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DEFUND TO REFUND THE VOTE: DISMANTLING THE  
CRIMINAL JUSTICE SYSTEM'S IMPACT ON VOTING

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I. INTRODUCTION

Voter suppression is: you're 19 years old and you get caught with marijuana, and you're forced to plead to a felony. Then you can never vote again, whereas a white kid getting caught with marijuana is [going to] be admonished and sent home to their parents. That's voter suppression . . . . [M]ass incarceration is a strategy not just to criminalize a generation, or now generations of African-Americans, but also to politically marginalize the [B]lack community. Mass incarceration is not just taking our freedom, it's taking our vote. It's taking our power.<sup>1</sup>

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<sup>1</sup>Yohana Desta, *Let Van Jones Explain How Mass Incarceration Led Directly to Trump's Win*, VANITY FAIR (Feb. 15, 2017), <https://www.vanityfair.com/hollywood/2017/02/van-jones-13th-trump> (quoting Van Jones).

Frederick Douglas once said, "Slavery is not abolished until the [B]lack man has the ballot."<sup>2</sup> Slavery is not abolished. It exists in the form of mass incarceration. Mass incarceration is legal voter disenfranchisement and voter suppression and it strips the ballot from those who are engulfed by it and their communities.<sup>3</sup> At first glance, the comparison of slavery to mass incarceration may seem jarring and radical. It is neither. Douglas A. Blackmon laid the foundation for this narrative in his book *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, Michelle Alexander added modern-day context in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, and Ava Duvernay brought national light to the issue in her documentary film *13<sup>th</sup>*.<sup>4</sup> These combined works and many others provide support for the argument that mass incarceration is legalized slavery.<sup>5</sup>

The purpose of this Article is to demonstrate how the criminal justice system, through the use of mass incarceration, has led to voter suppression and disenfranchisement, primarily of minority communities. This Article will detail how mass incarceration works to strip the right to vote, create barriers to voting, intimidate those who have the right to vote, and weaken the vote in minority communities. Felon disenfranchisement is highly discussed in legal scholarship. This Article would be remiss if it did not include a discussion on the topic, but felon disenfranchisement is not the only way the criminal justice system disenfranchises and suppresses the right to vote.<sup>67</sup>

Part II of this Article will provide a brief synopsis of the criminal justice system and mass incarceration. It will include an overview of the voting population impacted by the system and why

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<sup>2</sup> See, e.g., Cedric Merlin Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823, 890 (2008).

<sup>3</sup> Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 CASE W. RES. L. REV. 727, 765–66 (1998).

<sup>4</sup> See, e.g., Danielle Jones, *13th Documentary Reading List for Teens*, YOUNG ADULT LIBR. SERV. ASS'N: HUB (Dec. 28, 2016), <http://www.yalsa.ala.org/thehub/2016/12/28/13th-documentary-reading-list-teens/>.

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., *Block the Vote: Voter Suppression in 2020*, AM. CIV. LIBERTIES UNION (Feb. 3, 2020), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020/>.

<sup>7</sup> Jordan T. Stringer, Comment, *Criminalizing Voter Suppression: The Necessity of Restoring Legitimacy in Federal Elections and Reversing Disillusionment in Minority Communities*, 57 EMORY L.J. 1011, 1012–13, 1015–19 (2008).

these votes matter. Part III will address several ways that the criminal justice system and mass incarceration lead to disenfranchisement through the use of: (1) prisons, (2) community supervision, (3) jails, (4) criminalizing voting, and (5) prison gerrymandering. Part III will attempt to provide a few solutions to eliminate voter disenfranchisement and voter suppression caused by the criminal justice system. This part will also demonstrate why defunding the police and reallocating those funds is a worthy solution to curb the criminal justice system's impact on voting.

There are limitations to this Article that are noteworthy to address. This Article addresses the impact that the system has on communities of color. Most of this information will be related to Black communities. Unfortunately, there is limited research and data on other communities of color. For this reason, the Article is unable to provide an in-depth analysis of other minority communities that are also impacted by the system, like Latinx communities.

Additionally, there are many ways that family members of people who are under correctional control are impacted. Family members are often left to compensate for the financial, emotional, and physical loss of the individual under the control of the system.<sup>8</sup> For example, a non-incarcerated parent may need to work extra shifts or spend additional time caring for children. These requirements make it difficult to take unpaid time off from work to vote or to stay abreast of the issues to select a candidate. In this way, their vote is also impacted. There is limited discussion on this topic.

## II. BACKGROUND

The criminal justice system permeates every facet of life for those who are engulfed by it. The right to vote is not an exception. Criminal disenfranchisement, the act of prohibiting those who have been convicted of a crime from voting, is not a new practice.<sup>9</sup> The idea dates back to ancient Greek and Roman civilizations and carried over into early state constitutions in the late 1700s.<sup>10</sup> When Congress

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<sup>8</sup> See Emily W. Andersen, Note, "Not Ordinarily Relevant": *Bringing Family Responsibilities to the Federal Sentencing Table*, 56 B.C. L. REV. 1501, 1502-03 (2015).

<sup>9</sup> See, e.g., George Brooks, Comment, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 FORDHAM URB. L.J. 851, 852-54 (2005).

