



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Written Testimony of Stacey Litner, Prisoners' Rights Advocacy Director
Before the
Council of the District of Columbia
Committee on the Judiciary

Concerning Bill 23-0324, the "Restore the Vote Amendment Act of 2019"

October 10, 2019

Thank you for the opportunity to provide testimony on Bill 23-0324, the "Restore the Vote Amendment Act of 2019." This testimony is submitted on behalf of the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("the Washington Lawyers' Committee"). For more than fifty years, the Committee has fought to create legal, economic, and racial equity through litigation and policy advocacy. Since 2006, the Committee has litigated on behalf of D.C. residents incarcerated in the D.C. Department of Corrections, halfway houses, and in the federal Bureau of Prisons ("BOP").

Disenfranchisement of Black Voters through Voting Laws

The right to vote is an essential element of a democratic society. Unfortunately, this fundamental right is not shared by all. Throughout the country, various "race neutral" laws deny the right to vote disproportionately to Black Americans. An examination of the history of these laws reveal that they were designed to do exactly that.

Following the Civil War, Black Americans for the first time began to gain some political power. In 1865, the 13th Amendment to the Constitution abolished slavery; in 1868, the 14th Amendment clarified that every person naturalized or born in the U.S. is a citizen; the 14th Amendment also forbids states from denying any person due process of law or equal protection of the laws; in 1870, the ratification of the 15th Amendment guaranteed all U.S. citizens the right to vote regardless of "race, color, or previous condition of servitude." These laws initially were successful in expanding access to the ballot box for recently freed slaves. In Louisiana, Mississippi, and South Carolina, Black voter registration rates surpassed white registration rates. In other states, such as Alabama and Georgia, Black citizens were nearly 40 percent of all registered voters. Over 700,000 Black citizens voted for the first time in the 1868 presidential election.¹ Following this expansion of the ballot access, states began passing laws to limit access.² Felony disenfranchisement laws, while in existence before reconstruction, proliferated and, in some cases, were narrowly tailored to attempt to deny ballot access mostly to Black

¹ U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, 2018 statutory report, p. 15-16.

² *Id.* at 16.

voters.³ And, the larger a state's Black population, the more likely the state was to pass the most expansive felony disenfranchisement laws.⁴ In 1955, the U.S. Congress imposed a voter disenfranchisement law on the District that barred individuals with criminal convictions from voting.

Today, felony disenfranchisement, coupled with mass incarceration of Black and brown citizens, continues to disenfranchise communities of color. As of 2018, 2.2 million Black Americans remained disenfranchised. This is four times the rate of all other racial groups combined.⁵ Over 90% of incarcerated D.C. residents are Black.

Since the passage of the Home Rule Act in 1973, the District has taken several important steps to correct these 64 years of historical wrongs. People can vote while incarcerated on misdemeanors and people with felony convictions can vote once they are out of custody. However, people with felony convictions remain disenfranchised while they are incarcerated.

This legislation is a chance to restore the most fundamental right to all District residents. All residents should have a voice in matters that impact their life, their family, their community, and their country. Limiting the right to vote for some weakens democracy for all.

Ensuring the Right to Vote is Meaningful

While the proposed legislation would take the critical step of restoring the vote to thousands of District residents, the Committee has concerns about how the District will ensure that all D.C. residents actually have the ability to cast their votes, and that they have access to the information necessary to make that right meaningful. Ensuring the right for D.C.'s incarcerated citizens is complicated by the fact that D.C. prisoners are housed in federal BOP facilities. These facilities are spread out all over the country, often in rural and far flung places. And, of course, the District cannot make the federal BOP take action that would ensure D.C. residents imprisoned in their facilities are able to exercise their right to vote. The BOP does not have to provide information to D.C. prisoners on how to register to vote; it does not have to allow the Board of Elections ("BOE") to provide prepaid envelopes for absentee ballots; it does not even have to tell the District where D.C. prisoners are housed. Below we highlight some of the key barriers to voting that will need to be addressed to actually restore the vote to our fellow citizens of D.C.

³ The Sentencing Project, *Felony Disenfranchisement: A Primer*, p. 3, available at <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>

⁴ Behrens, Angela, and Uggen, Christopher's, and Manza, Jeff, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, (2003), available at: http://users.cla.umn.edu/~uggen/Behrens_Uggen_Manza_ajs.pdf

⁵ Taylor, J. Jim Crow's Lasting Legacy At the Ballot Box, (2018), available at: <https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>

Determining Residency

The District needs to decide how it will determine residency for incarcerated individuals. In Maine and Vermont, which never passed felony disenfranchisement laws, residency is determined by where the individual resided prior to incarceration, regardless of how many years have passed since the person lived at that address. We urge D.C. to adopt a similar mechanism for determining residency.

