

## RE: Support HB 4 to Guarantee the Right to Vote for All

Dear New Mexico legislators,

The undersigned national criminal justice reform, faith and civil rights organizations are committed to expanding voting rights to all citizens including people with felony convictions completing their sentences both inside and outside of incarceration.

We applaud the introduction of New Mexico's voting rights act, HB4, which, amongst other things, would end New Mexico's practice of disenfranchising people on probation and parole. We urge passage of this measure. We also encourage the New Mexico legislature to go further and guarantee the right to all citizens regardless of their incarceration status.

New Mexico currently denies the right to vote to 17,572 citizens, over 1% of its voting age population, because they are supervised in the community on probation or parole, or incarcerated in prison or jail for a felony conviction.<sup>1</sup> An estimated 64% of New Mexico's disenfranchised adults live in the community.

### Felony Disenfranchisement Disproportionately Harms Communities of Color

Felony disenfranchisement laws in the United States have troubling race and class dimensions that cannot be reconciled with our shared present-day values of equal citizenship and equal dignity.

Scholar Ward Elliott has observed that the spread of disenfranchisement laws may have been a response to the abolition of property-holding requirements, which "had served a number of indispensable functions, such as holding down the voting strength of free [B]lacks, women, infants, criminals, mental incompetents, unpropertied immigrants, and transients."<sup>2</sup> After Reconstruction, states in the South began to tailor their disenfranchisement laws to cover crimes for which Black citizens were most frequently prosecuted, "as part of a larger effort to disenfranchise African American voters and to restore the Democratic Party to political dominance."<sup>3</sup> Over time, states stopped distinguishing between kinds of crimes, instead imposing blanket disenfranchisement for all felony convictions.

New Mexico's felony disenfranchisement law disproportionately harms people of color. Black people are significantly more likely to be disenfranchised than non-Black people in the state, with about one in 30 Black New Mexicans of voting age disenfranchised, a rate 2.9 times that of non-Black New Mexicans.<sup>4</sup>

Hispanic people are also significantly more likely to be disenfranchised than non-Hispanic people in the state. One in 65 Hispanic New Mexicans of voting age are disenfranchised, a rate 1.7 times that of non-Hispanic New Mexicans. In contrast, one out of 125 voting age white New Mexicans are

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<sup>1</sup> Uggen, C., Larson, R., Shannon, S., & Stewart, R. (2022). [Locked out 2022: Estimates of people denied voting rights due to a felony conviction](#). The Sentencing Project.

<sup>2</sup> WARD E.Y. ELLIOTT, *THE RISE OF GUARDIAN DEMOCRACY* 43 (1974).

<sup>3</sup> Pippa Holloway, "A Chicken-Stealer Shall Lose His Vote": *Disenfranchisement for Larceny in the South, 1874-1890*, 75 J. S. HIST. 931, 931 (2009); see also Hamilton-Smith & Vogel, *supra* note 19, at 409 ("Disenfranchisement became an important aspect of the Jim Crow laws used in reconstruction-era America to continue to subjugate the newly-freed slaves.").

<sup>4</sup> Budd, K. (2023). [New Mexico Should Restore Voting Rights to Over 17,000 Citizens](#). The Sentencing Project.

disenfranchised. Felony disenfranchisement bears unequal weight on communities of color in New Mexico, largely due to disparities in the state's criminal legal system.<sup>5</sup>

Native Americans make up 11% of New Mexico's population and 9.5% of its prison population (race and ethnicity data are unavailable for the community supervision population).<sup>6</sup> While no official felony disenfranchisement estimates are available for Native Americans, their representation in New Mexico's population and criminal legal system indicates they too are heavily impacted by felony disenfranchisement laws and policies.<sup>7</sup>

### **Ending Felony Disenfranchisement Increases Public Safety**

Research shows that an opportunity to participate in democracy has the potential to reduce one's perceived status as an "outsider."<sup>8</sup> The act of voting can have a meaningful and sustaining positive influence on justice-impacted citizens by making them feel they belong to a community.<sup>9</sup>

Re-enfranchisement can facilitate successful re-entry and reduce recidivism. The University of Minnesota's Christopher Uggen and New York University's Jeff Manza find that among people with a prior arrest, there are "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior."<sup>10</sup>

Research also suggests having the right to vote immediately after incarceration matters for public safety. Individuals in states which continued to restrict the right to vote after incarceration were found to have a higher likelihood of experiencing a subsequent arrest compared to individuals in states who had their voting rights restored post-incarceration.<sup>11</sup> Given re-enfranchisement misinformation and obstacles facing justice-impacted citizens upon re-entry into our communities, one path to bolster public safety and promote prosocial identities is to preserve voting rights during incarceration.