<sup>10</sup> JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 23-24 (Oxford Univ. Press 2006) (ebook).

passed the Fourteenth Amendment of the Constitution, they included a provision that permitted the disenfranchisement of those convicted of "participation in rebellion, or other crime."<sup>11</sup> This provision opened a loophole for southern states to disenfranchise Blacks by arresting them for minor offenses during the post-Reconstruction era.<sup>12</sup>

Criminal disenfranchisement laws went mostly unchallenged until the Supreme Court heard the first case on criminal disenfranchisement in 1885.<sup>13</sup> In that case, the Court upheld laws prohibiting those convicted of bigamy and polygamy from voting.<sup>14</sup> The Court reasoned that states had a right to withhold the privilege of voting from those who did not uphold the sanctity of marriage.<sup>15</sup>

Almost one hundred years passed before the Supreme Court re-addressed the issue of felony disenfranchisement in the matter of *Richardson v. Ramirez* in 1974.<sup>16</sup> The case is the most notable on the issue of criminal disenfranchisement. The case was brought by a group of California residents who were denied the right to register to vote because they had been convicted of a felony.<sup>17</sup> The Court relied on the language in Section 2 of the Fourteenth Amendment which states:

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.<sup>18</sup>

The Court determined that the words "except for participation in rebellion or other crime" permitted the disenfranchisement of felons.<sup>19</sup> It upheld California's right to disenfranchise those who were

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<sup>11</sup> *Id.* at 30.

<sup>12</sup> *See id.* at 43.

<sup>13</sup> *Murphy v. Ramsey*, 114 U.S. 15, 35 (1885).

<sup>14</sup> *Id.* at 43.

<sup>15</sup> *Id.* at 45.

<sup>16</sup> 418 U.S. 24, 26–27 (1974).

<sup>17</sup> *Id.* at 31–32.

<sup>18</sup> *Id.* at 42–43 (quoting U.S. CONST. amend. XIV, § 2) (emphasis added).

<sup>19</sup> *Id.* at 45–48.

convicted of a felony.<sup>20</sup> Interestingly, a few months after the Court reached its decision, voters in California passed Proposition 10, which gave felons who completed their sentence the right to vote.<sup>21</sup>

The present-day criminal justice system has extended far beyond felony disenfranchisement. The criminal justice system, as referred to in this Article, is the system of agencies and institutions responsible for addressing or preventing crime. The system includes but is not limited to, police, courts, judges, attorneys, bail bondsmen, legislators, probation, and parole officers.<sup>22</sup> In her book, *The New Jim Crow*, Michelle Alexander describes the criminal justice system as a "gateway into a much larger system of racial stigmatization and permanent marginalization" that leads to "legalized discrimination and permanent social exclusion" for people labeled as criminals by the system.<sup>23</sup> The system she is referring to is mass incarceration. Mass incarceration refers to all ways in which the criminal justice system obtains and maintains control over large groups of people, primarily Black people.<sup>24</sup> Incarceration goes beyond locking people in prisons and jails; it includes what Alexander terms as e-incarceration.<sup>25</sup> E-incarceration includes the many ways the criminal justice system supervises people outside of prisons and jails, such as electronic monitoring, probation, and parole.<sup>26</sup> Mass incarceration encompasses the rules, laws, and practices used by the criminal justice system to imprison, jail, and maintain supervision over those who are labeled as criminals. It includes laws, practices, and rules that make it difficult to escape the grasp of the system.<sup>27</sup>

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<sup>20</sup> *Id.* at 53–56.

<sup>21</sup> See *California Proposition 10, Voting Rights Restoration Amendment (1974)*, BALLOTPEdia, [https://ballotpedia.org/California\\_Proposition\\_10\\_Voting\\_Rights\\_Restoration\\_Amendment\\_\(1974\)](https://ballotpedia.org/California_Proposition_10_Voting_Rights_Restoration_Amendment_(1974)) (last visited Dec. 2, 2020).

<sup>22</sup> See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2020).

<sup>23</sup> *Id.* at 12–13.

<sup>24</sup> *Id.* at 8–9.

<sup>25</sup> See Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), <https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html>.

<sup>26</sup> *Id.*

<sup>27</sup> ALEXANDER, *supra* note 22, at 13.

Mass incarceration is responsible for 6.7 million people under correctional control.<sup>28</sup> The prison population exploded by 500% between 1985 and 2017, even though crime rates remained the same.<sup>29</sup> This growth can be attributed to law and policy changes such as mandatory minimums instituted during the War on Drugs.<sup>30</sup> It is well documented that minorities are disproportionately impacted by mass incarceration, despite the fact that they do not commit more crimes than any other race.<sup>31</sup> They are often unjustly targeted by the criminal justice system and are more likely to be wrongfully convicted.<sup>32</sup>

According to a report released by the National Registry of Exonerations, Blacks are seven times more likely to be wrongfully convicted of murder than Whites, three and a half times more likely to be wrongfully convicted of sexual assault than Whites, and twelve times more likely to be wrongfully convicted of a drug offense than Whites.<sup>33</sup> Black people are losing the right to vote for crimes they did not even commit. Despite these statistics, Black people are more likely to be stopped by police, detained pre-trial, incarcerated in jail and prisons, and placed under community supervision.<sup>34</sup> One in seventeen White men will be incarcerated in their lifetime.<sup>35</sup> Men of color fare much worse. One in three Black men will be incarcerated and one in six Latino men will be incarcerated.<sup>36</sup>

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<sup>28</sup> Alexi Jones, *Correctional Control 2018: Incarceration and Supervision by State*, PRISON POL'Y INITIATIVE (Dec. 2018), <https://www.prisonpolicy.org/reports/correctionalcon-2018.html>.

