VALUE TO THE SOUL:

PEOPLE WITH CRIMINAL CONVICTIONS ON THE POWER OF THE VOTE



A REPORT BY THE NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE

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ACKNOWLEDGMENTS

The Institute gratefully acknowledges the generous support of the Ford Foundation, the Vital Project, the Prudential Foundation, the Fund for New Jersey, and our Board of Trustees. We are grateful for the assistance of our former intern, Margaret Fiori, and to our colleagues Andrea McChristian, Jayne Johnson, Laurie Beacham, Patricia Williamson, and Brooke Lewis for their invaluable substantive and editorial feedback. We also express our gratitude to Ellie Dupler and Katherine Comly for their excellent assistance with cite-checking.

The Institute would also like to thank our external reviewers of earlier drafts of this report for their very helpful input and insights, including Marc Mauer from The Sentencing Project, Leah Aden from NAACP LDF, Aleks Kajstura from the Prison Policy Initiative, Jorge Vasquez from LatinoJustice PRLDEF, Alex Shalom from ACLU-NJ, Jesse Burns and Helen Kioukis from the League of Women Voters-NJ, and Christopher Agans from NJ-STEP.

The Institute would especially like to convey our gratitude to all the people impacted by the denial of the vote who trusted us with their stories.

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Cover Design: Mosaic Strategies Group
Layout: Hallow Creek Productions, LLC



What is a democracy, if you don't have the right to vote? To strip an individual of their fundamental right to vote is to deny that individual their personhood. Ancient Greeks called it civic death. The vote has value to the soul. It brings a connectedness with it.

Ronald W. Pierce
Democracy and Justice Fellow



Voting is the lynchpin of our political democracy, woven into the fabric of this nation.

Justin Roslonek
Always Disfranchised
Served 17 years

I INTRODUCTION AND OVERVIEW

Over 102,000 people, a population larger than New Jersey's capital city of Trenton, are ghosts in New Jersey's democracy.[1] Ghosts because New Jersey, by denying their right to vote because of a conviction—a right that is "preservative of all rights"[2]— does not see, hear, or represent them. In New Jersey, democracy's ghosts are disproportionately, overwhelmingly Black people.[3] Forty-three percent are Black, even though Black people are just 15 percent of New Jersey's overall population.[4] Indeed, due to population changes, New Jersey suppresses the voting rights of more Black people today than it prohibited from voting prior to the passage of the Fifteenth Amendment in 1870.[5]

Because New Jersey's criminal justice system is infected with pervasive racial discrimination, stripping away the vote from people with criminal convictions imports that racial inequality directly into the political process, disproportionately separating Black people from voting—and diluting the collective voting strength of the communities from which they come.[6]

This report raises democracy's ghosts out of the shadows so that they can be seen, heard, and represented. The

"Without a vote, a voice, I am a ghost inhabiting a citizen's space."

– Joe Loya

(Author; Formerly Incarcerated)

A Note About This Report

In late 2018, we asked people who lost the right to vote due to criminal convictions to share their views on voting. We sent a questionnaire to prison facilities hoping to receive a dozen responses. We received over 100. We were not able to include all the responses in this report, but are sharing more on social media.

This report includes the thoughts of a number of impacted people—men and women, young and old, Black, White, Latinx, and Asian—whose voices have been silenced. They are ghosts of our democracy.

Included with the statements, in addition to the speaker's name, are length of disfranchisement and length of sentence previously served or being served now. Some speakers have never had the right to vote ("Always Disfranchised") because they were caught up in the criminal justice system before they turned 18. Some people have had their rights restored because they have completed their sentences. Statements have been lightly edited for brevity.

right to vote has value to the soul, particularly for people in prison, on parole, and on probation, because it is a form of expression and it connects individuals to the broader community.

This report argues there is no legitimate reason to deny the precious right to vote to people with criminal convictions. Research reveals that voting helps to increase public safety, reduce recidivism, and increase the chances of successful integration into communities upon release.[7] Having a voice in the governance of one's community enhances one's investment in being a positive and productive influence within it. In the same way that hospitals prepare to discharge a patient on the day of admission, successful reentry into society for people in prison must begin on the day a person enters prison. The right to vote for people in prison can be a strong element of successful integration.

New Jersey should join Maine and Vermont[8] and pass pending legislation (S2100/A3456) to restore the right to vote to more than 102,000 people in prison, on parole, or on probation so that they may all vote in their home communities.[9]

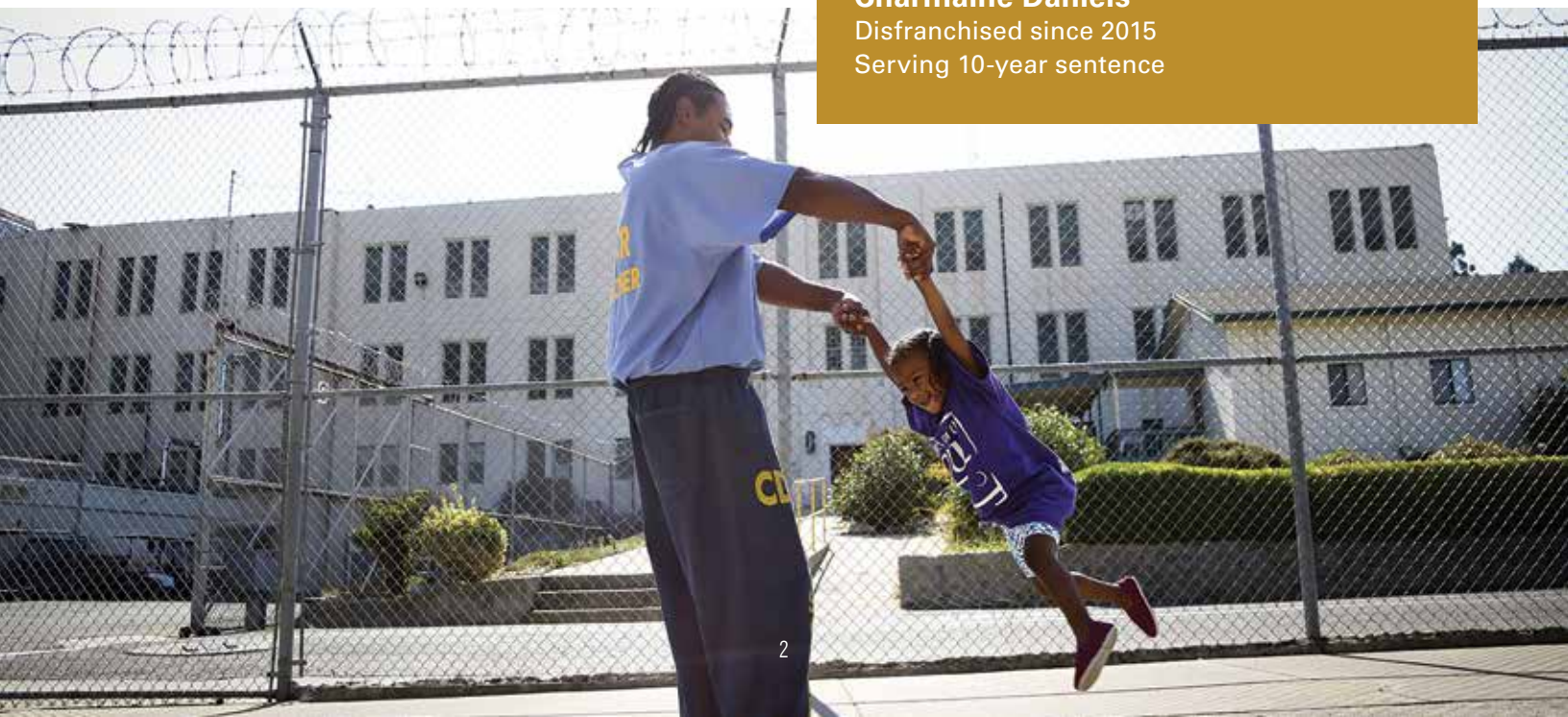
Finally, this report urges New Jersey to pass pending bill A1987, already passed by the New Jersey Senate, to end the pernicious practice of "prison-based gerrymandering," which counts people in prisons for purposes of redistricting as residents of their temporary prison communities, instead of as residents of the communities from which they have come and to which they will return.[10] Ending this practice ensures the voices and resources of the communities from which incarcerated people come from are not diluted.[11]

