



TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES**

Presented before

**The New York City Council Committees on Governmental Operations
and Criminal Justice**

Oversight Hearing on Voting Rights for Justice-Involved People

October 3, 2018

My name is Samuel Hamilton and I am a reentry advocate at Brooklyn Defender Services. Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year. Over the past 22 years, we have represented close to half a million people in criminal cases in Kings County, New York. As part of the reentry and advocacy team, I provide comprehensive support for people upon release from prison or jail, and direct advocacy on behalf of our clients while they are incarcerated.

I thank the New the New York City Council Committees on Governmental Operations and Criminal Justice for holding this important oversight hearing on voting rights for justice-involved people. Brooklyn Defender Services supports

Introduction

On April 18, 2018, Governor Cuomo announced Executive Order 181, which would restore the right to vote for people on parole through conditional pardons. This Executive Order was a positive step for New York. BDS applauds Governor Cuomo for turning the page on a shameful Jim Crow-era policy and helping to affirm our state's commitment to democracy. Prior to this Executive Order, nearly 100,000 New Yorkers were barred from voting because they were incarcerated in a New York State prison, temporarily held in a local jail while serving a sentence on a felony conviction, or on parole.¹ They were disproportionately Black and/or Latinx. This

¹ According to the Brennan Center for Justice, 44,000 New Yorkers are barred from voting because they are on state or federal parole. As of September 1, 2018, the population in New York State Department of Correction and Community Supervision prisons was 48,600. There are 4,120 people incarcerated in federal prisons in New York,

has had serious and direct consequences on representation and a wide range of policies. By denying people in prison or on parole the right to vote, New York withheld from communities with the greatest involvement in the criminal justice system a critical tool to help reform it.

As the Brennan Center for Justice notes, disenfranchisement laws place the U.S. at odds with the vast majority of the world's modern democracies. Almost half of the people in the world who are barred from voting because of criminal convictions are U.S. citizens, even though Americans make up less than five percent of the world's population. This tragic statistic undermines the legitimacy of our democracy.² There has never been a legitimate public interest in denying voting rights to anybody; disenfranchisement has always impacted marginalized people in the United States, particularly Black people. In fact, this Executive Order may have a positive on public safety, as voting rights are essential to the reintegration and empowerment of people re-entering the community.

That said, this order is a precarious mechanism to restore rights to an often-demonized population. Subsequent Governors may revoke it at will. The Order notably leaves out people who are currently incarcerated in state and federal prison. In addition, most local and state Boards of Election, which often already suffer from inefficacy, utterly failed at updating their websites and other materials to reflect the new reality.³ As of this writing, the New York City Board of Election website continues to list parole as a disqualifying factor in voter eligibility. New York State should enact legislation that grants all people the right to vote and provides clear guidance to Boards of Election and other stakeholders that nobody should be excluded or denied the ability to register based on convictions.

Int. 0367-2018

BDS supports this legislation, which would require the Department of Probation to distribute to any person sentenced to probation a written notice on their voting rights.

Int. 0514 – 2018

BDS supports this legislation, which would require the Department of Correction to distribute to every person upon release from custody a written notice on the voting rights of formerly incarcerated people in New York, as well as voter registration forms. It would also require the Board of Election, with the advice and assistance of the Voter Assistance Commission, to encourage or facilitate voter registration and voting by incarcerated or formerly incarcerated people who are or may become eligible to vote.

though the U.S. Bureau of Prisons often incarcerates people outside their home state and it is not known how many total New Yorkers are in federal prisons. Others convicted of felonies may temporarily be in local jails for a variety of reasons.

² Erika Wood, *Restoring the Right to Vote* (Brennan Center for Justice, 2009), available at <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf>

³ Emma Whitford, *In New York, Most Parolees Can Now Vote—But Many County Websites Say They Can't* (The Appeal, 2018), available at <https://theappeal.org/in-new-york-parolees-can-now-vote-but-many-county-websites-say-they-cant/>

Int. 1115 – 2018

BDS supports this legislation, which would require the Board of Election, with the advice and assistance of the Voter Assistance Commission, to develop and distribute guidance on the voting rights of formerly incarcerated people for agencies that promote voting in accordance with Section 1057-a of the New York City Charter.

