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Voting Rights and the Electoral Process: Resolving Representation Issues Due to Felony Disenfranchisement and Prison Gerrymandering

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REPORT

VOTING RIGHTS AND THE ELECTORAL PROCESS: RESOLVING REPRESENTATION ISSUES DUE TO FELONY DISENFRANCHISEMENT AND PRISON GERRYMANDERING

*Fordham University School of Law
Rule of Law Clinic**

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EXECUTIVE SUMMARY OF RECOMMENDATIONS

The Rule of Law Clinic recommends the following reforms related to felony disenfranchisement and prison gerrymandering to alleviate their effects on the democratic process:

1. Felony Disenfranchisement

- Federal Legislation:
 - Pass the Democracy Restoration Act, restoring voting rights in federal elections to all individuals previously incarcerated.
 - Amend the Democracy Restoration Act to remove the provision that eliminates federal funding for prison improvements in states that do not provide notice to incarcerated people of their voting rights upon release. This policy could make prison conditions worse. Instead, the Act should bar federal funds for uses unrelated to improving prison conditions.

* This Report was researched and written by students in Fordham University School of Law's Rule of Law Clinic under the supervision of Dean Emeritus John D. Feerick and Professor John G. Rogan during the Fall 2022 semester. The Clinic gratefully acknowledges the following individuals for sharing their knowledge and expertise during this Report's development: Robert Bauer, Nicole A. Gordon, the Honorable Marcy L. Kahn, Sean Morales-Doyle, Chauncey Parker, Elizabeth Roper, Yuri Rudensky, Cyrus R. Vance Jr., and Jesse Wegman.

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- State Legislation:
 - Restore voting rights to all individuals previously incarcerated, without exception for parolees, those on probation, and those who owe monetary obligations.
 - Require verbal and written notice by the Department of Corrections to individuals about the restoration of their voting rights and process for registering to vote. This information should be provided prior to release from the facility.

2. Prison Gerrymandering

- Federal Action:
 - Establish a special committee in the Census Bureau to oversee states’ collection of data relating to individuals currently incarcerated.
- State Action:
 - Adopt a mechanism to count individuals currently incarcerated with a certain number of years left in their sentences as residents of districts they intend to reside in after their release.
 - Annually distribute an “Intent of Future Residency” form to all individuals currently incarcerated.

EXECUTIVE SUMMARY OF RECOMMENDATIONS359

INTRODUCTION361

I. HISTORY OF FELONY DISENFRANCHISEMENT363

II. HISTORY OF PRISON GERRYMANDERING365

III. FELONY DISENFRANCHISEMENT MUST END.....368

 A. *Why Reform is Needed*..... 369

 1. Reintegration: Promoting Rehabilitation and Preventing Recidivism369

 2. Democratization: Promoting Civic Participation370

 3. Racial Equality: Restoring the Purposes of the Fourteenth and Fifteenth Amendments371

 4. Bipartisan Support372

 5. Clarity and Uniformity in the Law: Eliminating Variation and Confusion373

 B. *Existing Reform Proposals* 374

 1. Federal Legislation374

 2. State Legislation375

C. <i>Recommendations</i>	376
1. Pass the Democracy Restoration Act of 2021	376
2. Adopt a Model State Bill.....	379
IV. PRISON GERRYMANDERING MUST END	379
A. <i>Why Reform is Needed</i>	380
1. Dilution of Political Representation	380
2. Abuse of the Idea of Residency.....	381
3. Disparate Racial Impact	381
B. <i>Existing Policies</i>	382
1. The Federal Census	382
2. State Efforts to End Prison Gerrymandering.....	383
C. <i>Recent Federal Constitutional Litigation</i>	384
1. Divergence Already Exists Among Lower Federal Courts	385
a. Calvin v. Jefferson County Board of Commissioners	385
b. Davidson v. City of Cranston.....	386
2. Equal Protection Challenges Ending Prison Gerrymandering Likely Will Not Succeed Soon.....	386
D. <i>Recommendations</i>	387
1. State Legislation: Count ICIs Where They Plan to Reside	387
2. Establish a Special Committee Under the Census Bureau to Ensure a Uniform and Timely State Data Collection Timeline at the State and Federal Levels.....	388
CONCLUSION.....	388

INTRODUCTION

The United States has gradually provided fairer political representation and participation. When the Framers drafted the United States Constitution, they did not provide for the right to vote, leaving the discretion to the states.¹ States passed laws granting suffrage to certain groups while preventing other groups from voting, particularly the Black community.² Eventually, the Fifteenth Amendment granted Black men the right to vote,³ the

¹ See David Schultz, *A Constitutional Right to Early Voting*, 1 *FORDHAM L. VOTING RTS. & DEMOCRACY F.* 177, 179–80 (2023).

² See Angela Behrens et al., *Ballot Manipulation and the “Menace of Negro Domination”*: *Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 *AM. J. SOC.* 559, 561 (2003).

³ U.S. CONST. amend. XV.

Nineteenth Amendment secured the right to vote for women,⁴ and the Twenty-Sixth Amendment guaranteed the franchise for citizens aged eighteen and over.⁵ Although the right to vote has expanded, the United States still maintains policies that deny adequate representation for certain populations.

Individuals currently incarcerated (“ICIs”) and individuals previously incarcerated (“IPIs”) are not fairly represented in many jurisdictions.⁶ As of this writing, incarcerated people are restricted from voting in forty-eight states,⁷ and IPIs are disenfranchised in more than half of states.⁸ And, in addition to restricting ICIs from participating in elections, various jurisdictions misappropriate their residential status, amplifying the voices of voters in the districts where ICIs are incarcerated.⁹ This occurs through a process known as prison gerrymandering, which involves counting incarcerated people in the legislative districts where the prisons are located—even though ICIs cannot vote nor participate in those communities themselves.¹⁰

Stripping a citizen of nearly all of their civil rights after a criminal conviction is akin to “civil death,” a practice that traces back to Ancient Roman, Greek, and Medieval times.¹¹ In modern

⁴ *Id.* amend. XIX.

⁵ *Id.* amend. XXVI.

⁶ Individuals who are either currently or formerly incarcerated are commonly referred to with dehumanizing labels such as “felon,” “convict,” “prisoner,” or “criminal.” These labels further marginalize these individuals and stigmatize their past actions. Since this Report advocates for reintegration into society, its Authors are choosing to use the labels “individuals currently incarcerated” and “individuals previously incarcerated.” See *Words Matter: Using Humanizing Language*, FORTUNE SOC’Y, <https://fortunesociety.org/wordsmatter> [https://perma.cc/E4SD-23JS] (last visited Apr. 20, 2023).

⁷ *Felony Disenfranchisement Laws (Map)*, ACLU, <https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map> [https://perma.cc/L3RR-K7J8] (last visited Apr. 20, 2023).

⁸ *Id.*

⁹ See generally Ian Bollag-Miller, *One Person, How Many Votes? Measuring Prison Malapportionment*, 1 FORDHAM L. VOTING RTS. & DEMOCRACY F. 94, 95–101 (2022).

¹⁰ See Dale E. Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 STAN. L. & POL’Y REV. 355, 355 (2011) (defining “prison gerrymandering” as the “count[ing] [of] incarcerated persons at their places of confinement rather than at their home addresses during redistricting”). See also Bollag-Miller, *supra* note 9, at 95 n.3 (distinguishing between “prison gerrymandering” and “prison malapportionment” and stating that “gerrymandered districts can have equal populations but disparate voting power, while malapportioned districts have equal voting power but different population sizes.”).

¹¹ See Lindsay Dreyer, *Felon Disenfranchisement: What Federal Courts Got Wrong and How State Courts Can Address It*, 48 MITCHELL HAMLINE L. REV. 1, 2–3 (2022); *Historical Timeline: U.S. History of Felon Voting Disenfranchisement*, PROCON (Oct. 25, 2022), <https://felonvoting.procon.org>

democracies, however, “civil death” is an outdated form of punishment and deterrence.¹² Only three other countries—Belgium, Armenia, and Chile—restrict both ICIs and IPIs from voting.¹³ Twenty-one democratic countries allow ICIs to vote, while only four—including the United States—restrict the franchise for IPIs.¹⁴

The injustice of civic death in the United States is amplified by its disparate impact on underrepresented groups, specifically the Black and Latinx communities.¹⁵ This Report discusses felony disenfranchisement and prison gerrymandering as it pertains to the effects on elections and disparate treatment of people of color. It proposes solutions to end felony disenfranchisement and exploitation of ICIs and IPIs.

First, Parts I and II discuss the historical impacts of felony disenfranchisement and prison gerrymandering. Then, Parts III and IV analyze the contemporary effects of these discriminatory practices and offer solutions to end them.

I. HISTORY OF FELONY DISENFRANCHISEMENT

Although felony disenfranchisement was initially established without the intent to suppress the votes of underrepresented groups, it evolved into a tool of oppression. In the decades after the Founding, several states adopted felony disenfranchisement laws in their constitutions, using vague or broad language to mimic the European practice of discretionary voter disenfranchisement.¹⁶ In 1792, for example, Kentucky became the first state to include a felony disenfranchisement clause in its constitution.¹⁷ The clause broadly denied “suffrage [to] those . . . convicted of bribery, perjury, forgery, or other high crimes and misdemeanors.”¹⁸ From 1800 to 1860, twenty-three states followed

/historical-timeline [https://perma.cc/XP7R-XR24] [hereinafter *U.S. History of Disenfranchisement*].