<sup>29</sup> *Fact Sheet: Trends in U.S. Corrections*, SENT'G PROJECT 2, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> (last updated June 2019).

<sup>30</sup> *Id.* at 3.

<sup>31</sup> Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INST. JUST. 2 (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

<sup>32</sup> Samuel R. Gross et al., *Race and Wrongful Convictions in the United States*, NAT'L REGISTRY EXONERATIONS 1 (Mar. 7, 2017), [http://www.law.umich.edu/special/exoneration/Documents/Race\\_and\\_Wrongful\\_Convictions.pdf](http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf).

<sup>33</sup> *Id.* at 3, 11, 16.

<sup>34</sup> *Id.* at 27.

<sup>35</sup> *Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance*, SENT'G PROJECT 1 (Mar. 2018), <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>.

<sup>36</sup> *Id.*

Women are also impacted by mass incarceration. Women's incarceration increased by almost 800% between 2010 and 2017.<sup>37</sup> Black women in particular are heavily impacted. While one in 111 White women will be incarcerated during their lifetime, one in eighteen Black women will be incarcerated during theirs.<sup>38</sup> Women make up thirteen percent of the female prison population, however, Black women make up forty-four percent the female prison population in the United States.<sup>39</sup>

Mass incarceration is legalized voter disenfranchisement and suppression targeted at minorities who have worked hard to gain and maintain the right. Minorities have been the targets of voter suppression since the founding of the country. The majority of Black people were unable to register to vote until after the Voting Rights Act of 1965.<sup>40</sup> Today, Black voters, especially Black women, can win elections.<sup>41</sup> Women of color, especially Black women, are increasingly showing up at the polls.<sup>42</sup> Black women voted at a higher percentage than every

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<sup>37</sup> *Fact Sheet: Incarcerated Women and Girls*, SENT'G PROJECT 1, <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf> (last updated June 2019).

<sup>38</sup> Michele Goodwin, *The New Jane Crow: Women's Mass Incarceration*, JUST SECURITY (July 20, 2020), <https://www.justsecurity.org/71509/the-new-jane-crow-womens-mass-incarceration/>.

<sup>39</sup> Elizabeth Swavola et al., *Overlooked: Women and Jails in an Era of Reform*, VERA INST. JUST. 11, 14 (2016), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy\\_downloads/overlooked-women-and-jails-report-updated.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf).

<sup>40</sup> See ALEXANDER, *supra* note 22, at 192–93.

<sup>41</sup> Andre M. Perry & David Harshbarger, *Why the Race for Black Voters Is the Most Important Democratic Primary of Them All*, BROOKINGS: AVENUE (Nov. 25, 2019), <https://www.brookings.edu/blog/the-avenue/2019/11/25/why-the-race-for-black-voters-is-the-most-important-democratic-primary-of-them-all/>; see also Adam Harris, *What Biden Owes Black Voters*, ATLANTIC (Nov. 11, 2020), <https://www.theatlantic.com/politics/archive/2020/11/black-voters-saved-joe-bidens-campaign/617055/> (noting the vital role Black voters had in the 2020 presidential election); Anna North, *6 Black Women Organizers on What Happened in Georgia – And What Comes Next*, VOX (Nov. 11, 2020, 9:00 AM), <https://www.vox.com/21556742/georgia-votes-election-organizers-stacey-abrams> (discussing the role Black women played in turning Georgia blue in the 2020 presidential election).

<sup>42</sup> Danyelle Solomon & Connor Maxwell, *Women of Color: A Collective Powerhouse in the U.S. Electorate*, CTR. FOR AM. PROGRESS (Nov. 19, 2019, 5:00 AM), <https://www.americanprogress.org/issues/race/reports/2019/11/19/477309/women-color-collective-powerhouse-u-s-electorate/>.

other demographic in the 2008 and 2012 elections.<sup>43</sup> Although there was a small drop in voter turnout among Black women in 2014, their turnout in 2018 was higher than the national average.<sup>44</sup>

These votes matter. An attack on their voting rights is an attack on all the policies these voters tend to support. These policies include a pathway to legal citizenship for undocumented immigrants, stricter gun laws, access to affordable healthcare, and reproductive rights to name a few.<sup>45</sup> More importantly, an attack on any individual's voting rights is an attack on democracy.

### III. METHODS OF DISENFRANCHISEMENT

#### A. Prisons

In 1976, there were approximately 1.17 million people disenfranchised due to a felony, and by 2016 that number amounted to 6.1 million people.<sup>46</sup> Who are these disenfranchised people? The answer largely depends on the state where the individual lives. State laws vary on what a felony is and whether a person convicted of a felony can vote.

Typically, a felony is a crime that results in imprisonment of more than one year.<sup>47</sup> However, states have the authority to legislatively define what a felony is in their state.<sup>48</sup> These laws can vary

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<sup>43</sup> *Gender Differences in Voter Turnout*, CTR. FOR AM. WOMEN & POL. (Sept. 16, 2019), <http://www.cawp.rutgers.edu/sites/default/files/resources/genderdiff.pdf>.

<sup>44</sup> Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, U.S. CENSUS BUREAU (Apr. 23, 2019), <https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html>.

<sup>45</sup> See Jessica A. Floyd, *The Policies & Candidates on Black Women's Minds for 2020*, EBONY (July 30, 2019), <https://www.ebony.com/news/the-policies-candidates-on-black-womens-minds-for-2020/>.