NYS Senators’ ‘Southern Strategy’ on Voting Rights and Parole Releases

Frankly, I have been appalled by certain elected officials’ attacks on the recent expansion of voting rights, including in two recent State Senate hearings that were timed with a rollout of fearmongering digital campaign ads. Any rollback of this long-overdue reform would be a huge injustice – and an embarrassment to our state. The fact that some politicians have managed to link expanded voting rights with alleged public safety threats is reminiscent of the infamous Southern Strategy, stoking white fear and anger.

I also must address head on the issue of people previously convicted of sex offenses voting on school grounds, which has been raised by some state legislators and political candidates. It is important to step back and reconsider the laws establishing movement restrictions on people on the sex offender registry, which generally prohibit them from knowingly entering any area within 1000 feet of most spaces where young people gather. I understand the critical importance of protecting our children. That said, the exclusion statute is not an effective, or even rational, means of achieving this result.

In densely populated areas like New York City, the prevalence of these exclusion zones effectively precludes many impacted people from legally entering their home neighborhoods, and even boroughs, including—absurdly—to attend mandatory parole check-ins. Studies highlighted by the New York State Division of Criminal Justice Services (DCJS), the State agency responsible for administering the Sex Offender Registry, show that most people who molest children molest family members and close acquaintances. The U.S. Department of Justice reports that 93% of sexual assault victims under the age of 17 were assaulted by someone they knew.⁴ Thus, opportunities for the most likely offenses against school-aged children are not diminished by keeping offenders away from schools, and the prohibition does not advance that purpose.

Efforts to rehabilitate people and minimize the rate of re-offending are much more successful when people are employed, have family and community connections, and have a stable residence—all of which are undermined by exclusion restrictions. Exclusion statutes are known to drive people into homelessness, which makes it harder to supervise them. Within six months of the implementation of Iowa's exclusion restriction, for example, thousands of sex offenders became homeless or transient and thus more difficult for authorities to track and monitor. According to a report by DCJS, “The number of registered sex offenders in Iowa who could not

⁴ See DCJS Website, “Myths and Facts: Current Research on Managing Sex Offenders,” Myth 1, available at http://www.criminaljustice.ny.gov/nsor/som_mythsandfacts.htm (last visited Apr. 1, 2014).

be located more than doubled, damaging the reliability and validity of the sex offender registry.” The report quotes an Iowa Sheriff: “We are less safe as a community now than we were before the residency restrictions.”⁵ And in January 2008, the California Sex Offender Management Board reported an increase of 715% in parolees subject to exclusion restrictions who registered as “transient” since the law took effect.⁶ As a re-entry advocate, I know the immense challenge of finding housing for all people returning from prison, and this challenge is exponentially greater for people on the sex offender registry. Notably, the risk of re-incarceration increases 17% with post-release shelter stays.⁷

All of this is to say that, rather than focusing attention on obstructing voting rights, policymakers should be questioning their underlying assumptions about what keeps us and our children safe. To the extent there are legitimate concerns about any individual entering a poll site, policymakers should work with voting rights advocates to develop and facilitate viable and accessible alternatives.

Any rollback of this long-overdue restoration of voting rights for people on parole would be a huge injustice – and an embarrassment to our state. The fact that some politicians have managed to link expanded voting rights with alleged public safety threats is reminiscent of the infamous Southern Strategy, stoking white fear and anger.

Brooklyn Defender services thanks the New York City Council for its commitment to expanding voting rights and voter participation and for considering our comments.

If you have any questions or comments about my testimony, please feel free to reach out to Jared Chausow, with whom this testimony was written, at jchausow@bds.org or (718) 254-0700 (Ext. 382).

⁵ See DCJS Website, “Myths and Facts: Current Research on Managing Sex Offenders,” Myth 9, available at http://www.criminaljustice.ny.gov/nsor/som_mythsandfacts.htm (citing Rood, 2006; Human Rights Watch, 2007).

⁶ *Id.* (citing California Sex Offender Management Board, 2008).

⁷ *Id.* (citing Metraux & Culhane, 2004).