¹² Gabriel Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1790 (2012) (contending that the concept of “civil death” has reemerged to apply to “persons convicted of crimes in the form of a substantial and permanent change in legal status, operationalized by a network of collateral consequences.”).

¹³ *International Comparison of Felon Voting Laws*, PROCON (July 20, 2021), https://felonvoting.procon.org/international-comparison-of-felon-voting-laws [https://perma.cc/QT75-5JNZ].

¹⁴ See *id.*; Jason Lemon, *Can Prisoners Vote in Other Countries? Bernie Sanders Wants Felons to Cast Ballots While Incarcerated*, NEWSWEEK (Apr. 24, 2019, 5:39 PM), https://www.newsweek.com/which-countries-felons-vote-1405142 [https://perma.cc/27YW-F8CD].

¹⁵ See *infra* Parts III, IV.

¹⁶ See Behrens et al., *supra* note 2, at 563.

¹⁷ See *id.* at 565 tbl. 2.

¹⁸ *U.S. History of Disenfranchisement*, *supra* note 11.

suit, adopting broad felony disenfranchisement language.¹⁹ Despite being initially “race neutral,” the increasing adoption of felony disenfranchisement laws—alongside the creation of Black Codes during the post-Civil War era—demonstrates that these laws were used to oppress people of color.²⁰

While the Thirteenth Amendment brought about the emancipation of formerly enslaved people, the concept of slavery never ended; instead, it shifted to the incarcerated population through the loophole in the Thirteenth Amendment that allowed slavery “as a punishment for crime.”²¹ States created Black Codes, which allowed new ways to maintain the dynamics of slavery through incarceration of the Black population.²² These restrictive measures targeted Black people through prosecution of petty and nonsensical “crimes,” such as talking too loudly or failing to yield on the sidewalk.²³ As a result of these practices, states systematically criminalized Black communities—thus subjecting them to the Thirteenth Amendment’s loophole.

In the late 1800s, Southern states adopted an increasing number of overtly racist policies.²⁴ For example, Mississippi ratified the first state constitution with Black Codes, including a provision that restricted the Black vote through a poll tax, grandfather clause, literacy test, and felony disenfranchisement laws.²⁵ Notably, the United States Supreme Court upheld these oppressive laws, reasoning that they equally discriminated against “weak and vicious white men as well as weak and vicious black men.”²⁶ Mississippi’s laws served as a model for other Southern states that passed disenfranchisement laws targeting Black voters.²⁷

¹⁹ *See id.*

²⁰ *See* Kimberlee Kruesi, *Slavery is on the Ballot for Voters in 5 US States*, ASSOCIATED PRESS (Oct. 22, 2022), <https://apnews.com/article/2022-midterms-13th-amendment-slavery-4a0341cf82fa33942bda6a5d17ac4348> [https://perma.cc/U8GQ-AWQL].

²¹ U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”) (emphasis added); Caroline M. Kisiel, *Loopholes Have Preserved Slavery for More Than 150 Years After Abolition*, WASH. POST (Jan. 27, 2021, 6:00 AM), <https://www.washingtonpost.com/outlook/2021/01/27/loopholes-have-preserved-slavery-more-than-150-years-after-abolition> [https://perma.cc/P9DK-44BG].

²² *See* Behrens et al., *supra* note 2, at 560.

²³ *See* Kruesi, *supra* note 20.

²⁴ Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, BRENNAN CTR. FOR JUST. 3 (2017), https://www.brennancenter.org/sites/default/files/publications/Disenfranchisement_History.pdf [https://perma.cc/4HA7-C8HR].

²⁵ Behrens et al., *supra* note 2, at 569.

²⁶ *Williams v. Mississippi*, 170 U.S. 213, 222 (1898).

²⁷ *See* Kelley, *supra* note 24, at 3.

In 1884, the Alabama Supreme Court rationalized the state's restrictive voting laws as a way to "preserve the purity of the ballot box."²⁸ Later, in 1901, the Alabama constitutional convention broadened the scope of its felony disenfranchisement provision to include nearly every crime lawmakers believed Black individuals were more likely to commit.²⁹ The provision restricted voting for those who committed crimes involving "moral turpitude" without defining the term, creating broad and arbitrary discretion to deny the franchise.³⁰ In his opening remarks, John B. Knox, the president of Alabama's all-white constitutional convention, announced that the laws would manipulate the ballot to avert "the menace of negro domination."³¹ As displayed by Knox, the policy was racist and meant to disenfranchise the Black population.

The twentieth century, however, brought some positive change. Some states began repealing their oppressive laws, providing the franchise to those who had served their time.³² But other states continued disenfranchising ICIs and IPIs as mass incarceration of people of color rapidly increased in the 1970s.³³ Although some IPIs may have had the right to vote restored, the oppression and manipulation of ICIs remains prevalent in most states through prison gerrymandering.

II. HISTORY OF PRISON GERRYMANDERING

Felony disenfranchisement laws are not the only mechanism used to oppress underrepresented groups' participation in the democratic process. Most states create district maps that count the disenfranchised prison population in the district where the prison is located.³⁴ This practice, known as prison gerrymandering, exploits ICIs by amplifying the voices of voting-eligible citizens residing in the prison's district.³⁵ The disproportionate impact of prison

²⁸ *Washington v. State*, 75 Ala. 582, 585 (1884).

²⁹ *See U.S. History of Disenfranchisement*, *supra* note 11.

³⁰ *See id.*

³¹ Behrens et al., *supra* note 2, at 569.

³² *See* Victoria Sheber, *From "Civil Death" to Universal Suffrage: The Case for Restoring a Prisoner's Right to Vote*, 59 AM. CRIM. L. REV. ONLINE 37, 38–39 (2021).

³³ *See id.* at 39–41.

³⁴ *See* Garrett Fisher et al., *Prison Gerrymandering Undermines Our Democracy*, BRENNAN CTR. FOR JUST. (Oct. 22, 2021), <https://www.brennancenter.org/our-work/research-reports/prison-gerrymandering-undermines-our-democracy> [<https://perma.cc/PTG7-5665>].

³⁵ *See* Shana Iden, *A Modern-Day 3/5 Compromise: The Case for Finding Prison Gerrymandering Unconstitutional Under the Thirteenth Amendment*, 1 FORDHAM L. VOTING RTS. & DEMOCRACY F. 193, 195 (2023) (contending that prison gerrymandering "inflates the political representation of primarily white, rural

gerrymandering on Black and Latinx communities is clear: the United States prison population is 56 percent Black and Latinx despite these groups making up 32 percent of the overall population.³⁶

Exploiting people of color to benefit white voters is not a new practice. At the 1787 Constitutional Convention, Southern states sought to use enslaved people, who were a majority of the Southern population, to enhance their representation in Congress.³⁷ Thus, the Convention agreed to the Three-Fifths Compromise that counted each enslaved person as three-fifths of a person for representation and taxation purposes.³⁸ Indeed, populations stripped of civil liberties have been exploited for political gain since the Founding.

Alabama provides an example of how states transitioned from exploiting enslaved populations to incarcerated populations based on skin color. After the Thirteenth Amendment repealed the Three-Fifths Clause, the rise in non-white ICIs in Alabama increased from 2 percent in 1850 to 74 percent in 1870.³⁹ The racial motivation behind incarcerating underrepresented groups is not only to disenfranchise these communities, but also to strengthen the white vote through prison gerrymandering. Analyzing the racial motivation behind criminal statutes⁴⁰ clarifies the relationship between the Three-Fifths Compromise and prison gerrymandering.⁴¹ The use of prison gerrymandering in the districting process is no different. The practice creates a political incentive “for increased rates of incarceration” and developing more prisons.⁴² ICIs, a majority of whom are people of color, are thus used for political gain.⁴³

The United States Census Bureau has counted the incarcerated population since 1790.⁴⁴ The districting process begins with the decennial census, which is constitutionally required to produce an “actual Enumeration” of persons in each state every ten

prison ‘host communities’ at the expense of minority, urban communities from which incarcerated individuals disproportionately hail.”).

³⁶ Fisher et al., *supra* note 34.

³⁷ See *id.*; Nadra Kareem Nittle, *The History of the Three-Fifths Compromise*, THOUGHTCO. (Oct. 30, 2020), <https://www.thoughtco.com/three-fifths-compromise-4588466> [<https://perma.cc/F9KX-8WY5>].

³⁸ See Nittle, *supra* note 37.

³⁹ Kelley, *supra* note 24, at 2.

⁴⁰ See *supra* Part I.

⁴¹ See Iden, *supra* note 35, at 199–200.

⁴² *Id.* at 195.

⁴³ See *id.* at 195, 198–201.