<sup>46</sup> Christopher Uggen et al., *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, SENT'G PROJECT 3 (Oct. 6, 2019), <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

<sup>47</sup> See Chief Justice Maureen O'Conner & Sara Andrews, *A National Perspective: 50 State Low Level Felony Sentencing Summary*, OHIO CRIM. SENT'G COMMISSION *passim* (May 2017), <https://www.sconet.state.oh.us/Boards/Sentencing/resources/general/50StateLowLevelFelonySentencingSummary.pdf>.

<sup>48</sup> See *id.*



drastically from state to state.<sup>49</sup> States set the felony threshold, the dollar amount at which theft becomes a felony as opposed to a misdemeanor.<sup>50</sup> For example, the felony theft threshold in Florida was \$300 up until 2019, when it was raised to \$750.<sup>51</sup> Therefore, a person accused of stealing a \$300 cell phone in Florida in 2018 would have been charged with a felony and prohibited from voting until their rights were restored.<sup>52</sup> Meanwhile, the same crime in Georgia would have been a misdemeanor with no impact on voting rights.<sup>53</sup>

Felony laws dictating which types of crimes amount to a felony also vary by state. In one state, a third DUI may be a felony; in another state, the same crime may be a misdemeanor.<sup>54</sup> Marijuana laws provide another good example as the laws on marijuana possession vary by state. In Arizona, possession of marijuana is a felony.<sup>55</sup> A conviction for possession of marijuana will bar you from voting until you complete your sentence, including probation, and pay all fines and restitution, assuming this is your first offense.<sup>56</sup> If this is not your first offense, you must wait two years before you can apply to have your civil rights restored.<sup>57</sup> Contrast this scenario with what would happen in Arizona's neighboring states of California, Colorado, and Nevada. Possession of marijuana for recreational use in these states has no criminal penalty and no legal effect on an individual's ability to vote.<sup>58</sup>

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<sup>49</sup> See *id.*

<sup>50</sup> *The Effects of Changing Felony Theft Thresholds*, PEW CHARITABLE TR. 1 (Apr. 2017), [https://www.pewtrusts.org/~media/assets/2017/04/pspp\\_the\\_effects\\_of\\_changing\\_felony\\_theft\\_thresholds.pdf](https://www.pewtrusts.org/~media/assets/2017/04/pspp_the_effects_of_changing_felony_theft_thresholds.pdf).

<sup>51</sup> See *id.* at 8; see also FLA. STAT. ANN. § 812.014(2)(c)(1) (West 2020) (noting the felony theft threshold change in 2019).

<sup>52</sup> See § 97.041(2)(b) (West 2020) (noting the criteria for voter eligibility); see also § 812.014(2)(c)(1) (noting the felony theft threshold).

<sup>53</sup> Marella Gayla, *What's the Punishment for Theft? Depends On What State You're In*, MARSHALL PROJECT (Aug. 9, 2017, 10:00 PM), <https://www.themarshallproject.org/2017/08/09/what-s-the-punishment-for-theft-depends-on-what-state-you-re-in>.

<sup>54</sup> John McCurley, *Felony DUI Charges*, CRIMINALDEFENSELAWYER, <https://www.criminaldefenselawyer.com/crime-penalties/federal/Felony-DUL.htm> (last visited Dec. 2, 2020).

<sup>55</sup> ARIZ. REV. STAT. ANN. § 13-3405(b) (West 2020).

<sup>56</sup> *Id.* § 13-907.

<sup>57</sup> *Id.* § 13-908.

<sup>58</sup> See CAL. HEALTH & SAFETY CODE § 11362.1 (West, Westlaw through Ch. 27 of 2020 Reg. Sess.); COLO. REV. STAT. ANN. art. 18, § 16 (West, Westlaw through Nov. 5, 2019 election); NEV. REV. STAT. ANN. § 678A.005 (West, Westlaw through end of 31st Spec. Sess. (2020) subject to change from reviser of Legis. Bureau).

These varying laws make it difficult to draw a homogenous picture of a felon. To further complicate matters, laws dictating whether a felon may vote also vary from state to state.<sup>59</sup> A felony may bar you from voting altogether in one state, whereas another state may allow everyone one with a conviction to vote, including those who are incarcerated.<sup>60</sup> Two states, Maine and Vermont, allow all felons, including those who are incarcerated, to vote.<sup>61</sup> All other states impose voting restrictions on people with a felony.<sup>62</sup> These voting restrictions tend to fall into one of four categories as outlined by Jeff Manza and Christopher Uggen: "(1) disenfranchisement only while incarcerated; (2) disenfranchisement while incarcerated and while on parole; (3) disenfranchisement for the length of the sentence (until completion of probation, parole, and incarceration); and (4) disenfranchisement after completion of sentence (ex-felons)."<sup>63</sup>

Eighteen states disenfranchise only those who are incarcerated in prison.<sup>64</sup> In other words, a felon can vote if they are not in prison. Most of these states lie in the Northeast. In 2016, only 14 states fell in this category.<sup>65</sup> Since then, Colorado, the District of Columbia, Nevada, and New Jersey revised their laws to join those states that allow all felons to vote if they are not incarcerated.<sup>66</sup>

Three states—California, Connecticut, and New York—disenfranchise felons only while incarcerated and on parole.<sup>67</sup> Those on probation and those who have completed their sentence, inclusive of parole, may vote.<sup>68</sup> Seventeen states disenfranchise felons until they have

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<sup>59</sup> See *Felon Voting Rights*, NAT'L CONF. ST. LEGISLATURES (Sept. 3, 2020), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>60</sup> See *id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> MANZA & UGGEN, *supra* note 10, at 64.

