



April 14, 2023

Members of the Massachusetts Legislature
Joint Committee on Election Laws

Via Email

Re: Support for S. 8 to Restore Voting Rights to Incarcerated Individuals

Dear Chair Keenan, Chair Ryan, and Members of the Joint Committee on Election Laws:

We write to urge you to support S. 8, a bill to restore the right to vote to incarcerated individuals in Massachusetts. S. 8 will re-enfranchise thousands of people, simplify the current law, and make Massachusetts a national leader in protecting the right of all its citizens to vote and participate in American democracy.

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. Our Restore Your Vote program helps restore voting rights to people with past convictions by providing direct rights restoration services and empowering community leaders to understand and monitor implementation of rights restoration laws. CLC also works to ensure that eligible incarcerated voters can exercise their right to vote, including by working with jurisdictions to improve their election infrastructure and its accessibility to incarcerated voters. Most recently, CLC worked with Washington, D.C. on the implementation of its universal enfranchisement measure.¹

We strongly support ending Massachusetts’ disenfranchisement of incarcerated individuals and expanding access to the ballot to incarcerated voters. S. 8 is not just about whether incarcerated individuals should be allowed to vote, but whether there is any legitimate reason why an American citizen should be stripped of the right to vote in the first place. We do not believe that there is.

Incarcerated people could vote in Massachusetts until 2000, when voters passed a constitutional amendment which took that right away.² Twenty-three years have passed since that large step backwards, and there is now an opportunity to move the commonwealth forward again as a national leader in voting rights access for incarcerated individuals.

¹ See Restore the Vote Amendment Act of 2020, Washington, D.C. Bill 23-0324, <https://ims.dccouncil.us/Legislation/B23-0324>.

² See, e.g., Edgar B. Herwick III, *How Massachusetts Prisoners (Recently) Lost the Right To Vote*, WGBH (May 29, 2019), <https://www.wgbh.org/news/local-news/2019/05/29/how-massachusetts-prisoners-lost-the-right-to-vote>.

Felony disenfranchisement laws do not serve any legitimate criminal legal purpose: they have no meaningful punitive, deterrent, or restorative value. Indeed, studies actually show that disenfranchisement *undermines* rehabilitation and hinders re-entry.³ Conversely, restoring the right to vote *improves* individuals' connection to and engagement with their communities while incarcerated, as well as their transition back into society post-release.⁴ As one incarcerated voter in Washington, D.C. explained: “[I]f you’re allowing your incarcerated population to function within this democratic process, you are actually teaching them how to be citizens . . . [O]nce you get into the practice of doing that and once you transition back into society, you will continue that practice.”⁵

Enfranchising incarcerated individuals is important for democratic accountability. Elected officials make consequential decisions every day that directly impact incarcerated voters: legislators make the laws that incarcerated voters are charged with breaking, district attorneys prosecute their cases, state judges adjudicate their cases, and sheriffs and other law enforcement police them on the streets and run the jails and prisons in which they are currently incarcerated. Incarcerated voters' exposure to the criminal legal system gives them a major stake in the outcome of public policy, and their participation is crucial if the ballot box is truly to be a site where we hold our elected officials accountable.

Still, despite these empirical facts and the experiences of incarcerated voters, felony disenfranchisement laws persist, and their history explains why. In many states, these laws were enacted after the Civil War and proliferated during the Jim Crow era with the explicit and open purpose of undermining the 14th and 15th Amendments.⁶ Put simply, felony disenfranchisement exists and continues in the United States because of efforts to suppress voters and communities of color.⁷ Massachusetts' disenfranchisement scheme still serves that purpose today, disenfranchising

³ See, e.g., Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407 (2012); Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004). Felony disenfranchisement not only means that incarcerated people, as a class, are inadequately represented by the political process, it also means that the political power of certain racial and economic groups is diluted due to the number of members who cannot vote. In other words, disenfranchisement not only impacts incarcerated citizens, it disempowers the groups to which they belong. See Christopher Uggen, Jeff Manza, & Angela Behrens, *Felony Voting Rights and the Disenfranchisement of African Americans*, 5 SOULS 48 (2003), http://users.cla.umn.edu/~uggen/Uggen_Manza_Behrens_04_Souls.pdf.

⁴ See, e.g., Civic Nebraska, *Recidivism & Voting Rights, Case Study: Florida* (Jan. 30, 2019), <https://www.civiclebraska.org/wp-content/uploads/2019/02/2019-Florida-recidivism-case-study.pdf>; Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

⁵ Kira Lerner, *What It's Like to Vote From Prison: For the first time D.C. is letting people vote from prison.*, SLATE (Oct. 28, 2020), <https://slate.com/news-and-politics/2020/10/dc-prisoners-voting-first-time-felony-disenfranchisement.html>.

⁶ Jennifer Rae Taylor, *Jim Crow's Lasting Legacy at the Ballot Box*, THE MARSHALL PROJECT (Aug. 20, 2018), <https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>.

⁷ Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/racism-felony>.

Black citizens at 0.66 times the rate of the general population and Latino citizens at 0.47 times the rate of the general population.⁸ Felony disenfranchisement and its racist roots are a stain on our democracy. S. 8 will erase this exclusionary electoral feature and restore the right to vote to nearly 8,000 voters from the commonwealth.⁹

A system of universal enfranchisement also protects against *de facto* disenfranchisement —i.e., the process by which confusion and misinformation around voting after a felony conviction leads many people with past convictions—and election officials—to believe wrongly that they cannot vote, even if they are eligible.¹⁰ To combat this, S. 8 will create a simple, bright line rule that improves election administrability, as it stands to reason that a system disenfranchising no one will be easier to administer than a system disenfranchising a select few.

In sum, S. 8 is Massachusetts' opportunity to join a growing vanguard of states that are restoring voting rights to citizens with past convictions,¹¹ and to become a national leader on the issue. S. 8 will eliminate completely the outdated, discriminatory, and anti-democratic practice of felony disenfranchisement, will solidify ballot access for incarcerated voters, and will affirm Massachusetts' commitment to the principle that democracy works best when all eligible voters can participate. We urge you to take this important step.

Sincerely,

Blair Bowie
Director, Restore Your Vote
bbowie@campaignlegalcenter.org
(202) 736-2201

Danielle Lang
Senior Director, Voting Rights
dlang@campaignlegalcenter.org
(202) 856-7911

Ellen Boettcher
Legal Fellow
eboettcher@campaignlegalcenter.org
(202) 596-7445

[disenfranchisement-intertwined-history](#); George Brooks, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 Fordham Urban L.J. 101 (2005), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?httpsredir=1&article=2140&context=ulj>.

⁸ The Sentencing Project, *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction* at 16-18 (October 2022), <https://www.sentencingproject.org/app/uploads/2022/10/Locked-Out-2022-Estimates-of-People-Denied-Voting.pdf>.

⁹ *See id.* at 16.

¹⁰ *See* Erika Wood & Rachel Bloom, *De Facto Disenfranchisement*, Am. Civil Liberties Union & Brennan Ctr. for Justice 2-5 (2008), <https://www.aclu.org/other/de-facto-disenfranchisement>.

¹¹ *See* National Conference of State Legislatures, *Felon Voting Rights* (Feb. 9, 2023), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>.

Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005