⁴⁴ *Prison Gerrymandering Explained*, DEMOCRACY DOCKET (Oct. 4, 2021), <https://www.democracymocket.com/analysis/prison-gerrymandering-explained> [<https://perma.cc/EU74-M4MC>].

years.⁴⁵ The Supreme Court has ruled that the Fourteenth Amendment's Equal Protection Clause requires jurisdictions to abide by the one-person, one-vote principle outlined in a string of cases issued in the 1960s by the Warren Court.⁴⁶ The Census Bureau counts ICIs in the location of their prison facility through the "usual residence" rule.⁴⁷ Specifically, the rule counts individuals living in group arrangements, such as military barracks, dormitories, and prisons as residing in those facilities.⁴⁸ The Court has stated that the "usual residence [term] can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place."⁴⁹ Although ICIs are, of course, not necessarily free to leave their facilities, they are counted in the same way as military members or college students.⁵⁰

Historically, gerrymandering favors one constituency of voters at the expense of another through socioeconomic status, race, party affiliation, or criminal status.⁵¹ The districting process is left to the states and conducted by the state legislature, a commission, or a hybrid of both.⁵² States must adhere to provisions in the Voting Rights Act⁵³ and follow certain self-imposed guidelines.⁵⁴ But there is a lack of uniformity in these guidelines. They vary by state, leaving the potential for gaps in representation.⁵⁵ Thus, the districting process needs only to seem impartial to pass constitutional muster.

The rise of mass incarceration in the 1970s disproportionately enhanced the voting power of the free population, particularly in rural areas, due to the one-person, one-

⁴⁵ U.S. CONST. art. I, § 2, cl. 3 ("The actual Enumeration shall be made . . . every subsequent Term of ten Years . . ."). See also Julie E. Ebenstein, *The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners' Political Representation*, 45 FORDHAM URB. L.J. 323, 336 (2018).

⁴⁶ See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (requiring states to apportion seats in their state legislatures on the basis of the population); *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964) (holding that congressional districts must be drawn with equal populations); *Gray v. Sanders*, 372 U.S. 368, 381 (1963) (establishing the one-person, one-vote doctrine); *Baker v. Carr*, 369 U.S. 186, 191–92 (1962) (holding that malapportionment claims are justiciable).

⁴⁷ See Ho, *supra* note 10, at 359 (citing Pub. L. No. 94-171, 89 Stat. 1023).

⁴⁸ See *id.* at 359.

⁴⁹ Ebenstein, *supra* note 45, at 338 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992)).

⁵⁰ See Bollag-Miller, *supra* note 9, at 99.

⁵¹ See *Prison Gerrymandering Explained*, *supra* note 44.

⁵² See Nick Corasanti et al., *How Maps Reshape American Politics*, N.Y. TIMES (Nov. 7, 2021), <https://www.nytimes.com/interactive/2021/11/07/us/politics/redistricting-maps-explained.html> [<https://perma.cc/NA6M-SEZS>].

⁵³ Pub. L. 89-110, 79 Stat. 437 (codified as amended in scattered sections at 52 U.S.C.).

⁵⁴ See Corasanti et al., *supra* note 52.

⁵⁵ See *Prison Gerrymandering Explained*, *supra* note 44.

vote principle.⁵⁶ With the implementation of the “war on drugs” and the country’s harsh stance against drug crimes, the national prison population nearly quadrupled, with the majority of ICIs being Black or Latinx.⁵⁷ As a result, rural areas with prison facilities saw population increases as measured by the census.⁵⁸ Yet the number of eligible voters in these communities mostly remained the same.⁵⁹

The 2010 Illinois redistricting is one recent example of the disproportionate effect on voting power. Although 60 percent of the state’s incarcerated population said their home was in Cook County, 90 percent of ICIs were located and counted by the census outside of Cook County.⁶⁰ Notably, 95 percent of Illinois’ state and federal prisons are in disproportionately white counties.⁶¹ In 2021, however, the state abolished the practice of prison gerrymandering.⁶²

Felony disenfranchisement laws and prison gerrymandering allow states to actively oppress people of color from participating in local, state, and federal elections to the benefit of other groups, primarily the white population. Although several states have begun restoring voting rights to IPIs⁶³ and outlawing prison gerrymandering,⁶⁴ most states still allow both practices.⁶⁵

The following parts outline the case for reform. Part III focuses on felony disenfranchisement, and Part IV examines prison gerrymandering.

III. FELONY DISENFRANCHISEMENT MUST END

When citizens of voting age are denied the right to vote, democracy suffers. The disenfranchisement of IPIs harms not only the individual, but also the communities and the Nation at large by suppressing the voices of 4.6 million citizens.⁶⁶ Restoring voting rights to all incarcerated persons is crucial for promoting principles

⁵⁶ Ebenstein, *supra* note 45, at 327–29.

⁵⁷ *See id.* at 327–28.

⁵⁸ *See id.* at 325, 327–29.

⁵⁹ *See id.* at 329.

⁶⁰ Brett Blank & Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Illinois*, PRISON POL’Y INITIATIVE (Feb. 1, 2010), <https://www.prisonersofthecensus.org/illinois/importing.html> [<https://perma.cc/26BY-CWEQ>].

⁶¹ *Id.*

⁶² *See* Mac Brower, *These 24 States Improved Access to Voting This Year*, DEMOCRACY DOCKET (Dec. 28, 2021), <https://www.democracydocket.com/analysis/these-24-states-improved-access-to-voting-this-year> [<https://perma.cc/VZA4-E9CJ>].

⁶³ *See infra* Part II.B.1.

⁶⁴ *See infra* Part III.B.2.

⁶⁵ *See infra* Part III.A.

⁶⁶ *See infra* Part III.A.2.

of reintegration, democratization, and racial equity. Notably, the movement has garnered support from both sides of the political aisle.

A. *Why Reform is Needed*

1. Reintegration: Promoting Rehabilitation and Preventing Recidivism

Laws that disenfranchise IPIs, even after they have completed their sentences and returned to their communities, obstruct their reintegration into society. To release individuals from incarceration, only to permanently strip them of their right to participate in the democratic process, erects a barrier to civic engagement and rehabilitation.

Scholars have identified a causal link between civic reintegration and preventing recidivism. One analysis concludes that “to the extent that [IPIs] begin to vote and participate as citizens in their communities, it seems likely that many will bring their behavior into line with the expectations of the citizen role, avoiding further contact with the criminal justice system.”⁶⁷ Notably, the data used in this analysis among Minnesotan voters in the 1996 election demonstrated that voters were about half as likely to recidivate from 1997 to 2000 than non-voters.⁶⁸

Mechanisms such as probation and parole are intended to facilitate the successful reintegration of IPIs into their respective communities.⁶⁹ But denying voting rights to probationers or parolees conflicts with this objective. Instead, allowing these individuals to participate fully will enhance the chances of rehabilitation, reintegration, and success.⁷⁰

In an interview conducted by the Report’s Authors, former Manhattan District Attorney Cyrus Vance explained that

⁶⁷ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 215 (2004).

⁶⁸ *See id.* at 207. Former Manhattan District Attorney Cyrus Vance stated that the restoration of voting rights to post convicted individuals, including those on probation and parole, will “[afford] them the same opportunities as their peers to share in fundamental aspects of community building and civic engagement, whether it is working, raising a family, or participating in the political process.” Cyrus Vance, *Restore Parolees’ Voting Rights Permanently, and Do It Now*, N.Y. DAILY NEWS (May 21, 2019), <https://www.nydailynews.com/opinion/ny-oped-restore-parolees-voting-rights-permanently-and-do-it-now-20190521-6saqtv3gtvfp1nx6yx6lbfz7a-story.html> [<https://perma.cc/YH3E-5H2M>].

⁶⁹ *See generally* JOINT RELIGIOUS LEG. COAL., IMPROVING REENTRY: RESTORE THE VOTE (2016), <https://jrhc.org/wp-content/uploads/2017/09/ImprovingReentryRestoreTheVote.pdf> [<https://perma.cc/72Y5-EAKM>].

⁷⁰ *See id.*

reintegration is critical to the subsequent success of IPIs.⁷¹ Mr. Vance remarked that criminal justice policies ought to reconsider whether a restriction on the franchise has any relation to a reduction in crime.⁷² Importantly, no large-scale study has been conducted to establish a causal link between disenfranchisement and preventing recidivism.⁷³

2. Democratization: Promoting Civic Participation

As of 2022, approximately 4.6 million Americans are barred from voting by state felony disenfranchisement laws.⁷⁴ These citizens represent about 2 percent of the voting-eligible population in the United States.⁷⁵ In particular, over 3.5 million of those 4.6 million Americans are living in their communities, yet they are banned from participating in elections.⁷⁶ This system is contrary to democratic principles and the concept of political equality.

Felony disenfranchisement laws do not only prevent those who were previously incarcerated from participating in the democratic process; they also have a ripple effect on their families and communities. Indeed, experts conclude that states with more restrictive criminal disenfranchisement laws had lower overall voter turnout compared to states with less restrictive laws, indicating that these laws have a negative impact on civic participation.⁷⁷ Studies have also revealed that the impaired civic engagement of some members in a household can negatively impact others in the home.⁷⁸

⁷¹ Video Interview with Cyrus R. Vance Jr., former N.Y. Cty. Dist. Att’y (Nov. 9, 2022).

⁷² *Id.*

⁷³ See Uggen & Manza, *supra* note 67, at 195.

⁷⁴ See Chris Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT 4 (2022), <https://www.sentencingproject.org/app/uploads/2022/10/Locked-Out-2022-Estimates-of-People-Denied-Voting.pdf> [<https://perma.cc/PM9B-FSMA>].