<sup>64</sup> As of 2019, the following states disenfranchise only those who are in prison: Colorado, District of Columbia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. See JEAN CHUNG, SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER 1, 1 (2019), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

<sup>65</sup> Uggen et al., *supra* note 46, at 4.

<sup>66</sup> See CHUNG, *supra* note 64, at 1.

<sup>67</sup> *Id.*

<sup>68</sup> See *id.*

completed their entire sentence, inclusive of probation of parole.<sup>69</sup> In states like Arizona, this means that if the court orders you to six years in prison, but you are released in three years, your right to vote cannot be restored until the completion of the court-ordered time of six years.<sup>70</sup> Eleven states have the strictest disenfranchisement laws; they disenfranchise all people with a felony, including those who have completed their sentence.<sup>71</sup>

Florida is notoriously known for its felony disenfranchisement and restoration process. In 2018, voters passed a law that would automatically restore voting rights of people convicted of a felony after they completed their sentence, inclusive of probation and parole.<sup>72</sup> Before the law passed, people convicted of a felony could not vote until they completed their sentence, waited 5-7 years, applied for restoration, and were granted restoration by the governor.<sup>73</sup> The restoration process was arbitrary and capricious. Between 2007 and 2011, the governor restored voting rights for 154,00 people.<sup>74</sup> Between 2011 and 2018, only 3,000 people had their voting rights restored.<sup>75</sup> The felony disenfranchisement population grew from 150,000 in 2010 to almost 1.7 million voters in 2016.<sup>76</sup> The disenfranchised population was twenty-seven percent of the national total of disenfranchised felons.<sup>77</sup> Forty-eight percent of those who remained disenfranchised after they completed their sentence lived in Florida.<sup>78</sup> Florida is one of four states where one in five Blacks are disenfranchised due to a felony

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<sup>69</sup> As of 2019, the following states disenfranchise felons until they have completed their sentence: Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin. *See id.*

<sup>70</sup> *See* ARIZ. REV. STAT. ANN. § 13-908(2020).

<sup>71</sup> The eleven states that disenfranchise those who are confined by prison, felony probation, parole and post sentence are: Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming. *See id.*

<sup>72</sup> FLA. STAT. ANN. § 98.0751 (West, Westlaw through the 2020 Second Reg. Sess. of 26th Leg. in effect through July 01, 2020); *see also* *Voting Rights Restoration Efforts in Florida*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida> (last updated Sept. 11, 2020).

<sup>73</sup> *Hand v. Scott*, 285 F. Supp. 3d 1289, 1292-93 (N.D. Fla. 2018), *vacated and remanded sub nom*, *Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020).

<sup>74</sup> *Id.* at 1310.

<sup>75</sup> *Id.*

<sup>76</sup> *Voting Rights Restoration Efforts in Florida*, *supra* note 72.

<sup>77</sup> Uggen et al., *supra* note 46.

<sup>78</sup> *Id.*

conviction.<sup>79</sup> In 2018, a Florida District Court judge found that Florida's restoration process violated the First and Fourteenth Amendments of the Constitution.<sup>80</sup>

Thanks to voters who supported Amendment 4 in the 2018 election, 1.4 million Florida voters gained back the right to vote.<sup>81</sup> Governor De Santis won the 2018 Gubernatorial race by approximately 32,000 votes, so we know that these votes have the potential to change elections.<sup>82</sup> Unfortunately, Florida continued to restrict voting for people with a felony by requiring them to pay all fines and fees before voting.<sup>83</sup> This requirement continues the practice of disenfranchisement. A person convicted of a felony with no means to pay their fines or a person who is making payments on their fines or fees will continue to be disenfranchised under Florida's law. Florida is just one example of how state laws continue to disenfranchise large populations, primarily Black populations.

### 1. Impact on Minority Communities

If you are familiar with the criminal justice system's disparate impact on the Black community, then it will come as no surprise to you that Blacks are disproportionately impacted by felony disenfranchisement laws. Researchers found that states with prison populations that are largely African American were more likely to institute felony disenfranchisement laws.<sup>84</sup> Black people make up sixty percent of the prison population.<sup>85</sup> One in every thirteen Black adults has lost their right to vote due to a felony conviction.<sup>86</sup> Black voters are four times more likely than the rest of the adult population to lose their right to vote due to a felony conviction.<sup>87</sup> In 2016, 2.2 million Blacks were

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<sup>79</sup> *Id.*

<sup>80</sup> *Hand*, 285 F. Supp. 3d at 1309.

<sup>81</sup> *See* CHUNG, *supra* note 64.

<sup>82</sup> Lulu Ramadan, *Florida Lawsuit Decries New Felon Voting Barriers as 'Poll Tax'*, PALM BEACH POST (July 1, 2019, 4:45 PM), <https://www.palm-beachpost.com/news/20190701/florida-lawsuit-decries-new-felon-voting-barriers-as-poll-tax>.

<sup>83</sup> Merrit Kennedy, *ACLU Sues over Florida Law That Requires Felons to Pay Fees, Fines Before Voting*, NPR (July 1, 2019, 5:42 PM), <https://www.npr.org/2019/07/01/737668646/aclu-sues-over-florida-law-that-requires-felons-to-pay-fees-fines-before-voting>.

<sup>84</sup> MANZA & UGGEN, *supra* note 10, at 67.