II NEW JERSEY'S FOUNDATION OF DEMOCRATIC EXCLUSION

As we explain in our report *1844 No More: Let Us Vote*, the story is often told about how racist Southern legislatures built democracies that excluded Black people, other people of color, and women.[12] What is less well known is that this history of exclusion also took root deeply in New Jersey.[13]

New Jersey was one of the first Northern states to restrict the vote to white men.[14] New Jersey opposed the

> The vote is important because without it, one must simply accept anything that happens because you do not have the ability to fight peacefully for the change needed to address the inequality in the system, how the laws are bent and manipulated by those with hidden agendas against those that they systematically silence. When my sentence is completed I will be able to vote. Until then I am relegated to the ranks of the three-fifths society.
>
> **Charmaine Daniels**
> Disfranchised since 2015
> Serving 10-year sentence





People who are incarcerated, on parole, and on probation aren't represented in the political process and in many instances are treated as second class citizens.

Bashir Hawkins
Disfranchised from 2004-2015
Served 10 years

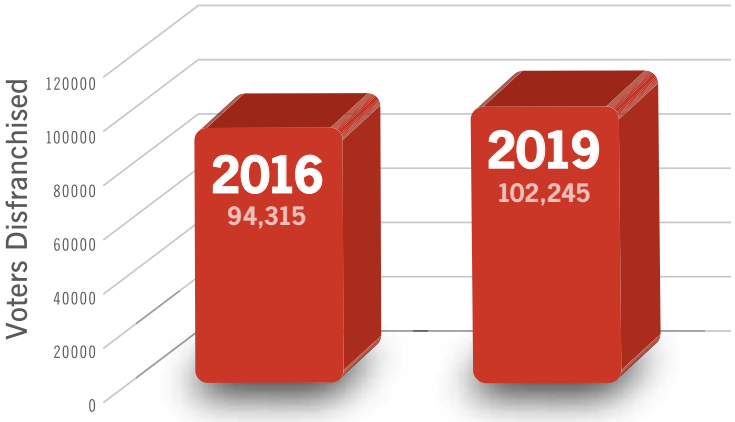
While change and growth happens to all, no matter our circumstance, I am unable to lead by example and show my family the importance of voting, especially in local elections. Media makes the presidential and to a smaller extent the Governor's election important, but the elections like the school board and elections of other local officials are more valuable as they directly affect the community. My life is also directly affected by policies made by others without the input of anyone that understands these conditions of servitude. As long as the vote is denied to me, I will always feel as an enslaved person on the fringe of society. My vote is my voice.

Morris Jackmon
Disfranchised since 1993
Serving 33-year sentence

Emancipation Proclamation,[15] and it was the *last* Northern state to abolish slavery.[16] Following the Civil War, New Jersey initially rejected the Thirteenth[17] and Fifteenth Amendments[18] and rescinded its initial ratification of the Fourteenth Amendment.[19]

It is against this racist historical backdrop that New Jersey restricted access to the ballot box by denying the vote to people with criminal convictions in 1844,[20] the same year it restricted voting to white men in its Constitution.[21] New Jersey's decision to maintain this practice 175 years later[22] accomplishes the same racial exclusion that was prevalent in 1844 and serves to suppress the vote of over 102,000 people around the State.

1. Over 102,000 Denied the Right to Vote and Counting: Importing Racial Discrimination into the Electorate



Voter Suppression Numbers

In 2016, New Jersey suppressed the voting rights of 94,315 people with criminal convictions.[23] In the three years since, that number has grown to 102,245.[24] That is more people than reside in New Jersey's capital city of Trenton, and more people than live in Camden, Hoboken, and in hundreds of other municipalities in New Jersey.[25] New Jersey is disfranchising people at a rate of over 2,500 people each year.[26]

Forty-three percent of the people denied the right to vote are Black, in a state where Black people are only 15 percent of the population.[27] 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,

Being able to have a voice would allow me to speak out against those who are profiteering off my incarcerated Black body.

Gerald Vaughn
Disfranchised since 1995
Serving life plus 30

which is infected with racial discrimination.[28]

As Courtney Clement, who has been incarcerated since 2002 and is currently serving a 25-year sentence, says: "Tyranny stems from silencing the masses of differing viewpoints. This is the history of America as it relates to African-Americans in general and most recently African-American women in particular, and the disparity in sentences between Black and white women amply highlights this point."

New Jersey also 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.[29] A Black child is 30 times more likely to be detained or committed than a white child[30]—even though research shows that Black and white kids commit most offenses at similar rates, and that any differences in the commission of violent offenses cannot explain these extreme racial disparities.[31]

New Jersey's law imports these staggering racial disparities[32] from the criminal justice system[33] *directly into the political process*, accomplishing what now-prohibited poll taxes, grandfather clauses, and literacy tests explicitly sought to do: disproportionately exclude Black people from access to the ballot and political representation. These disparities are in significant part a reflection of racially discriminatory policy decisions at every stage of the criminal justice system.[34]

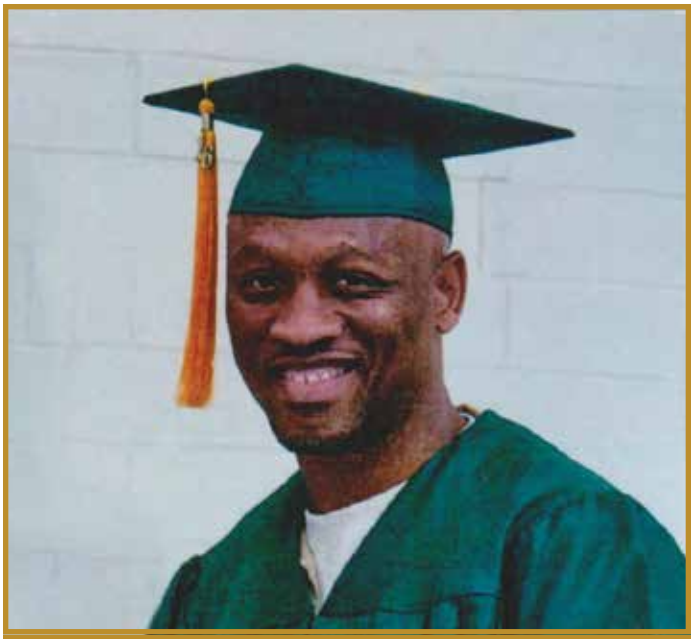


The loss of my voting rights has silenced my voice, which impedes my opportunity to contribute to my community and ultimately to my family. The right to vote is essential to engage in the political process. It is especially important and relevant given my exposure/experience with the criminal justice system.

Solwazi Nyahuma
Disfranchised since 1986
Serving life sentence

Losing my voting rights has silenced me, it has diminished the values I taught my children. Voting is your way to combat injustice and it is fundamentally one of the most important rights you have as an American, as a human. To remove it as a "collateral consequence" lessens it to merely a privilege afforded you by the government if you act in accordance with the government's dictates.

Denise R. Taylor
Disfranchised since 2012
Serving 10-year sentence



This loss of my voting rights is the loss of full citizenship and the ability to elect those that would champion disadvantaged people and the communities we live in.