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See, e.g., Arman McLeod et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African-American Voting Behavior and Implications for Reform*, 11 VA. J. SOC. POL’Y & L. 66, 77–78 (2003). An April 2023 study also finds that “[r]estoring voting rights for people with felony convictions can improve public safety.” See Kristen M. Budd & Niki Monazzam, *Increasing Public Safety by Restoring Voting Rights*, THE SENT’G PROJECT (2023), <https://www.sentencingproject.org/app/uploads/2023/04/Increasing-Public-Safety-by-Restoring-Voting-Rights.pdf> [<https://perma.cc/X5YT-B2SP>] (examining two studies that show that “[i]ndividuals who had their voting rights restored post-incarceration were found to have a lower likelihood of re-arrest compared to individuals in states which continued to restrict the right to vote after incarceration . . .”).

⁷⁸ See, e.g., ERIKA WOOD, RESTORING THE RIGHT TO VOTE, BRENNAN CTR. FOR JUST. 12 (2d ed. 2009), https://www.brennancenter.org/sites/default/files/2019-08/Report_Restoring-the-Right-to-Vote.pdf [<https://perma.cc/MXX9-6VYF>].

As a result, these laws not only harm those who are directly disenfranchised, but they also have broader implications for our democracy and society as a whole.

For many first-time voters, parents and legal guardians are their first point of reference for how to register to vote and where to vote.⁷⁹ For example, in an interview conducted by this Report's Authors, Sean Morale-Doyle, a voting rights expert with the Brennan Center for Justice, commented that "people learn civic behavior from their families and their communities."⁸⁰ Children whose parents are civically engaged voters, in turn, are more likely to value voting themselves. Therefore, in households where a parental figure has no right to vote, the next generation will also be disinclined to participate in elections.⁸¹ Disenfranchisement permeates into communities, households, and future generations, eroding civic participation—the basis for a well-functioning democracy.

3. Racial Equality: Restoring the Purposes of the Fourteenth and Fifteenth Amendments

Felony disenfranchisement laws have a disproportionate and discriminatory impact on Black Americans. As of 2022, one in every nineteen Black Americans of voting age is disenfranchised, a rate 3.5 times higher than that of non-Black Americans.⁸² Put differently, 5.3 percent of the adult Black population is disenfranchised, compared to 1.5 percent of non-Black populations.⁸³ This disparity is a clear continuation of the historical pattern of implementing disenfranchisement laws to target underrepresented populations, and it perpetuates systemic racism in our current political structure.

Felony disenfranchisement is a relic of the Jim Crow era, representing one of the last-standing race-neutral tactics⁸⁴ for removing Black citizens from the electorate.⁸⁵ Michelle Alexander, a civil rights lawyer, concludes that "felony disenfranchisement laws have been more effective in eliminating black voters in the age

⁷⁹ See Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 AM. POL. SCI. REV. 41, 43 (2002).

⁸⁰ Video Interview with Sean Morales-Doyle, Dir., Voting Rts. Program, Brennan Ctr. for Just. (Oct. 19, 2022).

⁸¹ See WOOD, *supra* note 78.

⁸² Uggen et al., *supra* note 74, at 2.

⁸³ *Id.*

⁸⁴ See Kelley, *supra* note 24, at 1–2. "Race neutral" tactics to disenfranchise Black citizens in the Jim Crow era included literacy tests, grandfather clauses, and poll taxes. See, e.g., Behrens et al., *supra* note 2, at 563, 577.

⁸⁵ See MICHELLE ALEXANDER, *THE NEW JIM CROW* 192 (2010).

of mass incarceration than they were during Jim Crow.”⁸⁶ Alexander extrapolates that these laws have allowed states to successfully sidestep the purposes of the Fourteenth and Fifteenth Amendments—further excluding a community from the election process.⁸⁷

4. Bipartisan Support

The movement to eliminate felony disenfranchisement laws has bipartisan support. In November 2018, for example, a Florida ballot referendum asked voters whether they supported a constitutional amendment automatically restoring the right to vote for individuals with prior felony convictions upon completion of their sentence, with exceptions for convictions for murder or sexual offenses.⁸⁸ Approximately two-thirds of voters approved the amendment, demonstrating support from both Democrats and Republicans.⁸⁹ Florida Governor Ron DeSantis, however, subsequently signed legislation requiring IPIs, upon completion of their sentence, to pay off their legal financial obligations—such as restitution, fees, fines, or costs—for their voting rights to be restored.⁹⁰ But as various observers contend, the bill essentially undermined the will of the voters.⁹¹ Consequently, Florida still leads the Nation in statistically disenfranchised individuals, with over 1.1 million currently banned from voting, mainly due to the failure to pay court-ordered monetary sanctions.⁹²

In other states, both Democratic and Republican politicians have supported reform. In 2020, Iowa’s Republican Governor issued an executive order restoring voting rights to residents with felony convictions who had completed their sentences.⁹³ To cement this progress, Iowa’s state legislature is attempting to amend the

⁸⁶ *Id.* at 193.

⁸⁷ *See id.*

⁸⁸ Tim Mak, *Over 1 Million Florida Felons Win Right to Vote with Amendment 4*, NAT’L PUB. RADIO (Nov. 7, 2018, 2:46 AM), <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4> [<https://perma.cc/RE7R-L5ZH>]. *See also Voting Rights Restoration Efforts in Florida*, BRENNAN CTR. FOR JUST. (Aug. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida> [<https://perma.cc/Z3P8-KEAH>].

⁸⁹ *See Voting Rights Restoration Efforts in Florida*, *supra* note 88.

⁹⁰ *See id.*

⁹¹ *See, e.g.,* Duncan Hosie, *When Will DeSantis Listen to His Own Voters*, ACLU (Sept. 24, 2020), <https://www.aclu.org/news/voting-rights/when-will-desantis-listen-to-his-own-voters-on-ex-felons-voting-rights> [<https://perma.cc/D3XE-KZXR>].

⁹² *See* Uggen et al., *supra* note 74, at 2.

⁹³ *See Voting Rights Restoration Efforts in Iowa*, BRENNAN CTR. FOR JUST. (Aug. 5, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-iowa> [<https://perma.cc/76TQ-B6DA>].

state constitution.⁹⁴ And in 2021, New York’s Democratic Governor signed legislation that automatically restored voting rights to all New Yorkers who are no longer incarcerated.⁹⁵

5. Clarity and Uniformity in the Law: Eliminating Variation and Confusion

The vast disparity among disenfranchisement laws across states creates confusion and complications in elections. In three states—Alabama, Mississippi, and Tennessee—more than 8 percent of the adult population is disenfranchised.⁹⁶ By contrast, Massachusetts’s disenfranchisement rate is 0.15 percent of the population.⁹⁷ And while Virginia and Kentucky permanently disenfranchise individuals with felony convictions unless the state approves individual rights restoration, Maine and Vermont allow all individuals with a felony conviction to vote, even while incarcerated.⁹⁸ The American Bar Association highlighted this disparity in 2022, observing, “[s]tate disenfranchisement laws and those covering how to restore the right to vote vary considerably and can be complicated.”⁹⁹

Criminal charges against several IPIs in Florida in 2022 exemplify this confusion over voter eligibility.¹⁰⁰ Governor DeSantis’s crackdown on alleged voter fraud included twenty arrests of IPIs who attempted to vote.¹⁰¹ Legal experts, however, have asserted that many, if not all, of the arrests appeared to have been without merit because the individuals were genuinely confused

⁹⁴ *See id.*

⁹⁵ *See Voting Rights Restoration Efforts in New York*, BRENNAN CTR. FOR JUST. (May 4, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-york> [<https://perma.cc/V62N-SGDA>].

⁹⁶ Uggen et al., *supra* note 74, at 2.

⁹⁷ *Id.* at 6–7.

⁹⁸ *See id.*; *Can People Convicted of a Felony Vote? Felony Voting Laws by State.*, BRENNAN CTR. FOR JUST. (Mar. 7, 2023), <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states> [<https://perma.cc/FRY8-SPVE>].

⁹⁹ *Protecting the Right to Vote: ABA Supports the Democracy Restoration Act*, A.B.A. (Sept. 30, 2022), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/september-2022-wl/dem-restore-0922wl [<https://perma.cc/NS2S-WK8S>] (supporting the “repeal of any laws that disenfranchise persons based upon criminal conviction . . . [and contending] that fundamental rights should never be denied due to a criminal conviction, including access to the courts and voting.”).

¹⁰⁰ *See Michael Wines & Neil Vigdor, Videos Show Confusion as Florida Police Arrest People on Voter Fraud Charges*, N.Y. TIMES (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/us/florida-voter-fraud-arrests-video.html> [<https://perma.cc/H66W-9W7P>].

¹⁰¹ *See id.*

about their voting eligibility.¹⁰² In the first trial in February 2023, for example, an IPI was acquitted on charges that he knew he was ineligible to vote when he cast a ballot, but he was convicted for providing false information on his voter registration form.¹⁰³

As states begin to enact reforms to address felony disenfranchisement, there is a risk of further confusion. For instance, before California, New York, and Connecticut passed reforms in recent years, each allowed people on probation to vote but did not extend the right to those on parole.¹⁰⁴ Unfortunately, nothing prevents a state from making similar distinctions, which would only serve to exacerbate confusion. Thus, it is essential for states to ensure that their reforms are clear and accessible to individuals disenfranchised due to prior criminal convictions.