<sup>85</sup> *Fact Sheet: Trends in U.S. Corrections*, *supra* note 29, at 5.

<sup>86</sup> CHUNG, *supra* note 64, at 2.

<sup>87</sup> *Id.*

disenfranchised due to a felony conviction.<sup>88</sup> These are valuable votes that are lost in the Black community, which weakens the voice of the community. The epitome of a disenfranchised felon may vary from state to state due to the variety of laws on felonious crimes and felony disenfranchisement, but some generalizations apply to the population of disenfranchised voters as a whole. They are disproportionately people of color, more specifically Black men. Advocates have attempted to use this fact to challenge the practice of disenfranchising people with felonies.<sup>89</sup> Those attempts were unsuccessful.

## 2. Reform Efforts

Advocates have argued that felony disenfranchisement laws violate the Equal Protection Clause, the Voting Rights Act, the First Amendment, and the Eighth Amendment; all of which failed to dismantle the nationwide practice of felony disenfranchisement.<sup>90</sup> The Supreme Court has held that felony disenfranchisement is permitted under the Constitution unless there is intentional racial discrimination.<sup>91</sup>

Although judicial challenges have proven to be futile in achieving change, many states have chosen to reform their felony disenfranchisement laws to permit voting.<sup>92</sup> Disenfranchising felons has become an unpopular opinion. Sixty-nine percent of Americans favor granting felons the right to vote after they have completed their

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<sup>88</sup> See Uggen et al., *supra* note 46.

<sup>89</sup> ELIZABETH SIMSON, JUSTICE DENIED: HOW FELONY DISENFRANCHISEMENT LAWS UNDERMINE AMERICAN DEMOCRACY 34–35 (2002), <https://static.prisonpolicy.org/scans/lizfull-paper.pdf>.

<sup>90</sup> John Ghaelian, *Restoring the Vote: Former Felons, International Law, and the Eighth Amendment*, 40 HASTINGS CONST. L.Q. 757, 757 (2013) (providing that challenges have been made under the Fourteenth Amendment's Equal Protection Clause, the Voting Rights Act, and the Eighth Amendment); Janai S. Nelson, *The First Amendment, Equal Protection and Felon Disenfranchisement: A New Viewpoint*, 65 FLA. L. REV. 111, 111 (2013) (discussing the First Amendment and the Equal Protection Clause).

<sup>91</sup> *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

<sup>92</sup> MORGAN MCLEOD, EXPANDING THE VOTE: TWO DECADES OF FELONY DISENFRANCHISEMENT REFORMS 3 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf>.

sentence.<sup>93</sup> Thus far, legislation expanding voting rights has been the most effective tool at decreasing the disenfranchised population.<sup>94</sup>

The First Step Act of 2018 (FSA) is the most recent criminal justice reform effort.<sup>95</sup> The FSA contains a list of reforms, including but not limited to a mandate that the Department of Justice create a "risk and needs assessment system" that would assign a risk level to each prisoner and a corresponding recidivism reduction programming based on their risk assessment, provide an early release for good behavior, reduce mandatory minimums, and retroactively apply the Fair Sentencing Act of 2018, which attempted to compensate for the disparity in sentencing between crack cocaine and powder.<sup>96</sup> In 2019, approximately 3,000 federal prisoners were released for good behavior and 2,400 sentences were reduced as a result of the FSA.<sup>97</sup> The FSA was touted as the solution to reduce the federal prison population, but it does not reduce prison populations in state prison, where the majority of prisoners are held.<sup>98</sup>

Since 1997, at least twenty-five states have reformed their felony disenfranchisement laws to the benefit of disenfranchised felons.<sup>99</sup> In 2019, eight states, and the District of Columbia, introduced laws to reform practices that negatively impacted the right to vote for people with a felony.<sup>100</sup> Yet still, more must be done. In addition to changing laws related to voting, states should also evaluate felony criminal laws that lead to a bar of voting rights. Since 2000, most states have

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<sup>93</sup> Kristen Bialik, *How Americans View Some of the Voting Policies Approved at the Ballot Box*, PEW RES. CTR. (Nov. 15, 2018), <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.

<sup>94</sup> See MCLEOD, *supra* note 92.

<sup>95</sup> NATHAN JAMES, CONG. RESEARCH SERV., R45558, THE FIRST STEP ACT OF 2018: AN OVERVIEW 1 (2019).

<sup>96</sup> *Id.* at 1, 8–9, 16.

<sup>97</sup> U.S. DEPT OF JUSTICE, DEPARTMENT OF JUSTICE ANNOUNCES ENHANCEMENTS TO THE RISK ASSESSMENT SYSTEM AND UPDATES ON THE FIRST STEP ACT IMPLEMENTATION (2020), <https://www.justice.gov/opa/pr/department-justice-announces-enhancements-risk-assessment-system-and-updates-first-step-act>.

<sup>98</sup> See German Lopez, *The First Step Act, Explained*, VOX, <https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform> (last updated Feb. 5, 2009, 9:42 PM).

<sup>99</sup> CHUNG, *supra* note 64.