Lamar Bacon
Disfranchised since 1996
Serving life plus 38-year sentence

I am a Vietnam Combat Marine Veteran, decorated for Valor and Gallantry, also receiving a Purple Heart for gunshot wound received in battle. I suffer with PTSD and Parkinson's Disease from exposure to Agent Orange and am legally blind. During my incarceration, I have voluntarily engaged in mentoring and assisting others. I had been a registered voter and voted as often as I could. Since my conviction, I have been unable to vote. Because of this prohibition, I am incapable of having my perspective listened to and this affects my life, the lives of my family, community, and nation.

Daryle Pitts
Disfranchised since 1984
Serving double life sentence

As one federal appeals court recognized:

> Before one who commits a criminal act becomes a felon…numerous other decisions must be made by State actors. Police departments decide where to spend resources, officers decide which individuals to search and arrest, prosecutors decide which individuals to charge (including whether to charge a felony or a misdemeanor), detain, and prosecute. If those decision points are infected with racial bias, resulting in some people becoming felons not just because they have committed a crime, but because of their race, then that felon status cannot…disqualify felons from voting.[35]

The exclusion of a sizable portion of the Black population from New Jersey's electorate is a direct result of its decision to link voting rights to the criminal justice system.[36]

Notably, Maine and Vermont, along with Puerto Rico and many western democracies, do not tie the right to vote to the criminal justice system.[37] Maine and Vermont are also, demographically, the two whitest states in the country.[38] Not only have Maine and Vermont never prohibited people with criminal convictions from voting, they defend the laws that provide voting rights to their states' residents. In 2018, the Maine Commission on Civil Rights examined the state's voting rights to determine whether any changes should be recommended.[39] In their report, the Commission unequivocally stated the following:

> In providing incarcerated citizens with the right to vote, Maine recognizes that there is no government interest served by felon [disfranchisement] – much less a compelling one.[40]

III NEW JERSEY'S LAW UNDERMINES PUBLIC SAFETY

New Jersey's denial of the right to vote to people with criminal convictions does not serve any of the well-recognized criminal justice goals of "retribution, deterrence, incapacitation, or rehabilitation."[41] Instead, it undermines

As I matured, I have come to understand losing my vote affects not only myself but also my entire community. I have come to understand that as more members of my community lose their right to vote, regaining these lost votes could change things for the community.

Duran Williams
Disfranchised since 2011
Serving 15-year sentence

each of these goals, and in doing so, public safety. We address each in turn below.[42]

1. Retribution

First, retribution is animated by the philosophy that one who is convicted of a crime must be punished; the worse the crime, the more severe the punishment should be.[43]

Crucially, the legislative purpose of denying people with criminal convictions the right to vote is not to "punish" the criminal act. The Supreme Court of the United States has explained that these laws are, in fact, "sustained as a *nonpenal* exercise of the power to regulate the franchise."[44]

Society may constrain a person's movement as a form of punishment, but, whatever their ability to move around freely, a person maintains core fundamental rights,[45] including the right to worship,[46] get married and divorced,[47]



I was once a woman from the town of Margate, now simply an outcast, tossed aside the same as the garbage along the American highways. My story stems from a blackout that I had and an interrogation that pushed me to the edge of sanity, before capitulating to the narrative of events the police insisted I knew. I was never a registered voter, because I did not know how to register—not taught in school—but I would have voted and would vote today if I were able. I understand now the importance of voting because I am not seen as human, merely in the worst possible light.

Tracey Donato (left)
Disfranchised since 2000
Serving 27-year sentence



At 10 years old I was arrested for a fight I got into at school. I then went to prison. I have never been able to vote. Many people face this disfranchisement, people whose voices truly matter because they are treated as if they are not humans are not able to speak out politically. The right to vote for me personally means to be able to express myself, to be a constitutional citizen, and to be able to liberate myself in the political realm.

Mark Hopkins
Always Disfranchised
Served 10 years

I represent the incarcerated individuals, referred to only in stats in recidivism and desistance rates. Because I am in a halfway house and am able to work in the community, I pay my taxes. If my voice is allowed to be heard I can be politically productive, be a positive influence on my family, and an asset to my community.

Renaldo Chavis
Disfranchised since 2001
Serving 25-year sentence



and file lawsuits.[48] While rights are restricted based on public safety concerns or the specific needs of administering a prison,[49] the right to vote, the foundation of our democracy, is neither a threat to public safety nor prison administration, and should not be denied as a consequence of a conviction.[50]

2. Deterrence

Second, the criminal justice goal of deterrence is intended to discourage community members from committing a crime. But denying the right to vote does not deter crime.[51] Research shows that people are not deterred from committing an offense because they fear that they will lose their right to vote come November—indeed, most people are not aware that a criminal conviction will result in the loss of voting rights.[52] In fact, the opposite is true: voting helps to reduce encounters with the criminal justice system and recidivism. [53]

I was a third grade school teacher who suffered from kidney issues my entire life. This led to needed surgery and addiction to pain pills to my eventually committing a robbery fueled by this addiction. Losing my right to vote makes me feel disassociated with society, as if I am not actually a member. No one's life journey is a straight-line path of righteousness, and mistakes should not invalidate one's individual voice, to express through the ballot, their own thoughts, feelings, opinions, and ideas.

Jessica Pacana
Disfranchised since 2015
Serving 8-year sentence

3. Incapacitation

Third, incapacitation is intended to enable society to protect itself by restraining or isolating people who threaten public safety.[54] Whatever public safety justification attaches for restraining one's ability to move freely, there is nothing dangerous about voting. To be sure, New Jersey does not justify denying voting rights for people with convictions on this basis.[55]

New Jersey justifies sentencing people with convictions to a "civil death"[56] by arguing they will "taint" the electoral process because they cannot be trusted to "vote responsibly."[57] The idea that people with convictions cannot be trusted to vote responsibly[58] or that they will use their vote to elect a "pro-crime" candidate or otherwise achieve immoral ends[59] is meritless and belied by the experience of people in Maine and Vermont who vote from prison.

In reality, our votes *affirm* the legitimacy of our democracy, and are the source of the power by which elected officials are held accountable.[60] Our collective task in the twenty-first century is to reduce barriers to voting and to encourage *more* people—not fewer— to participate in the political process.[61]

4. Rehabilitation

Finally, the criminal justice objective of rehabilitation[62] is recognized by a majority of American voters as the primary goal of the criminal justice system. [63]

Rehabilitation and successful reintegration into the community require opportunity and support. When people with convictions have opportunities to engage in their communities and enjoy the support of family and neighbors, they think of themselves as an engaged part of the community, a concept referred to by criminologists as "role transition," which is a central factor in rehabilitation.[64] New Jersey's law doubly isolates people from their community ties when they are incarcerated: first by denying them the right to engage in the electoral process by casting a vote, and second by counting them as residents of the prison facility where they are temporarily housed instead of their home communities to which they will return for redistricting purposes.[65]

A person who sees herself as part of a broader community is less likely to act against that community.[66] A person who develops pro-social roles, which voting helps to foster, is increasingly less likely to engage in behavior that is inconsistent with those new roles.[67]

Bashir Hawkins, who was prohibited from voting in New Jersey from 2004 to 2015, observed that "people who are incarcerated, on parole, and on probation aren't represented in the political process and in many instances are treated as second class citizens."



The loss of my right to vote has eliminated my voice from my community. So many voices in our community have been silenced, the voice of communities of color are merely a whisper in the wind. Without a right to vote, my community and I are not counted, not as citizens, nor human beings. The loss of voting rights is the gateway to inequality in society.

Wali Palmer
Disfranchised since 1999
Serving 35-year sentence

I am a Special, Beautiful, Black Man currently incarcerated. Prior to my incarceration, I was on probation, so I have never had the right to vote. Not having the right to vote means you don't count, you are not seen as human and your fate is at the whim of those who have unrestricted power over you.