B. Existing Reform Proposals

1. Federal Legislation

In Congress, the Democracy Restoration Act of 2021¹⁰⁵ (“DRA”) represented the most substantial and pertinent proposal to eliminate post-incarcerated disenfranchisement. Introduced in 2021, the DRA would have restored voting rights in federal elections to all individuals convicted of a criminal offense.¹⁰⁶ The DRA, however, provided an exception to individuals “serving a felony sentence” at the time of the election.¹⁰⁷ To eliminate the confusion concerning voter eligibility,¹⁰⁸ the DRA would have required federal and state processes for notifying individuals when their voting rights were restored.¹⁰⁹

The House of Representatives passed the DRA as part of an omnibus voting rights package.¹¹⁰ But U.S. Senate Republicans

¹⁰² See *id.*; *Voting Rights Restoration Efforts in Florida*, *supra* note 88.

¹⁰³ See Sam Levine, *First Case in DeSantis Voter Fraud Crackdown Ends with Split Verdict*, THE GUARDIAN (Feb. 8, 2023), <https://www.theguardian.com/us-news/2023/feb/08/florida-desantis-election-crimes-nathan-hart> [<https://perma.cc/9Q4M-PXTY>].

¹⁰⁴ See Uggen et al., *supra* note 74, at 3–4.

¹⁰⁵ S. 481, 117th Cong. (2021).

¹⁰⁶ See *id.* § 3.

¹⁰⁷ *Id.* § 3.

¹⁰⁸ See *supra* Part III.A.5.

¹⁰⁹ See S. 481, § 5.

¹¹⁰ Specifically, the DRA was part of the House’s H.R. 1, also known as the For the People Act. H.R. 1, 116th Cong. (2019). See also Dartunorro Clark, *House Passes Sweeping Voting Rights, Ethics Bill*, NBC NEWS (Mar. 3, 2021), <https://www.nbcnews.com/politics/congress/house-passes-sweeping-voting-rights-ethics-bill-n1259549> [<https://perma.cc/45T6-PGKJ>].

filibustered the legislation,¹¹¹ leading to an initial compromise bill known as the Freedom to Vote Act,¹¹² which incorporated the DRA. Yet, Senate Republicans again voted to block debate on the bill, preventing a floor vote.¹¹³

2. State Legislation

Since 2020, several states, such as Connecticut,¹¹⁴ New York,¹¹⁵ and Washington,¹¹⁶ have expanded voting rights to individuals with past convictions.¹¹⁷ Since July 2021, for example, Connecticut has permitted IPIs to regain their electoral privileges upon release from confinement in a correctional facility or institution.¹¹⁸ Previously, Connecticut did not restore voting rights to individuals in community residences, on parole, or those who had not paid all felony conviction-related fines.¹¹⁹

Some states have passed legislation that requires prison facilities to inform individuals of their voting rights before they leave, empowering them to participate in the democratic process and ensuring that restoration efforts are fully realized. For example, Washington's bill requires the state to provide people with a voter registration form and instructions for completing it before leaving the facility.¹²⁰ Furthermore, New York's recent bill states that

¹¹¹ See Nicholas Fandos, *Republicans Use Filibuster to Block Voting Rights Bill*, N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/live/2021/06/22/us/joe-biden-news> [<https://perma.cc/FN9R-CNWD>].

¹¹² S. 2747, 117th Cong. (2021).

¹¹³ See *Brennan Center President Reacts to Cloture Vote in Senate on Freedom to Vote Act*, BRENNAN CTR. FOR JUST. (Oct. 20, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/brennan-center-president-reacts-cloture-vote-senate-freedom-vote-act> [<https://perma.cc/MD4L-93HL>].

¹¹⁴ S. 1202, 2021 Gen. Assemb., Spec. Sess. (Conn. 2021).

¹¹⁵ S. 830B, 2021 Leg., 2021 Reg. Sess. (N.Y. 2021).

¹¹⁶ H.R. 1078, 2021 Leg., 2021 Reg. Sess. (Wash. 2021).

¹¹⁷ As of February 2023, at least seventy-three bills related to felony disenfranchisement have been introduced in over twenty states. Carolina Sullivan, *Nearly 70 Bills Introduced to Restore Voting Rights After Felony Conviction*, DEMOCRACY DOCKET (Feb. 23, 2023), <https://www.democracymarket.com/analysis/nearly-70-bills-introduced-to-restore-voting-rights-after-felony-conviction> [<https://perma.cc/YFW6-53U4>] (“Of these 73 bills, 68 of them ease existing felony disenfranchisement laws to differing extents. The remaining five bills look to make the laws more restrictive. This means that 93% of bills related to voting rights in the criminal legal system move in the pro-voting direction.”).

¹¹⁸ See Matt Vasilogambros, *Connecticut Restores Voting Rights to People with Felony Convictions on Parole*, PEW CHARITABLE TRS. (June 25, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/06/25/connecticut-restores-voting-rights-to-people-with-felony-convictions-on-parole> [<https://perma.cc/KK4S-KW48>].

¹¹⁹ See *id.*

¹²⁰ H.R. 1078, 2021 Leg., 2021 Reg. Sess. (Wash. 2021).

“prior to the release from a correctional facility of any person, the department [of corrections] shall notify such person verbally and in writing, that his or her voting rights will be restored upon release and provide such person with a form of application for voter registration.”¹²¹ These examples of notice and registration reforms, alongside restoration for all IPIs, help streamline the voting process and eliminate eligibility confusion.

Nonetheless, twenty-six states still bar IPIs from voting, simply on the basis of past convictions.¹²² Among these states, eleven deny voting rights to some or all individuals who have completed their parole, probation, or prison sentences.¹²³

C. Recommendations

1. Pass the Democracy Restoration Act of 2021

To uphold democratic principles and eradicate racial inequalities among voting populations, Congress must reintroduce and pass the DRA. In turn, the DRA will ensure that all voices of those currently living within their communities are heard in federal elections.¹²⁴

Despite the DRA’s recent failure to pass, federal legislation is perhaps best equipped to address voting rights restorations in federal elections. Indeed, federal action will provide a uniform standard for federal elections without implicating constitutional concerns or constraints. By contrast, state legislatures are restricted by the language of their state constitutions.¹²⁵ Specifically, some state constitutions contain provisions pertaining to the voting rights of individuals with criminal convictions.¹²⁶ Moreover, some states would require amending the state constitution for restoration—such

¹²¹ S. 830B, 2021 Leg., 2021 Reg. Sess. (N.Y. 2021).

¹²² See *Can People Convicted of a Felony Vote? Felony Voting Laws by State.*, *supra* note 98.

¹²³ See Uggen et al., *supra* note 74, at 3 tbl. 1.

¹²⁴ *Supra* Part III.A.

¹²⁵ See, e.g., N.J. CONST. art. II, § 1, ¶ 7 (“The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.”).

¹²⁶ See, e.g., VA. CONST. art. II, § 1 (“No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”). Although the Virginia Constitution permanently disenfranchises all citizens with past felony convictions, it grants the state’s governor authority to restore voting rights. In March 2021, then-Governor Ralph Northam took executive action to restore the franchise to all Virginians who were not incarcerated. See Fredreka Schouten, *Virginia Gov. Northam Restores Voting Rights to 69,000 Former Felons with New Policy*, CNN (Mar. 16, 2021, 12:52 PM), <https://www.cnn.com/2021/03/16/politics/northam-virginia-voting-rights-former-felons/index.html> [https://perma.cc/5T9T-DRJD].

as Florida’s recent Amendment 4¹²⁷ that was approved through a ballot referendum.¹²⁸ Therefore, federal legislation can most effectively provide a solution to the lack of uniformity among states, along with sensible and fair restoration of voting rights to all IPIs.

If Congress were to revise provisions within the DRA, this Report recommends removing the words “to construct or otherwise improve” within the “Federal Prison Funds” provision, and adding “for purposes unrelated to improving the conditions” in its place.¹²⁹ The current text states:

No State, unit of local government, or other person may receive or use, *to construct or otherwise improve* a prison, jail, or other place of incarceration, any Federal funds unless that State, unit of local government, or person—

(1) is in compliance with section 3; and

(2) has in effect a program under which each individual incarcerated in that person’s jurisdiction who is a citizen of the United States is notified, upon release from such incarceration, of that individual’s rights under section 3.¹³⁰

The inclusion of “to construct or otherwise improve” indicates that if states do not comply with the notice requirements, they will not receive funding to improve existing prison facilities. A state’s compliance should not be incentivized through worsening conditions for ICIs. Instead, a state’s compliance should depend only on funds for purposes unrelated to improving prison conditions. Therefore, the DRA should state: “No State, unit of local government, or other person may receive or use any Federal funds *for a prison, jail, or other place of incarceration for purposes unrelated to improving conditions. . .*”

Congress has the constitutional authority to implement the DRA provisions concerning voting rights restoration in federal—but not state—elections. Congress’s power to pass this legislation is rooted in three constitutional provisions: Article I, Section 4;

¹²⁷ To read the full text and ballot summary of Amendment 4, see *Voter Restoration Amendment Text*, ACLU FLA. (2020), <https://www.aclufll.org/en/voter-restoration-amendment-text> [<https://perma.cc/R27Q-KPHU>].