<sup>100</sup> *Mid Session Voting Rights Bills 2019*, CQ STATETRACK (June 24, 2019), <https://www.cqstatetrack.com/texis/statetrack/inession/viewrpt?report=5d112b944b&sid=&Report.workflow=tracking>.

increased their felony threshold to account for inflation.<sup>101</sup> In Georgia, the felony threshold was raised from \$500 to \$1,500 in 2012.<sup>102</sup> Oklahoma made the largest increase, percentage-wise, in 2001; the state increased its felony threshold from \$50 to \$500.<sup>103</sup> Before 2001, an individual who stole an item valued at \$50 could lose the right to vote in Oklahoma until they completed their sentence.<sup>104</sup> States should also look at which crimes amount to a felony and which felonies will lead to a bar on voting.

States that continue the practice of disenfranchising people who were convicted of a felony are damaging to the electoral process and minority communities. Six million, one hundred thousand people have lost their right to vote as a result of these laws.<sup>105</sup> While some states have chosen to side with popular opinion and expand voting rights, there is still more that needs to be done to account for this impediment to electoral representation, especially for communities of color. Although felony disenfranchisement laws and practices are the most notable stain on the electoral process left by the criminal justice system, they are not the only one.

### *B. Community Supervision*

Community supervision may be seen by some as a solution to mass incarceration. For most disenfranchised voters, it is another stain on the electoral process left behind by the criminal justice system. Community supervision refers to probation or parole. It is a beneficial alternative to prison for voters in states that limit disenfranchisement to those who are incarcerated.<sup>106</sup> However, it falls short in addressing the majority of people who are impacted by disenfranchisement laws. Seventy-seven percent of the people who are disenfranchised as a result of a felony are not in jail nor prison; they are at home.<sup>107</sup> They have either completed their sentence or are under community supervision. Felony disenfranchisement primarily refers to

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<sup>101</sup> *The Effects of Changing Felony Theft Thresholds*, *supra* note 50, at 1–2.

<sup>102</sup> *Id.* at 2–3.

<sup>103</sup> *Id.* at 2.

<sup>104</sup> *Id.*

<sup>105</sup> Uggen et al., *supra* note 46.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

disenfranchising those who are under community supervision as a result of a prior felony conviction.

Community supervision has risen drastically over the years. While reformers were focused on combatting mass incarceration and decreasing the United States' prison population, the probation and parole population rose to twice the size of the incarcerated population.<sup>108</sup> Four and one half million people are on probation or parole in the United States, the majority of them for non-violent offenses.<sup>109</sup> That is a 239% increase since 1980.<sup>110</sup> Three million, six hundred thousand people are on probation, while 870,000 are on parole.<sup>111</sup>

### 1. Impact on Minority Communities

Community supervision is detrimental to voting in two major ways. First, community supervision is detrimental to voting when states bar those under community supervision from voting. As discussed above, the rules on whether a person on probation or parole can vote vary from state to state. People on probation or parole as a result of a misdemeanor conviction are typically not barred from voting.<sup>112</sup> Thirty-one states disenfranchise those on felony probation and thirty-five states disenfranchise those on parole.<sup>113</sup> The resulting impact is the disenfranchisement of millions of people, primarily Black people.<sup>114</sup>

Like all other aspects of the criminal justice system, minorities are disproportionately subjected to community supervision. While Black people make up thirteen percent of the population, they make up thirty percent of those under community supervision.<sup>115</sup> Nationally, one

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<sup>108</sup> *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, PEW CHARITABLE TR. (Sept. 25, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Jones, *supra* note 28.

<sup>112</sup> Nicole D. Porter, *Voting in Jails*, SENT'G PROJECT (May 7, 2020), <https://www.sentencingproject.org/publications/voting-in-jails/>.

<sup>113</sup> *Felony Disenfranchisement Laws in the United States*, SENT'G PROJECT (Apr. 28, 2014), <https://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states/>.

<sup>114</sup> *Id.*

<sup>115</sup> Jones, *supra* note 28.



out of fifty-five adults is on probation or parole.<sup>116</sup> The number is much higher for Blacks. One out of twenty-three Black adults is on probation or parole.<sup>117</sup> Whites fare better than the national average and compared to Black adults. One out of eighty-one White adults is on probation or parole.<sup>118</sup> Women are also impacted by community supervision. Even though men are 3.5 times more likely to be under community supervision than women, the number of women under community supervision doubled to one million between 1990 and 2016.<sup>119</sup>

The second way community supervision impacts the right to vote is by funneling people into jail where there are barriers to voting or prison where they are prohibited from voting.<sup>120</sup> Community supervision often involves strict and unnecessary restrictions, reminiscent of Black codes instituted after slavery.<sup>121</sup> These rules can range from the requirement to pay fees; adherence to curfews; prohibition from associating with people who have criminal records, including friends or family; attending meetings or appointments; and passing drug tests.<sup>122</sup> The list of restrictions can vary from court to court and person to person. An individual under community supervision can be subjected to multiple restrictions. Any violation of the restrictions, referred to as a technical violation, could result in jail or prison time.<sup>123</sup> A missed appointment or spending time with a family member who committed

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<sup>116</sup> *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, *supra* note 108.

<sup>117</sup> Jake Horowitz & Connie Utada, *Community Supervision Marked by Racial and Gender Disparities*, PEW CHARITABLE TR. (Dec. 6, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities>.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Margaret Barthel, *Getting out the Vote from the County Jail*, ATLANTIC (Nov. 4, 2018), <https://www.theatlantic.com/politics/archive/2018/11/organizers-fight-turn-out-vote-county-jails/574783/> (exemplifying one aspect of potential voter disenfranchisement in jails); Porter, *supra* note 112.