Terrell Jackson
Disfranchised since 2006
Served 18 years

Similar to the way that hospitals begin preparing patients to be discharged on the day of admission, so too should courts, jails, and correctional facilities begin preparing people with convictions for rehabilitation and release at least on, if not before, the first day of interaction. Policy decisions that make the right to vote—and the connectedness to community that it fosters—available to people while they are



The justice system disproportionately impacts people of color and people of lower socio-economic status. This means taking away the right to vote to this segment of society gives a disproportionate advantage to rich white folks when it comes to electing people. Now that I can vote, I exercise my right in every election from the lowest held office to the President.

Regina Diamond-Rodriguez
Disfranchised from 2005-2014
Served 4 years

Incarcerated since the age of fourteen, I have never been allowed to vote. Although incarcerated, I have family who live in bad communities. My inability to vote has silenced my ability to assist them in bettering their lives and the life of the community. The right to vote is important, because I understand without it, I will always be "less than."

Lawrence Bell
Always Disfranchised
Serving double life sentence

incarcerated is central to the process of rehabilitation.[68]

For people with convictions, particularly those in prison, voting also helps people feel connected to the community,[69] rather than people estranged from, alienated from, and outside of it.[70] A significant aspect of rehabilitation requires a person not only to manage and overcome the stigma of a conviction, but to create a new, pro-social identity, something voting facilitates.[71]

Research is clear on the connection between voting and rehabilitation.[72] An in-depth study that tracked a cohort of people in Minnesota found that those who voted were less likely to be involved in crime.[73] In that study, approximately 16 percent of non-voters were arrested between 1997 and 2000, as compared to only 5 percent of voters.[74] Similarly, 12 percent of non-voters were incarcerated during that time, as compared to only 5 percent of voters.[75] Differences in arrest rates remain even when controlling for a person's criminal history: among people who had previously been arrested, 27 percent of the non-voters were re-arrested, as compared to 12 percent of voters.[76] In other words, the differences in arrest rates between voters and non-voters cannot be explained by criminal history.[77]

A 2011 report by the Florida Parole Commission also found a similar connection to voting and reduced recidivism:[78] while the overall recidivism rate for individuals in Florida was 33.1 percent, the recidivism rate of those whose voting rights had been restored was only 11.1 percent.[79]

Corrections officials further attest to the positive impact voting has on rehabilitation. The American Probation and Parole Association, a membership organization of thousands of corrections professionals, writes that,

My voice would represent a particular class of people living in society, those that endured through tragedy, not unscathed, not without making mistakes, but learning from them and putting life back together.

Taheira Hickman
Disfranchised since 2006
Serving 18-year sentence

"[p]articipation in the voting process affirms an individual's value to the political process. In addition, it encourages participation in civic life and builds connections to other law-abiding citizens who serve as support for those who may struggle with substance abuse or mental health issues."[80]

On the other hand, suppressing the votes of people with criminal convictions, as New Jersey does to more than 102,000 people, is a dehumanizing practice that relegates people to becoming democracy's ghosts[81]—and in the process *undermines* the criminal justice goals of retribution, incapacitation, deterrence, and rehabilitation.

Maurice Romero is currently serving a life plus sentence and has never had the right to vote because he entered the criminal justice system as a minor. He shared that "it would give me a sense of pride in myself, where I came from, and my vote would assist in taking our nation into a positive direction."

New Jersey should facilitate rehabilitation in every way possible, which includes connecting people with convictions to their broader community through the right to vote.

IV NEW JERSEY'S VOTER SUPPRESSION IS ROOTED IN RACISM AND ENTRENCHED POLITICS

Although there are race-neutral justifications claimed for

The right to vote today would make me a part of the society who wrote me off while I was still a juvenile. Having a say in policies affecting my family and myself would introduce a credible source of information concerning the needs of formerly incarcerated individuals trying to re-acclimate themselves into society as productive citizens, many for the first time as an adult.

Samuel Quiles
Always Disfranchised
Serving 30-year sentence

I understand the value of my vote. This loss has prevented me from being a difference maker in my community, denying me the ability to lead by example for my children. I try to express the vote's importance to my children, expressing how everyone's vote matters. Without being able to exercise the franchise myself, this advice rings hollow.

Michael Lamar Weaver
Disfranchised since 2004
Serving 37-year sentence

I have never been eligible to vote. When my children showed pride in voting for the first time, I felt left out, not able to relate to their elation and somewhat ashamed. I've come to understand the importance of my vote through my children's eyes, to know if I do not get to choose who represents me, someone else makes that choice and my representatives owe their allegiance to them. I want to be someone who can vote someone into office that will represent ALL OF THE PEOPLE.

Rodney "Prince" Williford
Disfranchised since 1990
Serving 50-year sentence



I came to realize, growing up in Trenton: young—minority—people are blinded from their oppressive history and the depths of struggles endured for their civil rights. For the poor, especially poor people of color, incarceration has become a social norm. The right to vote gives people the ability to be heard, even when they are unseen. Voting can give hope that the social structure of communities of color can be different — more activities, programs, and mentors for the young people, hope that hyper-punishment, hyper-surveillance, and labeling can be redirected to more positive practices by school attendants, communities, and criminal justice officials.

Karla Freeman
Disenfranchised since 2003
Serving 30-year sentence



denying the right to vote to people with convictions, these policies are rooted in racism that produces explicit racially discriminatory results, and undemocratically entrenched political power.

1. Racism

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,[82] which, as discussed above, has the highest Black/white adult (12:1) [83] and youth (30:1) incarceration disparity rates in America.[84] These staggering racial disparities are imported from the criminal justice system[85] *into the political process*, producing racially discriminatory results.

Even when shown evidence that voting could reduce recidivism, individuals with strong racial animus still resist rights restoration.[86] One study showed that "[r]acialized resentment and ideology exert the most influence on the reactions to policies seeking political rights for [people with felony convictions] as well as beliefs about the value of doing so."[87] Consistent with this research, Maine and Vermont—the two states with the fewest people of color[88]—are the only states that extend the vote to all people with criminal convictions.[89]

New Jersey should follow Maine and Vermont's lead by restoring voting rights to everyone with convictions, including those presently incarcerated. Given that New Jersey's racial disparities are most stark in prison, restoring rights for people on parole or probation will further exacerbate the racial disparity of those denied the right to vote in New Jersey.[90]

2. Entrenching Political Power

While elected officials have supported restoring voting rights for people with convictions, others have expressed concern that such support may make it seem like they are "soft on crime,"[91] even as research shows that the policy helps

reduce recidivism.[92] Some elected officials have also expressed concern that, if given the right to vote, people with convictions would vote, en masse, for a certain party. In fact, imprisoned people have political leanings consistent with the broader community outside of prison.[93] Regardless, these political considerations are not proper justifications for New Jersey's voter suppression. *How* someone will exercise their right to vote—whether for a particular party or another, or for no party at all—should have no bearing on *whether* they have access to this fundamental right.

V RECOMMENDATIONS TO ENSURE THAT PEOPLE WITH CONVICTIONS ARE DEMOCRACY'S GHOSTS NO MORE

1. Restoring Voting Rights to All People with Criminal Convictions

The racial disparities alone should compel New Jersey to restore voting rights to all people with criminal convictions. That voting increases public safety and could facilitate rehabilitation strengthens the argument.