¹²⁸ See *Voting Rights Restoration Efforts in Florida*, *supra* note 88.

¹²⁹ Democracy Restoration Act of 2021, S. 481, 117th Cong. § 8 (2021).

¹³⁰ *Id.* (emphasis added).

Section 5 of the Fourteenth Amendment; and Section 2 of the Fifteenth Amendment.

First, under the Elections Clause of Article I, Section 4, Congress has the power to regulate the “Times, Places and Manner” of congressional elections.¹³¹ The U.S. Supreme Court has consistently read the Elections Clause to provide Congress with the authority to regulate federal elections. In *Oregon v. Mitchell*,¹³² for example, the Court upheld legislation lowering the minimum voting age in federal elections from twenty-one to eighteen.¹³³ Justice Black’s majority opinion relied on the Clause to conclude that Congress has the authority to set qualifications for voters in federal elections.¹³⁴ Furthermore, Justice Black stated that Congress has the “ultimate supervisory power over congressional elections.”¹³⁵ Subsequently, in *Kusper v. Pontikes*,¹³⁶ the Court favorably cited its assertion in *Mitchell*: “[W]ith respect to elections to federal office . . . the Court has held that Congress had the power to establish voter qualifications.”¹³⁷

Section 5 of the Fourteenth Amendment and Section 2 of the Fifteenth Amendment grant Congress the authority “to enforce” the amendments by appropriate legislation.¹³⁸ The Supreme Court has found this power to be “broad,” permitting Congress to enact “prophylactic legislation that proscribes facially constitutional conduct . . . to prevent and deter unconstitutional conduct.”¹³⁹ Such legislation, however, must be an “appropriate response to [a] history and pattern of unequal treatment.”¹⁴⁰ If Congress frames this legislation against the backdrop of the historical and discriminatory application of post-convicted disenfranchisement laws, the remedy will likely be constitutional under these powers as well.

Although federal action could streamline voting rights restorations in federal elections, Congress may encounter constitutional hurdles if it attempts to implement similar legislation applying to state elections.¹⁴¹ Therefore, it is likely up to the states to decide voting restoration reform for *state* elections.

¹³¹ U.S. CONST. art. I, § 4.

¹³² 400 U.S. 112 (1970).

¹³³ *See id.* at 117–18.

¹³⁴ *See id.* at 122 (stating that “the powers of Congress to regulate congressional elections[] include[e] the age and other qualification of the voters.”).

¹³⁵ *Id.* at 124.

¹³⁶ 414 U.S. 51 (1973).

¹³⁷ *Id.* at 57 n.11 (citing *Mitchell*, 400 U.S. at 121, 124).

¹³⁸ U.S. CONST. amend. XIV, § 5 (“The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”); *id.* amend. XV, § 2 (“The Congress shall have the power to enforce this article by appropriate legislation.”).

¹³⁹ *Tennessee v. Lane*, 541 U.S. 509, 518 (2004).

¹⁴⁰ *Id.* at 530.

¹⁴¹ *See Oregon v. Mitchell*, 400 U.S. 112 (1970).

2. Adopt a Model State Bill

To ensure that all citizens have equal access to the ballot box, states that disenfranchise IPIs should adopt legislation restoring voting rights and implementing a notification process for the re-enfranchised individuals. The legislation should contain two key components: (1) an unconditional restoration of voting rights in state and federal elections upon release from incarceration, and (2) a requirement for the state's department of corrections (or other applicable agency) to notify individuals of their restored voting rights and the registration process before their release.

The restoration of voting rights should be without exception for parole, probation, or payment of fees, and should apply to both state and federal elections. As discussed, IPIs are members of the community upon release and should be treated accordingly.¹⁴² Importantly, no data shows that restricting the right to vote incentivizes payments of monetary obligations nor prevents parole or probation violations.¹⁴³ Thus, it is time to begin to untether the criminal justice system from voting rights.

Notice regarding restoration and registration is critical to avoiding confusion and the success of re-enfranchisement.¹⁴⁴ To this end, each state's department of corrections should provide verbal and written notice upon release and prior to exit. The department should also provide a voter registration form with written instructions for completing the form and the necessary steps for fulfilling the process. By taking these steps, states can ensure that all eligible individuals are able to participate in the democratic process and have their voices heard.

IV. PRISON GERRYMANDERING MUST END

As discussed, prison gerrymandering is the process by which states count ICIs as residents of the districts where they are incarcerated, rather than their home communities.¹⁴⁵ The practice undermines our Nation's one-person, one-vote principle—a bedrock tenet in our democratic society. ICIs are not genuine members of their host communities in a meaningful sense. As a result, prison gerrymandering dilutes the voting rights of people residing in the ICIs' original home communities, while amplifying the voices of individuals in their host communities.¹⁴⁶ As one state lawmaker

¹⁴² See *supra* Part III.A.1.

¹⁴³ See, e.g., Uggen & Manza, *supra* note 67, at 195.

¹⁴⁴ See *supra* Parts III.B, III.C.

¹⁴⁵ Fisher et al., *supra* note 34.

¹⁴⁶ See Iden, *supra* note 35, at 195–96.

said, “[m]ass incarceration is already bad policy—it shouldn’t be used to undermine the fairness of elections, too.”¹⁴⁷

A. *Why Reform is Needed*

1. Dilution of Political Representation

Prison populations should not be used to increase the political power of districts where prisons are located. Counting ICIs in their prison districts not only amplifies the voices of non-incarcerated individuals in those districts, but also dilutes and diminishes the collective political power of ICIs’ home communities.¹⁴⁸ This is especially true in states with the highest rates of incarceration, such as Mississippi, Louisiana, and Oklahoma.¹⁴⁹

The impact of prison gerrymandering is even more apparent when comparing two electoral districts with the same population.¹⁵⁰ If one district has a significant ICI population and the other does not, the ratio between eligible voter and total population would differ greatly.¹⁵¹ This discrepancy unfairly boosts the representational strength of communities with prisons, at the expense of those communities without. This practice goes against democratic principles and undermines the concept of one-person, one-vote.

¹⁴⁷ Sanya Mansoor & Madeleine Carlisle, *When Your Body Counts but Your Vote Does Not: How Prison Gerrymandering Distorts Political Representation*, TIME (July 1, 2021, 3:19 PM), <https://time.com/6077245/prison-gerrymandering-political-representation> [<https://perma.cc/TK8B-B27Q>].

¹⁴⁸ See Iden, *supra* note 35, at 198 (“[A] white, rural district may be allocated more money and resources based on inaccurate demographic data, furthering economic and racial divides between localities.”); Kate Carlton Greer, *How Political Districts with Prisons Give Their Lawmakers Outsize Influence*, KOSU (Nov. 7, 2016), <http://kosu.org/post/how-political-districts-prisons-give-their-lawmakers-outsize-influence> [<https://perma.cc/7QNS-QQ5G>].

¹⁴⁹ Mississippi is the state with the highest incarceration rates, at 575 per 100,000 residents. Louisiana is the second with 564 per 100,000 residents. Oklahoma is the third with 555 per 100,000 residents. The U.S. average is 350 per 100,000 residents. Massachusetts is the state with the lowest percentage of incarcerated population, with every 96 persons incarcerated out of 100,000 residents. *U.S. Criminal Justice Data*, THE SENT’G PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data> [<https://perma.cc/P839-C5RR>] (last visited Apr. 20, 2023).

¹⁵⁰ This, of course, excludes Maine and Vermont, where ICIs are allowed to vote. See *Can People Convicted of a Felony Vote? Felony Voting Laws by State.*, *supra* note 98.

¹⁵¹ See *id.*

2. Abuse of the Idea of Residency

The very idea of residency goes against counting ICIs in the communities where they are incarcerated. ICIs are not members of those communities in any meaningful sense.¹⁵² Indeed, “no duration of time in a correctional facility could make a person a functional or practical resident” of the location of their prison.¹⁵³ For example, ICIs serving life sentences cannot use their prison address to enroll their children at the local public schools.¹⁵⁴ ICIs cannot generally participate in activities a normal resident could, such as attending community churches. Overall, the practice of prison gerrymandering has far-reaching consequences, not only impacting ICIs and IPIs but also their families and home communities.

3. Disparate Racial Impact

Prison gerrymandering undermines the political representation of people of color. Black citizens, for example, represent 32 percent of the Nation’s population but make up 56 percent of the incarcerated population.¹⁵⁵ In twelve states, “more than half the prison population is Black: Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia.”¹⁵⁶ Black and Latinx Americans are incarcerated in state prisons at nearly five and 1.3 times the rate of white Americans, respectively.¹⁵⁷

The racial disproportionality in prison population also directly boosts the representational voice in whiter districts. A 2019 study, for example, noted that approximately 100,000 of the 264,000 incarcerated Pennsylvanians were Black from the Philadelphia

¹⁵² See Iden, *supra* note 35, at 198 (“Though politicians have argued that incarcerated people benefit from the resources provided in host districts, those incarcerated cannot utilize resources from any of the ten most extensive programs whose funds are guided by census data.”).

¹⁵³ See Letter from Steven Lance et al., Pol’y Coun., NAACP Legal Def. & Educ. Fund, Inc., to Special Comm’n on Reapportionment, Rhode Island Gen. Assemb. 3 (Jan. 5, 2022), <https://www.rilegislature.gov/commissions/reap/commdocs/LDF%202nd%20Letter%20to%20RI%20Comm%20re%20Prison-Based%20Gerrymandering%20-%20January%205,%202022.pdf> [<https://perma.cc/Y58Q-QLNB>].