Voter Registration

In order to successfully re-enfranchise incarcerated D.C. residents, the District needs to establish processes for ensuring that people imprisoned in BOP facilities and in state prisons are notified of their right to vote and have the ability to register. One way to ensure that people imprisoned in the future are able to exercise their right to vote is to automatically register them when they are sentenced to prison. This is similar to the process already in place in which D.C. residents automatically are registered to vote when they complete a driver's license or identification card application, unless they opt to decline.⁶ D.C. also should stop removing people from voter registration rolls at the time of their conviction.

Absentee Ballots

In addition to automatic voter registration, the District should place incarcerated individuals who are held outside of the District on the "Permanent Absentee Ballot List" until their release from custody. The District currently allows residents to request placement on the "Permanent Absentee Ballot List," which triggers the BOE to automatically send a ballot to the individual in all future elections.⁷

The BOE also should take steps to ensure that incarcerated individuals are not removed from the Permanent Absentee Ballot List. Individuals are removed from the List if any mail sent by the BOE is returned as undeliverable for any reason or if the person fails to vote by mail in two consecutive elections. These provisions should not apply to individuals incarcerated outside of the District. Instead, returned mail should trigger the BOE to identify the individual's new housing location, not remove the individual from the list. And, because sending and receiving mail in a correctional setting is not always reliable or timely, the failure of an individual incarcerated outside of the District to vote in two consecutive elections does not necessarily indicate a lack of intention to vote or even a failure to send in a ballot.

⁶ District of Columbia, Department of Motor Vehicles. (2018, June 22). Automatic Voter Registration Begins at DC DMV on June 26, 2018 [Press release]. Retrieved from <https://dmv.dc.gov/release/automatic-voter-registration-begins-dc-dmv-june-26-2018>.

⁷ United States, District of Columbia, Board of Elections. (2019). Absentee Ballot Request. Washington, DC. Retrieved from <https://www.dcboe.org/AbsenteeBallotRequest>.

Public Education

It is crucial that the District, either through the BOE or another government agency such as the Corrections Information Council, educate the public at large and particularly incarcerated District residents about the change in law. The BOE should engage in active outreach to incarcerated residents across the BOP and in other jurisdictions to encourage and support voter registration. While this outreach should include voting guides, which the bill indicates the BOE will “endeavor” to provide incarcerated residents, the information provided should not be so limited. The responsible agency should provide guides about the registration process, reasons to register, and ways to access additional information about the candidates.

Accessibility

Educational materials, voter registration information, and ballots need to be accessible to all District residents so that incarcerated individuals with language barriers, disabilities, or other barriers will have a meaningful opportunity to cast a ballot.

1. Language Access

The D.C. ballot is offered in English and Spanish, but some individuals may rely upon other language translations. Not only must the ballot be offered in translated versions, but all documents relating to the election process must be made available in a format that the individual can understand.

One option for ensuring access is to allow incarcerated individuals to utilize the language access phone line provided by the BOE.⁸ This would require the BOE to expand capacity to allow for collect calls from prison facilities, or establish a different contact line directly for incarcerated voters.

2. Accessibility for People with Disabilities

The District should create a system that would increase accessibility for incarcerated residents with disabilities and allow them to exercise their right to vote absentee privately and independently.⁹ Relying on inaccessible paper ballots will deprive some individuals with a disability of the right to cast his or her ballot privately and independently. Ballots should be formatted to allow them to be processed using visual impairment devices and/or readers, such as a tablet-based voting system, for individuals who are blind or have low vision.

3. Costs

⁸ Voter Access FAQs. (2019). Retrieved from <https://dcboe.org/FAQS/Voter-Access-FAQs>.

⁹ U.S. Election Assistance Commission, Voting Accessibility. Retrieved from <https://www.eac.gov/voters/voting-accessibility/>.

The District needs to ensure that the BOE has the necessary staffing and monetary resources to implement this law. And, the District needs to ensure that there is not a cost associated with voting for incarcerated D.C. residents. Many prisons, including the BOP, do not allow pre-stamped or pre-metered envelopes into the facility. The District needs to establish procedures that will allow all incarcerated residents to vote without incurring debt.

Conclusion

Overall, the Restore the Vote Amendment Act is a crucial step towards restoring the right to vote to the thousands of D.C. residents who are in prison, most of whom are Black. We are glad to see strong Council support and leadership on this issue and urge the District to act to restore the right to vote to all District residents.

In part because the District has allowed D.C. residents to be incarcerated in federal facilities, however, actually making this right meaningful will be difficult. The Council and the BOE will need to work together to surmount the hurdles discussed above. This legislation is an important first step.