Restoring voting rights will have a broader effect on voter participation and turnout in the community. Evidence shows that disfranchisement policy affects how others in the community view voting—there is "a negative relationship between Black [disfranchisement] and Black

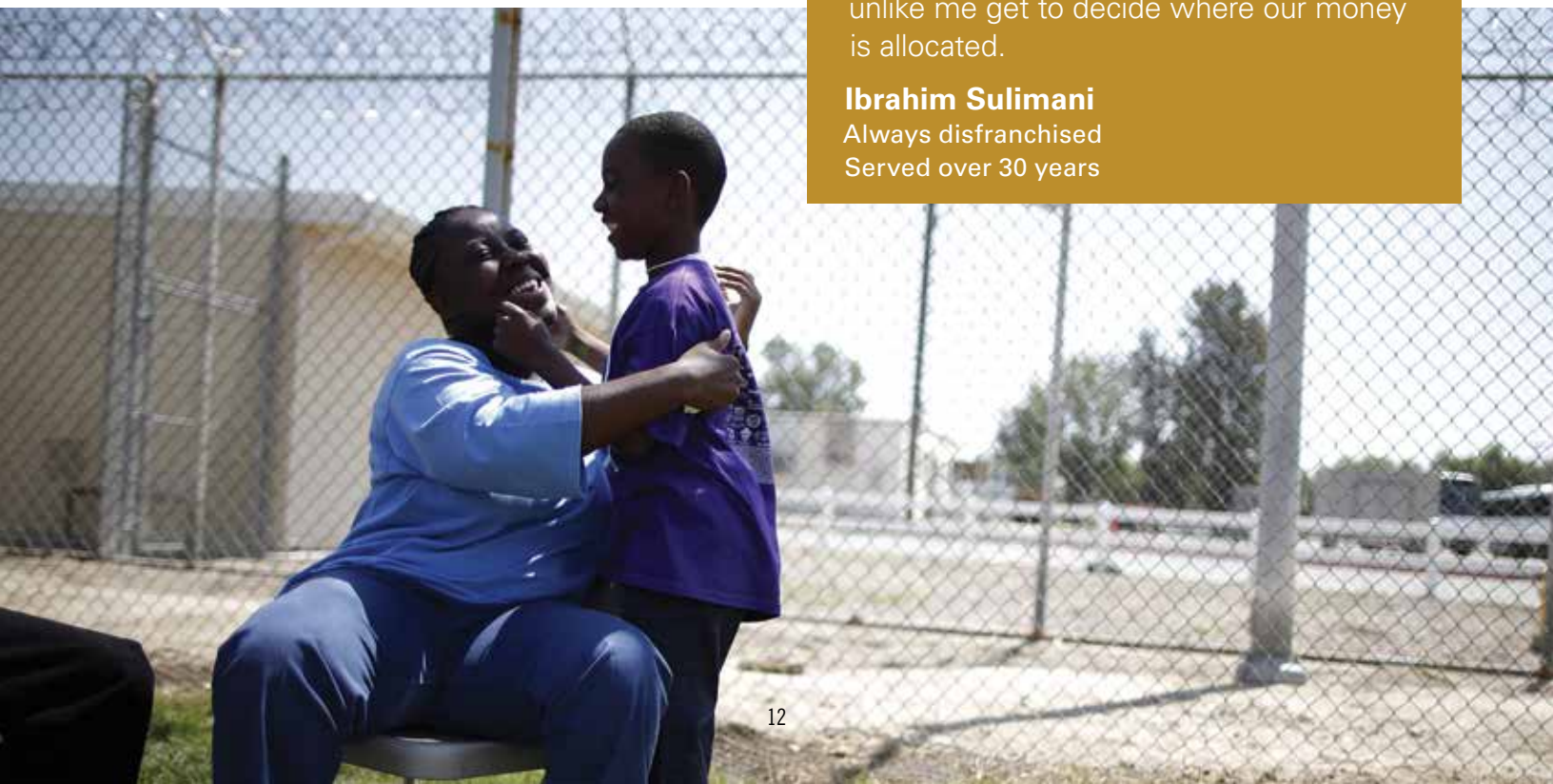
It is important that all have a voice in a democracy; otherwise, it hurts society, giving more power to some while others are silenced through less representation.

John Rodriguez
Disfranchised since 1978
Served 37 years



I have the obligation of every citizen to pay taxes, but no right in selecting the officials who will allocate them. This impact on society is that the more people like me are prevented from voting, the more people unlike me get to decide where our money is allocated.

Ibrahim Sulimani
Always disfranchised
Served over 30 years





voter turnout."[94] One recent study has shown that felony disfranchisement is associated with a three percent reduction in the likelihood of voting in the broader community.[95]

There have been increasing concerns about voter apathy and the need for voter turnout.[96] Elected officials should support policies that further turnout. In order to convince the public that the right to vote is fundamental, our leaders must demonstrate they believe it themselves.

It is especially important to act soon. Every ten years, the United States is constitutionally required to count every person living in this country.[97] The data obtained in the 2020 Census will determine our representation in all levels of government.[98] Census data is used to determine how many seats each state holds in the House of Representatives and the number of electoral votes each state has.[99] New Jersey has two fewer seats in Congress and two fewer electoral votes today than it did in 1990.[100]

A number of demographic groups, including Black people,[101] are hard to count, returning their Census forms at low rates.[102] However, every ten years, incarcerated people are fully counted.[103] The Department of Corrections knows



I cannot participate in electing a politician whose political views align with my communal values. The right to vote is important because a disfranchised minority, now excluded from the political process, maintains the silence, allowing for the codification of policies in conflict with my community's interest. This ensures a continued negative effect—a stacking of the deck—against communities of color and the disfranchised.

Novis Parker
Disfranchised since 2002
Served 16 years

exactly how many people are currently incarcerated, and provides that information to the Census Bureau.[104] While this practice seems wholly innocuous, we must consider the shocking implications. Every ten years, we count every incarcerated person during the Census and use that data to determine how much representation we have in the federal government, while we continue to deny these same people the right to vote for that representation. New Jersey will count their bodies—62 percent of whom are Black[105]—but deny them a voice in the system.

New Jersey must pass pending legislation S2100/A3456 and allow all people the right to vote for the government that represents them. Incarcerated people should not just have the right to vote, they must have the right to vote by mail-in-ballot in their home communities. Voting-by-mail is already how individuals vote who are in New Jersey jails, either because they are convicted of disorderly, or misdemeanor, offenses or because they are awaiting trial.[106]

2. End Prison-Based Gerrymandering

For people in prison, voting by mail in their home communities goes hand in hand with being counted in their home communities. In combination with restoring voting rights, New Jersey must pass pending bill A1987 (already passed in the State Senate) to end the practice of counting incarcerated people as residents of the prison for legislative redistricting purposes and instead count them at their home addresses. Doing so would shift political power and priorities back to the communities from which people in prison actually come. Several states have passed legislation to end this corrosive policy,[107] and it is long past time for New Jersey to join them.



It is hard to become involved in my community, if I am not allowed to vote because of a mistake I made at the age of fourteen. I see the reality of social injustice, the areas that are not addressed— or if addressed, done so incorrectly—and I know my experiences can effect positive change. Having a voice and being able to vote for candidates that reflect what is best for my community should not be treated as a "privilege" but as an American right.

Sean Farrell
Always Disfranchised
Serving life sentence

I voted in every election until my incarceration. Voting matters to me and should matter to you, because who is in office from President to local School Board creates the policies that shape the direction and future of our lives and the lives of our children and their children.

Monique Kendall
Disfranchised since 2004
Serving 25-year sentence

Incarcerated at the age of twenty-six, I became part of the voiceless community. Democracy dictates that all citizens have a voice in the governing of the nation. I still am a citizen and should maintain my right to impact political decisions on all levels of governance.

Marvin Spears
Disfranchised since 1994
Serving 30-year sentence

I have been through several bouts of cancer and the resulting depression made the ability to get life back on track a struggle. My life slowed down through my incarceration and I gained insight into focusing on changing my life direction. I began taking all available programs, and college. I began to understand myself and love the person I saw growing before my eyes. However, with this comes the understanding that I have a voice, and losing my right to use my voice leaves a void.

