

Respectfully submitted,

/s/
Jose Perez
Deputy General Counsel
jperez@latinojustice.org

/s/
Jorge Vasquez
Associate Counsel
jvasquez@latinojustice.org

Principally drafted by Cesar Z. Ruiz
City University of New York Class of 2021
LatinoJustice Summer Legal Intern.