¹⁵⁴ See *id.* See also *Davidson v. City of Cranston*, 188 F. Supp. 3d 146, 147 (D.R.I.), *rev’d on other grounds sub nom. Davidson v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016).

¹⁵⁵ *Criminal Justice Fact Sheet*, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet> [<https://perma.cc/4SYJ-TYCY>] (last visited Apr. 20, 2023).

¹⁵⁶ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENT’G PROJECT 5 (2021), <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> [<https://perma.cc/LGR3-YUYG>].

¹⁵⁷ *Id.*

area.¹⁵⁸ Before Pennsylvania took steps to abolish prison gerrymandering, however, the study revealed that counting ICIs as part of their prison districts added about fifty-nine people to the average white voters' districts and took away approximately 353 people from the average Black voters' district.¹⁵⁹ Accordingly, this practice unfairly boosts the political voice of white communities while diluting the voting strength of communities of color.

B. Existing Policies

1. The Federal Census

In 2016, the Census Bureau published group quarters data, which includes people living in prisons, college residence halls, military barracks, and other similar places.¹⁶⁰ A federal law requires the Census Bureau to allow states to identify the small geographic areas for which they need data to conduct redistricting.¹⁶¹ Although ICIs are not relocated to the place of imprisonment by choice, they are counted as active citizens for the census in their prison districts.¹⁶²

The Census Bureau policies require counting individuals at their “usual residence,” which is defined as the place where they live and sleep most of the time.¹⁶³ For individuals without a usual residence or who cannot determine one, the census counts them at their physical location on Census Day. Those residing in certain

¹⁵⁸ *Prison Gerrymandering Explained*, *supra* note 44.

¹⁵⁹ *Id.* In New York, for example, before the state abolished prison gerrymandering for the 2010 redistricting cycle, 98 percent of ICIs were housed in facilities located in districts that were whiter than the state average. Peter Wagner, *98% of New York's Prison Cells Are in Disproportionately White Senate Districts*, PRISON POL'Y INITIATIVE (Jan. 17, 2005), <http://www.prisonersofthecensus.org/news/2005/01/17/white-senate-districts> [<https://perma.cc/Q9SB-CDXA>].

¹⁶⁰ Enacted by Congress in 1975, Public Law 94-171 requires the Census Bureau “to provide states the opportunity to identify the small area geography for which they need data in order to conduct legislative redistricting.” *Decennial Census P.L. 94-171 Redistricting Data*, U.S. CENSUS BUREAU (Sept. 16, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html#:~:text=P.L.-,94%2D171%20%20Redistricting%20Data,order%20to%20connect%20%20legislative%20%20redistricting> [<https://perma.cc/KG7W-6GZ3>].

¹⁶¹ *See id.*

¹⁶² *2020 Census Residence Criteria and Residence Situations*, U.S. CENSUS BUREAU 4 (2020), https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_04-appendix.pdf [<https://perma.cc/MH3A-9TTC>] (last visited Apr. 20, 2023). *See also* Ebenstein, *supra* note 45, at 336.

¹⁶³ *See 2020 Census Residence Criteria and Residence Situations*, *supra* note 162, at 1.

types of “group facilities,” however, are counted as residents of these facilities per the Census Bureau’s guidelines.

The Bureau considers prisons as institutional “group facilities” and accordingly regards prisons as the “usual residence” of ICIs.¹⁶⁴ The challenges to counting the institutional group facilities in this way exist regardless of whether the surrounding community is urban or rural.¹⁶⁵ Nonetheless, persons counted in institutional group quarters often lack the residential and commercial characteristics associated with the surrounding community.¹⁶⁶

2. State Efforts to End Prison Gerrymandering

As of February 2023, sixteen states and over 200 local governments have ended the practice of prison gerrymandering. Specifically, thirteen states have passed legislation prohibiting prison gerrymandering.¹⁶⁷ Maryland and New York were the first states to pass legislation to include ICIs at their home addresses for state and local redistricting purposes for the 2010 redistricting cycle.¹⁶⁸ Additionally, eight states—including California, Colorado, Connecticut, Delaware, Nevada, New Jersey, Virginia, and Washington—passed laws that went into effect for the 2020 redistricting cycle.¹⁶⁹ And Illinois passed legislation that will become effective in 2025 to end prison gerrymandering in time for the 2030 redistricting cycle.¹⁷⁰ Two other states, Michigan and Tennessee, have laws that apply to local government redistricting, but not state legislative districts.¹⁷¹

Three states have addressed prison gerrymandering through redistricting commissions. In Pennsylvania, for example, the

¹⁶⁴ See generally DANIEL L. CORK & PAUL R. VOSS, *ONCE, ONLY ONCE, AND IN THE RIGHT PLACE, RESIDENCE RULES IN THE DECENNIAL CENSUS* (2006).

¹⁶⁵ See *id.*

¹⁶⁶ See *Iden*, *supra* note 35, at 197–98.

¹⁶⁷ Aleks Kajstura, *Quick-Reference Chart: States’ Legislation Ending Prison Gerrymandering*, PRISON POL’Y INITIATIVE (Sept. 16, 2022), <https://www.prisonersofthecensus.org/models/chart.html> [<https://perma.cc/D899-FVVD>].

¹⁶⁸ See *id.*; Aleks Kajstura, *What Are States Saying About Their Experience Addressing Prison Gerrymandering?*, PRISON POL’Y INITIATIVE (Feb. 24, 2023), <https://www.prisonersofthecensus.org/news/2023/02/24/states-reports> [<https://perma.cc/8HMB-QZ89>].

¹⁶⁹ See Kajstura, *supra* note 168.

¹⁷⁰ See *Illinois Governor J.B. Pritzker Signs Law Ending Prison Gerrymandering*, PRISON POL’Y INITIATIVE (Feb. 25, 2021), <https://www.prisonersofthecensus.org/news/2021/02/25/illinois-victory> [<https://perma.cc/3RRX-2YMU>] (noting that House Bill 3653 “ensure[s] that . . . people in state prisons will be counted as residents of their home address when new legislative districts are drawn” for the 2030 redistricting).

¹⁷¹ See Kajstura, *supra* note 168.

legislative redistricting commission counted people at their home addresses to avoid prison gerrymandering for the 2020 redistricting cycle.¹⁷² In February 2022, Rhode Island became the second state whose redistricting commission took steps to reduce prison gerrymandering.¹⁷³ And in February 2023, Montana’s districting and apportionment commission approved new legislative maps that count ICIs at their home addresses—ending prison gerrymandering in the state.¹⁷⁴

One significant challenge for states in redistricting is obtaining the necessary data on time to ensure the counting process concludes before elections. For example, Delaware delayed the effective date of its law designed to end prison gerrymandering, claiming it could not find a vendor to complete the necessary population adjustment.¹⁷⁵ As most states do, Delaware left critical redistricting decisions to the last minute.¹⁷⁶

C. Recent Federal Constitutional Litigation

Prison gerrymandering unbalances the scale of equal representation. Yet recent court decisions suggest that abolishing prison gerrymandering through litigation could be challenging. From a practical perspective, even decisions holding that prison gerrymandering violates the equal protection principle provide little guidance for real-life challenges state agencies face in counting the incarcerated population.

¹⁷² See Mike Wessler, *Pennsylvania Ending Prison Gerrymandering, Montana Close Behind*, PRISON POL’Y INITIATIVE (Aug. 31, 2021), https://www.prisonersofthecensus.org/news/2021/08/31/pa_mt_nj_update [https://perma.cc/3UK3-PJMS].

¹⁷³ Importantly, Rhode Island did not entirely eliminate prison gerrymandering; instead, the state’s new legislative maps will only count 44 percent of ICIs in their home districts. See *Rhode Island Becomes Latest State to Address Prison Gerrymandering*, PRISON POL’Y INITIATIVE (Feb. 23, 2022), https://www.prisonersofthecensus.org/news/2022/02/23/ri_victory [https://perma.cc/XH4J-XGE8] (“Instead of counting all incarcerated people at home when drawing new districts, the redistricting commission counted only people who, on Census Day (April 1, 2020), were either not yet sentenced or had less than two years remaining on their sentence.”).

¹⁷⁴ See *With Unanimous, Bipartisan Support, Montana Ends Prison Gerrymandering*, PRISON POL’Y INITIATIVE (Feb. 13, 2022), https://www.prisonersofthecensus.org/news/2023/02/13/montana_victory [https://perma.cc/X5X6-NPGW].

¹⁷⁵ See Peter Wagner, *What the Census Bureau Proposes to do on Prison Gerrymandering and Why It Is Inadequate*, PRISON POL’Y INITIATIVE (July 1, 2016), <https://www.prisonersofthecensus.org/news/2016/07/01/inadequate> [https://perma.cc/PX3Q-NDGR].