Johnnetha Hawthorne
Disfranchised since 2009
Serving 18-year sentence

VI CONCLUSION

It is time for New Jersey to bring democracy's over 102,000 ghosts out of the shadows and join Maine, Vermont, Puerto Rico, and many western democracies in restoring the right to vote to people with criminal convictions. New Jersey must also end prison-based gerrymandering. It has been 175 years since New Jersey first tied the criminal justice system to the franchise in its Constitution.[108] It is time to finally sever this pernicious connection and ensure that people with criminal convictions are democracy's ghosts no more by empowering them with the right to vote.



I am a lifelong resident of New Jersey, a Marine Veteran, and graduate of Rutgers University. The importance of voting was instilled in me from a very young age. Guided by my father, we were taught to discuss the community needs with members of the community and politics was a common discussion in my household. I voted in every election until I was no longer allowed to do so by law. When I became a convicted person, I became relegated to the shadows. No longer did I matter and I literally became a number, counted as property of the State of New Jersey. Losing my most fundamental human right—the right that protects all other rights—made me less than a full citizen, a member of the marginalized society. No longer could I assist to gain my community needed resources, no longer could I choose who would select the curriculum for our children's education, no longer could I meaningfully contribute to the chorus that is the collective voices of the community to seek change of policies that are detrimental to poor communities. No longer do I have representation. To restore the franchise to me would make my voice—once again—relevant and connect me back to a society I defended as a Marine.

Ronald W. Pierce (second from left)
Disfranchised since 1987
Served 30 years

Endnotes:

[1] *See infra* note 24.

[2] Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

[3] *See infra* note 27.

[4] *See infra* note 27; *Populations of New Jersey Cities*, TOGETHER WE TEACH, http://www.togetherweteach.com/TWTIC/uscityinfo/30nj/njpopr/30njpr.htm (citing 2010 data from the U.S. Census Bureau) (last visited July 31, 2019 [hereinafter Populations of New Jersey Cities]); QuickFacts: New Jersey, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/NJ/RHI725216 (last visited July 31, 2019) [hereinafter Quick Facts: New Jersey].

[5] *See* 1844 No More Report, *infra* note 12.

[6] *See infra* note 27.

[7] *See*, *e.g.*, Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004).

[8] 1844 No More Report, *infra* note 12. *See also* Ludovic Blain III, *One Person, No Vote: Felony Disenfranchisement Strips People of Color of Political Power*, 10 RACE, POVERTY & ENV'T 49, 49 (2003).

[9] *See infra* note 24.

[10] *Prison Populations and the Census - FAQ*, PRISON POLICY INITIATIVE, https://www.prisonersofthecensus.org/faq.html (last updated Apr. 25, 2019).

[11] *Id.*

[12] *See generally* N.J. INST. FOR SOC. JUSTICE, WE ARE 1844 NO MORE: LET US VOTE (2017), http://www.njisj.org/1844nomorereport2017 [hereinafter 1844 No More Report].

[13] *See generally id.*

[14] ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 320 tbl.A5 (rev. ed. 2009). Delaware was the first Northern state to restrict the right to vote to white men only.

[15] *See* Emily Hawke, *An Anomalous Case of Southern Sympathy: New Jersey's Civil War Stance*, 7 GETTYSBURG COLL. J. CIVIL WAR ERA 35, 35-36 (2017).

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

[17] KENNETH R. THOMAS & LARRY M. EIG, CONGRESSIONAL RESEARCH SERVICE, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, CENTENNIAL EDITION 30 n.5 (June 26, 2013), https://www.govinfo.gov/content/pkg/GPO-CONAN-2013/pdf/GPO-CONAN-2013.pdf.

[18] *Id.* at 33 n.7.

[19] *Id.* at 32 n.6.

[20] KEYSSAR, *supra* note 14, at 360 tbl.A15.

[21] *Id.* at 320 tbl.A5. New Jersey first restricted the right to vote to white men by statute in 1807. *Id*. The statute specifically limited the franchise to free, white male citizens, 21 years of age or older and "worth fifty pounds proclamation money, clear estate, and have resided in the county where he claims a vote for at least twelve months immediately preceding the election." J.R. Pole, *The Suffrage in New Jersey 1790-1807*, 71 PROC. N.J. HIST. SOC'Y 39, 58 (1953) (citation omitted). *See also* Marion Thompson Wright, *Negro Suffrage in New Jersey, 1776-1875*, 32 J. NEGRO HIST. 168, 175 (1948).

[22] 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 disfranchisement as an additional punishment on anyone convicted of an elections offense. N.J. STAT. ANN. § 19:34-46 (West 2017). Whether to impose disfranchisement 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).

[23] *See* 1844 No More Report, *supra* note 12; CHRISTOPHER UGGEN, RYAN LARSON, & SARAH SHANNON, THE SENTENCING PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT 15 tbl.3 (Oct. 2016), http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf.

[24] This number was calculated through a combination of publicly available information and responses to requests. As of January 2019, 19,212 people are incarcerated in New Jersey under supervision by the Department of Corrections. N.J. STATE DEP'T OF CORRECTIONS, Offenders in New Jersey Correctional Institutions on January 2, 2019, by Race/Ethnic Identification 36 (2019), https://www.state.nj.us/corrections/pdf/offender_statistics/2019/Race%20Ethnic%20Identification%20-%20Offender%20Characteristics%20Report.pdf. As of August 2, 2019, 45 youth, who were waived up and convicted of criminal convictions are over the age of 18 and under the supervision of the Juvenile Justice Commission in New Jersey. N.J. OFFICE OF THE ATT'Y GEN., JUVENILE JUSTICE COMM'N, Juvenile Demographics and Statistics (2019), https://www.nj.gov/oag/jjc/stats/08-02-19-Juvenile-Demographics-and-Stats.pdf. In response to an Open Public Record Act ("OPRA"), N.J. STAT. ANN. § 47:1A-1 (West 2017), request, the New Jersey Parole Board stated that, as of August 1, 2019, 15,607 adults with criminal convictions are under the supervision of the

Division of Parole. E-mail from Dina Rogers, Records Custodian, N.J. State Parole Bd., to Margaret Fiori, Legal Intern, N.J. Inst. for Soc. Justice (Aug. 1, 2019) (on file with author) (providing statistics and race and ethnicity information on offenders under the supervision of the Division of Parole, including those enrolled in Mandatory Supervision, Community Supervision for Life, Parole Supervision for Life, discretionary parole, and GPS monitoring programs). In response to a request pursuant to N.J. CT. R. 1:38, the New Jersey Courts provided that, as of July 24, 2019, there are 67,381 adults with criminal convictions on probation in the state. E-mail from MaryAnn Spoto, Commc'ns Manager, N.J. Admin. Office of the Courts, to Margaret Fiori, Legal Intern, N.J Inst. for Soc. Justice (July 24, 2019) (on file with author) (providing statistics and race and ethnicity information for active supervision matters for adult criminal offenders).

[25] *See* Populations of New Jersey Cities, *supra* note 4.

[26] *See supra* note 24. In 2016, New Jersey denied the right to vote to 94,315 people with criminal convictions. In 2019, three years later, New Jersey denies the right to vote to 102,245. That is an increase of 7,930 people in three years, or over 2,500 people per year.

[27] This number was calculated through information gathered from publicly available information and responses to requests. See *supra* note 27. 102,245 people are denied the right to vote because they are in prison, on parole, or on probation in New Jersey. A total of 44,106 of them are Black (11,847 in prison, 6,128 on parole, and 26,131 on probation). 5,176 people were identified as "blank, unknown, or other," so they are excluded from the analysis of the racial breakdown of the numbers. While the Juvenile Justice Commission publishes demographic data of the youth prisons in New Jersey on a weekly basis, the racial and age breakdown is for the total population. We could not determine the races of each of the 45 youth over the age of 18 that were waived up and are incarcerated for criminal convictions. As such, those 45 are also excluded from the analysis of the racial breakdown of the number of impacted people. *See* QuickFacts: New Jersey, *supra* note 4.