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<sup>5</sup> L. Freeman, personal communication, November 28, 2022. See <https://nmsc.unm.edu/reports/index.html>; U.S. Census Bureau. 2020. *Quickfacts: New Mexico*. <https://www.census.gov/quickfacts/fact/table/NM/POP010220>

<sup>6</sup> L. Freeman, personal communication, November 28, 2022. See <https://nmsc.unm.edu/reports/index.html>

<sup>7</sup> New Mexico also does not collect LGBTQIA+ data; therefore, there is no way to know how many LGBTQIA+ New Mexican citizens are disenfranchised due to a felony conviction.

<sup>8</sup> Uggen, C., & Manza, J. (2004). Voting and subsequent crime and arrest: Evidence from a community sample.

*Columbia Human Rights Law Review*, 36(1), 193-216.; Aviram, H., Bragg, A., & Lewis, C. (2017). Felon

Disenfranchisement. *Annual Review of Law and Social Science*, 13, 295-311.

<https://doi.org/10.1146/annurev-lawsocsci-110316-113558>; Miller, B. L., & Agnich, L. E. (2016). Unpaid debt to

society: Exploring how ex-felons view restrictions on voting rights after the completion of their sentence.

*Contemporary Justice Review*, 19(1), 69-85. <https://doi.org/10.1080/10282580.2015.1101685>

<sup>9</sup> Uggen et al. (2022), see note 1.

<sup>10</sup> Uggen & Manza, (2004). See note 8.

<sup>11</sup> Hamilton-Smith, G. P., & Vogel, M. (2012). The violence of voicelessness: The impact of felony disenfranchisement on recidivism. *Berkeley La Raza Law Journal*, 22, 407- 432. <https://doi.org/10.15779/Z38266F>

A 2004 study controlling for factors like race and gender found that “among former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.”<sup>12</sup> It concluded that “there is at least some correlation between voting and recidivism . . . among people who have had some official contact with the criminal justice system.”<sup>13</sup> Another study found that “individuals who are released in states that permanently disenfranchise are roughly nineteen percent *more likely* to be rearrested than those released in states that restore the franchise post-release. This finding provides initial evidence consistent with the thesis that disenfranchisement is directly related to recidivism.”<sup>14</sup>

### **New Mexico Can Right an Historic Wrong**

The right to vote is the core and essence of modern democracy. Per capita, however, no country strips voting rights from more of its citizens than the United States.<sup>15</sup> By contrast, most of Europe allows prisoners to vote.<sup>16</sup>

Maine, Vermont, Puerto Rico, and Washington DC do not disenfranchise citizens for felonies. Maine and Vermont typically boast voter turnout higher than the national average, with Maine often taking the top spot nationally. Now other states are beginning to recognize the importance of restoring the right to vote. Since 1997, 25 states and Washington DC have expanded voting rights to citizens with felony convictions.

New Mexico can be a leader and by passing the Voting Rights Act. Furthermore, the state legislature should introduce legislation that would expand the right to vote to all citizens, regardless of their incarceration status and provide resources to counties to enhance jail-based voting plans.

If you have any questions or would like to discuss this further, please contact Nicole D. Porter, Senior Director of Advocacy at The Sentencing Project, at 202-628-0871 or [nporter@sentencingproject.org](mailto:nporter@sentencingproject.org).

Sincerely,

ACLU of New Mexico

Campaign Legal Center

Center for Disability Rights

Center for Popular Democracy

CURE ( Citizens United for Rehabilitation of Errants)

The Festival Center

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<sup>12</sup> *Id.* at 205.

<sup>13</sup> *Id.* at 206.

<sup>14</sup> Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407, 426 (2015) (emphasis added).

<sup>15</sup> Hamilton-Smith & Vogel, *supra* note 19, at 411.

<sup>16</sup> ACLU, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies* (2006), available at [https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep\\_20060525.pdf](https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf).

Full Citizens Coalition  
Heal Da Homies  
Human Rights for Kids  
Human Rights Watch  
Illinois Alliance for Reentry & Justice  
Initiate Justice  
Just Future Project  
Justice Strategies  
LatinoJustice PRLDF  
Legal Action Center  
National Association of Criminal Defense Lawyers  
National Employment Law Center  
NETWORK Lobby for Catholic Social Justice  
Prison Policy Initiative  
Reentry Advocacy Project  
Sawari Media's Right2Vote  
The Sentencing Project  
Stand Up America  
Voice of the Experienced (VOTE)  
Wisconsin Democracy Campaign  
Wisconsin Fair Maps Coalition  
Wisconsin Faith Voices for Justice