¹⁷⁶ See *id.*

1. Divergence Already Exists Among Lower Federal Courts

Lawsuits challenging prison gerrymandering on equal protection grounds are relatively novel. Several lower federal courts, however, have already developed split views on the issue.

a. *Calvin v. Jefferson County Board of Commissioners*

In 2016, a federal district court in Florida held that the Fourteenth Amendment's Equal Protection Clause barred Jefferson County, Florida, from counting ICIs as residents of the Jefferson Correctional Institution in its redistricting population count for the 2010 census.¹⁷⁷ Jefferson County is a rural community with roughly 13,000 residents situated in five local legislative districts.¹⁷⁸ During redistricting, the county included the 1,157 inmates from the Jefferson Correctional Institution in the population count of one of the county's legislative districts with 3,000 residents.¹⁷⁹ Jefferson County residents in the other local legislative districts sued the county on equal protection grounds, contending that "the inmate population in one district diluted the representational and voting strength of voters in other districts."¹⁸⁰ Notably, the *Calvin* court created a threshold inquiry for this type of vote dilution claim: "For plaintiffs to prevail, they must show that the inmates 'lack a meaningful or substantial representational nexus with' the relevant legislative body."¹⁸¹

The *Calvin* decision was the first to support a constitutional challenge to prison gerrymandering.¹⁸² The court reasoned that "treat[ing] inmates the same as actual constituents makes no sense under any theory of one person, one vote."¹⁸³ Nonetheless, the court observed that when the gap between total constituents and eligible voters is narrow, using registered voters alone (not treating ICIs as constituents) has a similar effect to using the total voting population (treating ICIs as constituents) as the base.¹⁸⁴

¹⁷⁷ *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F. Supp. 3d 1292, 1326 (N.D. Fla. 2016).

¹⁷⁸ See Michael Skocpol, Note, *The Emerging Constitutional Law of Prison Gerrymandering*, 69 STAN. L. REV. 1473, 1539 (2017).

¹⁷⁹ *Calvin*, 172 F. Supp. 3d at 1296. See also Skocpol, *supra* note 178, at 1539.

¹⁸⁰ Meredith Gingold, *States, The Final Frontier: How Minnesota's State Constitution Can Serve as New Ammunition in the Fight Against Prison Gerrymandering*, 105 MINN. L. REV. HEADNOTES 368, 378 (2021) (citing *Calvin*, 172 F. Supp. 3d at 1323).

¹⁸¹ *Id.* (citing *Calvin*, 172 F. Supp. 3d at 1312).

¹⁸² See Ebenstein, *supra* note 45, at 349.

¹⁸³ *Calvin*, 172 F. Supp. 3d at 1326.

¹⁸⁴ See *id.* at 1305, 1315.

b. Davidson v. City of Cranston

The U.S. Court of Appeals for the First Circuit, however, holds a contrary view to the Florida district court's ruling in *Calvin*. In 2016, the First Circuit held that the U.S. Constitution does not require the city of Cranston, Rhode Island, to exclude ICIs from the city's apportionment process.¹⁸⁵ The First Circuit ruled that the Constitution gives no power to the federal courts to interfere with a city's decision to include ICIs in that count.¹⁸⁶ According to the court's holding, a redistricting plan using census data on the district's total population does not violate the one-person, one-vote principle of the Equal Protection Clause.

2. Equal Protection Challenges Ending Prison Gerrymandering Likely Will Not Succeed Soon

Shortly after *Calvin*, Texas voters sought a "permanent injunction to replace the existing state senate map with a map that equalized" the voting population—rather than the overall population—in each senate district.¹⁸⁷ The U.S. Supreme Court in *Evenwel v. Abbott*¹⁸⁸ rejected an equal protection challenge, reasoning that all states use total population numbers, but that "only seven States adjust those census numbers in any meaningful way."¹⁸⁹

Previously, the Court ruled eight-to-one in *Reynolds v. Sims*¹⁹⁰ that the Fourteenth Amendment's one-person, one-vote principle mandates that legislative districts be equal.¹⁹¹ In 2016, however, *Evenwel* addressed whether the Equal Protection Clause requires states' legislative apportionments to equalize *total population* rather than *total eligible voter population* during redistricting.¹⁹² The Court unanimously held that state and local jurisdictions could measure equalization by total population.¹⁹³ Accordingly, the *Evenwel* Court made clear that "states may

¹⁸⁵ *Davidson v. City of Cranston*, 188 F. Supp. 3d 146, 149–52 (D.R.I.), *rev'd*, 837 F.3d 135 (1st Cir. 2016).

¹⁸⁶ *Id.* at 141–45.

¹⁸⁷ Gingold, *supra* note 180, at 378 (citing *Evenwel v. Abbott*, 136 S. Ct. 1120, 1125 (2016)).

¹⁸⁸ 136 S. Ct. 1120 (2016).

¹⁸⁹ *Id.* at 1124.

¹⁹⁰ 377 U.S. 533 (1964).

¹⁹¹ *See id.* at 562.

¹⁹² *Evenwel*, 136 S. Ct. at 1123.

¹⁹³ *See id.* at 1123 ("As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible to vote. Nonvoters have an important stake in many policy debates and in receiving constituent services.").

constitutionally count voters and nonvoters alike when drawing districts.”¹⁹⁴

Decades before *Evenwel*, the Supreme Court endorsed using U.S. Census Bureau data as a basis for drawing legislative districts, even while acknowledging the shortcomings of that data.¹⁹⁵ The Court acknowledged that the data provides the only reliable—although not perfect—indication of district population levels.¹⁹⁶

Evenwel suggests that the Court will not be receptive to challenges to prison gerrymandering on equal protection grounds. Accordingly, this Report recommends addressing prison gerrymandering through legislation and state administrative reforms.

D. Recommendations

1. State Legislation: Count ICIs Where They Plan to Reside

States should adopt legislation counting ICIs with a certain number of years remaining in their sentences in the electoral district where they plan to reside following their release. Each state should set a year-limit based on its average prison sentence length, overall prison population, and other relevant factors. Rhode Island, for example, includes ICIs with two years or less remaining in their sentences in this way.¹⁹⁷

Incarcerated individuals do not always choose to return to the communities they lived in before their incarceration.¹⁹⁸ Rhode Island’s policy, for example, would give states time to accurately project and place incarcerated individuals in appropriate districts. Additionally, the flexible year-limit count provides a strong incentive for incarcerated individuals to re-integrate into their most desired communities and consequently mitigates the difficulty of post-release integration. For example, in an interview conducted by this Report’s Authors, Chauncey Parker, a Deputy Commissioner of the New York City Police Department, stressed the importance of

¹⁹⁴ Gingold, *supra* note 180, at 379.

¹⁹⁵ *See* Karcher v. Daggett, 462 U.S. 725, 738 (1983).

¹⁹⁶ *See id.*

¹⁹⁷ *Rhode Island Becomes Latest State to Address Prison Gerrymandering*, *supra* note 173.

¹⁹⁸ Various re-entry difficulties discourage incarcerated individuals from returning to their hometown communities. *See generally* Melissa Li, *From Prisons to Communities: Confronting Re-Entry Challenges and Social Inequality*, AM. PSYCHOL. ASS’N (2018), <https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities> [<https://perma.cc/G6MZ-CUY9>].

thinking about re-entry well in advance and even before sentencing.¹⁹⁹

Legislation should mandate that states' correction departments distribute an Intent of Future Residency ("IFR") form yearly to all ICIs regardless of the years left in their sentences—but only collect those forms from ICIs with the targeted years left in their sentence. Distributing the IFR form universally to all ICIs is easier to implement. It also encourages other ICIs with more years left to serve to think about the communities they intend to return to. The IFR form would be essential to collecting and ensuring the accuracy of residency data. Furthermore, this policy would be critical in addressing disenfranchisement by promoting community participation early on.

2. Establish a Special Committee Under the Census Bureau to Ensure a Uniform and Timely State Data Collection Timeline at the State and Federal Levels

A common challenge for states that have passed legislation ending prison gerrymandering is ensuring that the counting process concludes before elections take place.²⁰⁰ States should adopt a uniform timeline for collecting the residency and future-intended residency information from ICIs.²⁰¹ To adequately adopt these timelines, however, federal collaboration is required. Thus, this Report recommends that the Census Bureau establish a special committee overseeing the timely collection of residency data to sufficiently assist states.

Lastly, this Report notes that if a state allows incarcerated individuals to vote, this may modify the considerations relevant to developing a policy response to prison gerrymandering. Specifically, it might be sensible to allow enfranchised incarcerated individuals to vote in the districts where their prisons are located. This policy, in turn, may cause elected officials who represent districts that include prisons to be more responsive to concerns about prison conditions and other issues that are important to incarcerated individuals.

CONCLUSION

Despite progress toward fairer representation in the United States, current policies still deny adequate representation to ICIs and IPIs. This is perpetuated through both felony disenfranchisement

¹⁹⁹ Video Interview with Chauncey Parker, Deputy Comm'r for Collaborative Policing, N.Y.C. Police Dep't (Nov. 22, 2022).

²⁰⁰ Wagner, *supra* note 175.

²⁰¹ *See id.* (discussing Delaware's delay in ending prison gerrymandering).

and prison gerrymandering, which have disproportionate impacts on people of color. This Report's historical and contemporary analysis sheds lights on these discriminatory practices and proposes solutions—some with past bipartisan support—to end them. It is essential to recognize that denying individuals the franchise and adequate political representation goes against the Nation's democratic principles. Thus, it is incumbent upon lawmakers to take swift action to dismantle these practices and uphold the values of a more equitable society.