[28] *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 30-32, 158-161 (rev. ed. 2012).

[29] ASHLEY NELLIS, THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISON 17 tbl.3 (2016), https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.

[30] 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.

[31] JUSTICE NETWORK, IMPLICIT BIAS: WHY IT MATTERS FOR YOUTH JUSTICE 1-2 (2017), http://www.njjn.org/uploads/digital-library/NJJN%20Implicit%20Bias%20Snapshot%202017.pdf.

[32] Black people in New Jersey are also more likely to be imprisoned for longer periods of time than white people. NELLIS, *supra* note 29, at 15-16 tbls.3, 4. For example, while making up about 60 percent of New Jersey's prison population, almost 70 percent of people serving sentences of life without parole are Black. *Id*. *See also* 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.

[33] A 2014 investigation by the U.S. Department of Justice found that almost 80 percent of the Newark Police Division's ("NPD") stops and arrests were of Black residents, even though Newark's population is only about 54 percent Black. U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV. & U.S. ATTORNEY'S OFFICE DIST. OF N.J., INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 16 (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.* 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 subjected to 85 percent of all illegal stops made by an NPD officer who subjectively determined them to be a "suspicious person," a conclusory phrase that requires no further justification for the stop. *Id*. at 19.

[34] *See* Andrea McChristian, *How Discrimination is Sending More Black Kids to Prison*, STAR-LEDGER (Oct. 3, 2017), http://www.nj.com/opinion/index.ssf/2017/10/how_discrimination_is_sending_more_black_youths_to.html.

[35] Farrakhan v. Gregoire, 590 F.3d 989, 1014 (9th Cir. 2010).

[36] *See* Ryan Haygood, *Disregarding the Results: Examining the Ninth Circuit's Heightened Section 2 "Intentional Discrimination" Standard in* Farrakhan v. Gregoire, 111 Colum. L. Rev. 51 (2011).

[37] 1844 No More Report, *supra* note 12. *See also* Blain III, *supra* note 8, at 49.

[38] *Population Distribution by Race/Ethnicity (2017)*, KAISER FAMILY FOUND., https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22White%22,%22sort%22:%22desc%22%7D [hereinafter Population Distribution by Race/Ethnicity].

[39] *See* MAINE ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, VOTING RIGHTS IN MAINE (Apr. 2018), https://www.usccr.gov/pubs/2018/06-29-ME-Voting-Rights.pdf.

[40] *Id*. at 16 (citations omitted).

[41] Graham v. Fla., 560 U.S. 48, 71 (2010) (citations omitted).

[42] Felony disfranchisement 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. In fact, a growing body of research indicates that disfranchisement 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, 414-16 (2015); Uggen & Manza, *supra* note 7; FLA. PAROLE COMM'N, STATUS UPDATE: RESTORATION OF CIVIL RIGHTS' (RCR) CASES GRANTED 2009

AND 2010, at 13 (2011), https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf [hereinafter RCR CASES GRANTED 2009 AND 2010].

[43] *See Graham*, 560 U.S. at 71 (discussing retribution justification of incarceration).

[44] Trop v. Dulles, 356 U.S. 86, 96-97 (1958) (explaining that Courts determine whether statues are meant to be penal: "A person who commits a bank robbery, for instance, loses his right to liberty and often his right to vote. If, in the exercise of the power to protect banks, both sanctions were imposed for the purpose of punishing bank robbers, the statutes authorizing both disabilities would be penal. But because the purpose of the latter statute is to designate a reasonable ground of eligibility for voting, this law is sustained as a nonpenal exercise of the power to regulate the franchise." (citations omitted)).

[45] *See* Marc Mauer, *Felon Disfranchisement: A Growing Collateral Consequence of Mass Incarceration*, 12 FED. SENTENCING REP. 248, 250 (2000) ("[C]riminal convictions do not otherwise result in the loss of basic rights: convicted felons (sic.) maintain the right to divorce, to own property, or file lawsuits.").

[46] *See*, *e.g.*, Holt v. Hobbs, 135 S. Ct. 853, 859 (2015).

[47] Turner v. Safley, 482 U.S. 78, 96 (1987).

[48] Mauer, *supra* note 45, at 250.

[49] *See Turner*, 482 U.S. at 89-91.

[50] Furthermore, there is a strong argument that denying the right to vote solely as a means of retribution would violate the Eighth Amendment's prohibition on cruel and unusual punishment. *See, e.g.*, Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disfranchisement*, 56 STAN L. REV. 1147, 1164-68 (2004); Mark E. Thompson, *Don't Do the Crime If You Ever Intend to Vote Again: Challenging the Disfranchisement of Ex-Felons as Cruel and Unusual Punishment*, 33 SETON HALL L. REV. 167 (2002).

[51] Karlan, *supra* note 50, at 1166.

[52] *Id*. at 1166.

[53] *E.g.*, RCR CASES GRANTED 2009 AND 2010, *supra* note 42, at 12-13.

[54] *See Graham*, 560 U.S. at 72-73 (discussing incapacitation justification of incarceration).

[55] The Legislature has never explicitly stated what the purpose of New Jersey's disfranchisement laws is and there is no legislative intent provision in the statute. *See* N.J. STAT. ANN. § 19:4-1(8) (West 2017). Without a clear intent, courts have assumed that the Legislature's purpose was to maintain the "purity of elections." Stephens v. Yeomans, 327 F. Supp. 1182, 1188 (D.N.J. 1970) ("Location of the constitutional authority for the statute in the article on suffrage, and of the statute in the title on elections, suggests that the intended state purpose for the disenfranchisement has something to do with the purity of the electoral process. The courts of New Jersey have assumed as much.") (citing Application of Marino, 23 N.J.Misc. 159 (Com.Pl.1945)); *see also* McCann v. Superintendent of Elections of Hudson Cty., 303 N.J. Super. 371, 379 (Ch. Div. 1997), *aff'd*, 303 N.J. Super. 352 (App. Div. 1997).

[56] *See generally* Travis D. Spears, *Civil Death in a Modern World: Criminal Disenfranchisement and the First Amendment*, 7 CRITICAL STUD. J. 91, 106-08 (2012); Bryan Lee Miller and Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 PUNISHMENT & SOC'Y 402, 407 (2012).

[57] Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 HOWARD L.J. 549, 557 (2011). Indeed, this theory of tainting the electorate is the stated purpose of New Jersey's disfranchisement law. *See* Application of Marino, 42 A.2d 469, 470 (N.J. 1945).

[58] Notably, denying the right to vote to people with criminal convictions based on a belief that they cannot vote responsibly harkens back to the same rationale that was once used to deny the vote to people of color, women, and low-income Americans. Note, *The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and "The Purity of the Ballot Box*, 102 HARV. L. REV. 1300, 1308 (1989).

[59] Mauer, *supra* note 57, at 557-58.

[60] 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, 1020 (2012).

[61] *See generally id*.

[62] *See Graham*, 560 U.S. at 73-74 (discussing rehabilitation justification of incarceration).

[63] Memorandum from Robert Blizzard, Public Opinion Strategies, to Interested Parties on National Poll Results 1 (Jan. 25, 2018), https://www.politico.com/f/?id=00000161-2ccc-da2c-a963-efff82be0001. Specifically, 79 percent of Republicans, 83 percent of Independents, and 92 percent of Democrats agreed that rehabilitation should be the primary approach of the criminal justice system. *Id.*

[64] Uggen & Manza, *supra* note 7, at 195 (citations omitted); Mandeep K. Dhami, P*risoner Disfranchisement Policy: A Threat to Democracy?*, 5 ANALYSES SOC. ISSUES PUB. POL. 9 (2005).

[65] *See* 1844 No More Report, *supra* note 12.

[66] *See* Hamilton-Smith & Vogel, *supra* note 42, at 413.

