

## **2022 Concurrence on Voting for Incarcerated Individuals**

**Proposed Position: The League of Women Voters of New York State supports extending the right to vote to all currently incarcerated individuals.**

### **Purpose of the Concurrence and Response Process**

In New York State, those sentenced to prison for a felony conviction lose the right to vote in federal, state, and local elections while incarcerated. Last year, state law was amended to restore the right to vote for individuals on parole, a goal of voting rights groups including the League. Now that victory has been achieved, re-entry advocates and other voting rights groups in the state are turning their attention to achieving voting rights for all currently incarcerated individuals including those convicted of a felony. It is planned as a multi-year effort.

LWVUS has confirmed that they do not have a position that covers restoration of voting rights to those currently incarcerated. To support this effort, the state League needs to determine if we have member understanding and agreement on this objective. At the December 2<sup>nd</sup> state Board meeting, the Board voted to support a concurrence with the right to vote for all incarcerated individuals. The concurrence needs to meet the state League guidelines for participation and win 2/3 approval to become a state League position.

**We encourage you to conduct this concurrence process at the same time you are conducting the election administration concurrence. A separate response form is attached, and both are due May 1.** We are urging all local Leagues to have member meetings to discuss both sets of materials and the state League will give greater weight to member input as part of a local League response. For members who cannot attend their local League discussions, or who are members of a local League not participating in the study, the state League will organize virtual discussions and Q&A sessions. Individuals may complete an individual response form if they participate in these sessions.

### **Who is currently disenfranchised in New York State?**

State Election Law provides that no one convicted of a felony may register to vote or vote while incarcerated. This applies to state felonies and incarceration in New York State, incarceration of New York residents in other states, and federal incarceration of New York residents. People in pre-trial detention and people serving misdemeanor sentences maintain the right to vote.

Based on 2020 and 2021 New York Department of Corrections reports, The Sentencing Project estimates 30,000 incarcerated New Yorkers are disenfranchised, of which 72% are Black and Latinx. According to the last Census, Black and Latinx persons make up only 37% of the state's

total population. Nearly half (48%) of the individuals in New York's prisons are Black, four times their share of the population (12%).

Because of changes in crime rates and arrests in New York City, most of the state's prison population no longer originates from the five boroughs. If enfranchised, prisoners would vote in their place of residence before incarceration which is where they are counted for the census. The average age of incarcerated individuals in 2019 was 39 years old. Over a quarter of the prison population is between 18-29 years old, and a third is in their thirties.

### **Where are incarcerated individuals allowed to vote?**

In the United States, Maine, Vermont, Puerto Rico, and Washington D.C., are the only places where the incarcerated are allowed to vote. Washington D.C. implemented this reform last year becoming the only place in the country that has restored voting rights to people in prison. They have always had the right to vote in Maine and Vermont. Two other states, Utah and Massachusetts kept the franchise for the incarcerated until 1998 and 2000 respectively.

Internationally, blanket bans on voting by the incarcerated are the exception but 11 countries, including the United States, Argentina, Brazil, Chile, India, Russia, and the United Kingdom impose them. The incarcerated in many countries, including Canada, Israel, Ireland, and South Africa are allowed to vote in all elections. In 14 countries, including Germany, France, Italy and Belgium, there is selective restriction of felons' voting rights depending on the nature of the crime.

### **Arguments in support of extending the right to vote to incarcerated individuals.**

The primary argument in favor is that the right to vote is an inalienable democratic right that should not be withheld for any reason, especially as a form of punishment. It also disproportionately affects people of color, particularly Black and Latino men. For this reason, advocates frequently refer to felony disenfranchisement as a form of voter suppression, one of the vestiges of Jim Crow.

Another argument suggested against disenfranchisement is the long-term effect it has on civic involvement. With a quarter of the prison population in New York between 18-29 years old, inmates will often spend those years disenfranchised. These are also the years when citizens tend to develop voting habits.

### **Arguments opposed to enfranchising incarcerated individuals**

Those in favor of disenfranchisement argue that that it is an appropriate and proportionate punishment for those who have knowingly and intentionally violated the laws of society. In addition to the loss of personal freedom, the incarcerated also forfeit important civil rights, including the right to vote, a privilege and right of law-abiding citizens. Restricting the right to

vote is considered appropriate punishment, i.e., a “civil death”, for those who have broken the “social contract. Others argue that persons in prison should prove that they are responsible enough to engage in the democratic processes.

Although there is a disproportionate racial impact of disenfranchisement with the majority of those impacted being Black and Latinx, proponents of disenfranchisement point out that this is not because of race but because of their convictions. An alternative path to civic engagement and responsibility for the incarcerated would be civics education and college courses.

### **Additional Reading**

- The Sentencing Project, 2021. Voting Rights in the Era of Mass Incarceration: A Primer. <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>
- In 2018, former Governor Andrew Cuomo signed an Executive Order restoring voting rights to individuals released on parole after individual review. By 2019, this process had effectively re-enfranchised more than 49,000 New Yorkers. The Governor’s order was later codified in state law by the passage of S830 (Comrie)/A4448 (O’Donnell), which automatically restored voting rights to parolees post-incarceration. See more information at <https://www.gothamgazette.com/state/9018-49-000-parolees-voting-rights-restored-under-cuomo-executive-order> and <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-york>
- *Jim Crow in New York*, The Brennan Center, [https://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROW\\_NY\\_2010.pdf](https://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROW_NY_2010.pdf). See also: <https://www.brennancenter.org/our-work/analysis-opinion/nys-jim-crow-laws-back-day-and-what-remains-today>
- For full international survey: <https://felonvoting.procon.org/international-comparison-of-felon-voting-laws/>
- For arguments against enfranchising the incarcerated, see for example: The Heritage Foundation, 2018. There Are Good Reasons for Felons to Lose the Right to Vote. <https://www.heritage.org/election-integrity/commentary/there-are-good-reasons-felons-lose-the-right-vote>