[67] Uggen & Manza, *supra* note 7, at 199.

[68] Hamilton-Smith & Vogel, *supra* note 42, at 408.

[69] Uggen & Manza, *supra* note 7, at 195.

[70] Miller & Spillane, *supra* note 56, at 409.

[71] Uggen & Manza, *supra* note 7, at 214.

[72] A Note on Statistical Data and Causality: In summarizing the statistical research, it is important to note the difference between causation and correlation. The data do not show that voting causes desistance from crime or that disfranchisement causes a person to re-offend. As two of the leading scholars of the subject write: "While the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons' [sic.] lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society." Uggen & Manza, *supra* note 7, at 213. Our purpose in summarizing the statistical research is not to suggest that a specific person is more or less likely to recidivate if given the right to vote, but rather to show that being civically engaged is an important part of rehabilitation and that our policy choices reflect a decision of whether we want to help further rehabilitation or fuel alienation and resentment. Disfranchisement may not be the sole cause of recidivism, but neither are any of the other barriers that make integration difficult but that we nonetheless try to eliminate. James M. Binnall, *The Number They Gave Me When They Revoked My Citizenship: Perverse Consequences of Ex-Felon Civil Exile*, 44 WILLIAMETTE L. REV. 667, 695 (2008). Many of the other factors that predict criminal behavior, such as socioeconomic status, family support, employment, and levels of education and criminal history, are not easily amenable to change. *See* Uggen & Manza, *supra* note 7, at 208-10. Restoring the right to vote–especially in conjunction with expanding civics education and discussion of political issues in prisons–is a simple policy change that has no identifiable negative effects.

[73] Uggen & Manza, *supra* note 7, at 205.

[74] *Id*.

[75] *Id*.

[76] *Id*. at 205-06.

[77] *Id.* at 206. Among those with no history of arrest, 10 percent of non-voters were arrested, compared to less than 4 percent of voters. *Id.*

[78] RCR CASES GRANTED 2009 AND 2010, *supra* note 42, at 12-13.

[79] RCR CASES GRANTED 2009 AND 2010, *supra* note 42, at 7, 13.

[80] Letter from Veronica Cunningham, Exec. Dir., Am. Probation & Parole Ass'n, to Senator John Murante, Chair, Gov't, Military & Veterans Affairs Comm. (Feb. 23, 2017), https://www.civicnebraska.org/wp-content/uploads/2015/10/NE-LB-75-APPA.pdf.

[81] *See* Miller & Spillane, *supra* note 56, at 409.

[82] *See* ALEXANDER, *supra* note 28, at 30-32, 158-161.

[83] NELLIS, *supra* note 29, at 17 tbl.3.

[84] THE SENTENCING PROJECT, *supra* note 30, at 1.

[85] NELLIS, *supra* note 29.

[86] *Id.*

[87] David C. Wilson, et al., *How Racial Attitudes and Ideology Affect Political Rights for Felons*, 12 DU BOIS REV. 73, 73 (2015).

[88] Population Distribution by Race/Ethnicity, *supra* note 38.

[89] 1844 No More Report, *supra* note 12 (citations omitted).

[90] Currently, about 43 percent of the people who are disfranchised are Black. If only those who are incarcerated were disfranchised, 62 percent of those denied the right to vote would be Black. N.J. STATE DEP'T OF CORRECTIONS, *supra* note 27.

[91] *E.g.*, Robin Toner, *Prison Furloughs in Massachusetts Threaten Dukakis Record on Crime*, N.Y. TIMES (July 5, 1988), https://www.nytimes.com/1988/07/05/us/prison-furloughs-in-massachusetts-threaten-dukakis-record-on-crime.html?mtrref=www.google.com
&gwh=88FC026EB048B9FF5EA5E3E96457D1E6&gwt=pay.

[92] *See*, *e.g.*, RCR CASES GRANTED 2009 AND 2010, *supra* note 42.

[92] *See Graham*, 560 U.S. at 71 (discussing retribution justification of incarceration).

[93] Tilman Klumpp, Hugo M. Mialon & Michael A. Williams, *The Voting Rights of Ex-Felons and Election Outcomes in the United States*, 59 Int'l Rev. L. Econ. 40 (2019). *See also* Hamilton-Smith & Vogel, *supra* note 45, at 414 (citing Uggen & Manza, *supra* note 10, at 198) ("Active participants in the democratic process are more likely *to adopt* the shared values of their broader community.").

[94] Bridgett A. King and Laura Erickson, *Disfranchising the Enfranchised: Exploring the Relationship Between Felony Disenfranchisement and African American Voter Turnout*, 47 J. BLACK STUDIES 799, 812 (2016).

[95] Arpita Ghosh et al., *On the Political Economy of Felon Disfranchisement* (forthcoming) (manuscript at 9), https://ssrn.com/abstract+3330565.

[96] *See*, *e.g.*, Asma Khalid, Don Gonyea, & Leila Fadel, *On the Sidelines of Democracy: Exploring Why So Many Americans Don't Vote*, NPR NEWS (Sept. 10, 2018), https://www.npr.org/2018/09/10/645223716/on-the-sidelines-of-democracy-exploring-why-so-many-americans-dont-vote; Drew DeSilver, *U.S. Trails Most Developed Countries in Voter Turnout*, Pew Research Ctr. (May 21, 2018), https://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/; R. Michael Alvarez, *Why Don't People Vote*, PSYCHOLOGY TODAY (Dec. 21, 2011), https://www.psychologytoday.com/us/blog/the-psychology-behind-political-debate/201112/why-dont-people-vote.

[97] N.J INST. FOR SOC. JUSTICE, *New Jersey Counts in 2020* 1 (July 2019), https://d3n8a8pro7vhmx.cloudfront.net/njisj/pages/1294/attachments/original/1563994464/New_Jersey_Counts_in_2020_with_endnotes_rev_7-23-19_%281%29.pdf?1563994464.

[98] *Id*.

[99] *Id.*

[100] *Id.*

[101] *Id.* at 2.
[102] *Id.* at 1. ("'Hard-to-count' communities are areas where fewer than 73% of the residents returned their Census forms in 2010.").
[103] Robert Groves, *So, How Do You Handle Prisons?*, U.S. CENSUS BUREAU (Mar. 1, 2010), https://www.census.gov/newsroom/blogs/director/2010/03/so-how-do-you-handle-prisons.html; PRISON POLICY INITIATIVE, *supra* note 13.
[104] PRISON POLICY INITIATIVE, *supra* note 10.
[105] N.J. STATE DEP'T OF CORRECTIONS, *supra* note 24.
[106] STATE OF N.J. DEP'T OF State, *Restore Your Right to Vote in New Jersey: Voter Restoration Handbook* 1, https://www.nj.gov/corrections/pdf/OTS/FRARA/VoterRegistration/6-7-10-Ex-Offender%20Voter%20Restore%20Handbook.pdf (last visited Aug. 1, 2019); ACLU OF N.J., *Know Your Voting Rights*, https://www.aclu-nj.org/theissues/electionsvoting/know-your-voting-rights ("If you're serving time for a misdemeanor or civil matter you can still vote. You have the right to register and to vote from jail using a mail-in ballot. To register, your application must be received at least 21 days before the election.")(last visited Aug. 1, 2019).
[107] *See* PRISON POLICY INITIATIVE, *Prison Gerrymandering Project,* https://www.prisonersofthecensus.org/ ("Six states passed legislation to end prison-based gerrymandering and count incarcerated people at home for redistricting purposes. Maryland and New York's laws changed the 2011 redistricting, and California, Delaware, Nevada and Washington State's laws will apply after the 2020 Census. New York's law was upheld by the New York Supreme Court, and Maryland's law was upheld by the Supreme Court of the United States.") (last visited Aug. 1, 2019).
[108] 1844 No More Report, *supra* note 12 (citations omitted).



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