<sup>121</sup> See Barbra Miner & Robert Smith, *OPINION: 'You are Still a Slave': How 'Reforms' Expand Our Racially Unjust 'Criminal Justice' System*, MILWAUKEE NNS (July 30, 2019), <https://milwaukeeenns.org/2019/07/30/opinion-you-are-still-a-slave-how-reforms-expand-our-racially-unjust-criminal-justice-system/> (comparing the differences between the Mississippi Black Codes of 1865 and Wisconsin's Rules of Supervision).

<sup>122</sup> Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1034–35 (2013).

<sup>123</sup> *Id.* at 1035–36.

a crime can lead to a jail or prison cell. A new criminal charge can also send a probationer back to jail, even if they have not been convicted of the crime.<sup>124</sup>

Forty-five percent of the prison population is serving time for a technical violation or for being charged with a new crime.<sup>125</sup> The mandates that come along with community supervision (i.e., paying fees, required meetings with probation officers, curfews, etc.) can be taxing on anyone, especially a person with a criminal record.<sup>126</sup> Meetings and other restrictions can disrupt work schedules. These restrictions are even more taxing on women.

Women still earn less than men, which makes it harder to pay fees and other required court costs.<sup>127</sup> Women earn eighty-two cents for every dollar that a man earns; Black women earn sixty-two cents and Hispanic women earn fifty-four cents for every dollar a White man makes.<sup>128</sup> Women are also more likely to be caregivers for their families. They tend to be responsible for transporting children to and from school, extracurricular activities, and other appointments, while also transporting elderly family members, running errands like grocery shopping, and maintaining employment.<sup>129</sup> This makes it even more difficult for women to keep appointments with probation or parole officers or any other court-ordered appointments. This puts women at

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<sup>124</sup> See Teresa Wiltz, *Doing Less Time: Some States Cut Back on Probation*, PEW CHARITABLE TR. (Apr. 26, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/26/doing-less-time-some-states-cut-back-on-probation>.

<sup>125</sup> *Confined and Costly*, COUNCIL ST. GOV'T JUST. CTR. (June 18, 2019), <https://csgjusticecenter.org/publications/confined-costly/>.

<sup>126</sup> See Bryan Tarnowski, *"Set up to Fail": The Impact of Offender-Funded Private Probation on the Poor*, HUM. RTS. WATCH (Feb. 20, 2018), <https://www.hrw.org/report/2018/02/21/set-fail/impact-offender-funded-private-probation-poor#> (exemplifying that many people can't afford an attorney, nor can they afford fines set by stringent probationary standards).

<sup>127</sup> See *Quantifying America's Gender Wage Gap by Race/Ethnicity*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (Mar. 2020), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/quantifying-americas-gender-wage-gap.pdf>.

<sup>128</sup> *Id.*

<sup>129</sup> See Maggie Germano, *Women Are Working More Than Ever, but They Still Take on Most Household Responsibilities*, FORBES (Mar. 27, 2019, 12:20 PM), <https://www.forbes.com/sites/maggiegermano/2019/03/27/women-are-working-more-than-ever-but-they-still-take-on-most-household-responsibilities/#1ff8a97952e9>; see also *Work & Family Data*, INST. FOR WOMEN'S POL'Y RES., <https://statusofwomendata.org/explore-the-data/work-family/read-the-full-section/> (last visited Dec. 2, 2020).

risk of probation revocation, leading to disenfranchisement or de facto disenfranchisement that occurs from jail confinement.<sup>130</sup>

The overuse of probation is detrimental to voters. While there is a benefit to avoiding jail and prison, there is a detriment to voters who lose the right to vote while on probation and voters who are subjecting to arduous restrictions that are sure to lead to probation revocation resulting in jail or prison time. Blacks are especially at risk since the make-up thirty percent of the probation population.<sup>131</sup> Women on probation or parole are also at risk of losing voting rights since the restrictions to maintain appointments and pay fines and fees tend to be more taxing on women than men.<sup>132</sup>

## 2. Reform

People under community supervision should maintain their right to vote. They are members of society. Some may argue that those under community supervision have not completed their sentence or paid their debt to society.<sup>133</sup> Therefore, they should not have the privilege to vote. Voting is a right, not a treat given for good behavior.<sup>134</sup> People under community supervision should be encouraged to invest in the well-being of their communities and participate in their communities instead of casting them as outcasts. It is hypocritical to ask people under community supervision to be upstanding members of society without giving them the right to fully participate in their communities by voting. People under community supervision should have a say in the laws that govern their lives and the lives of their children and family. They should have a vote on decisions that impact the schools their children attend, the social services provided

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<sup>130</sup> *Felony Disenfranchisement Rates for Women*, SENT'G PROJECT, <https://static.prison-policy.org/scans/sp/fvr-women.pdf> (last visited Dec. 2, 2020).

<sup>131</sup> Horowitz & Utada, *supra* note 117.

<sup>132</sup> See Linda Sydney, *Gender-Responsive Strategies for Women Offenders*, U.S. Dep't Just.: NAT'L INST. CORRECTIONS (Oct. 2005), <https://info.nicic.gov/nicrp/system/files/020419.pdf>.

<sup>133</sup> See, e.g., Pamela Wood, *Hogan Vetoes Bill Allowing Felons to Vote Sooner*, BALT. SUN (May 22, 2015, 8:14 PM), <https://www.baltimoresun.com/politics/bs-md-hogan-bill-decisions-20150522-story.html#page=1> (showing an example of politicians taking the position that one has to earn the right to vote).

<sup>134</sup> Garrett Epps, *Voting: Right or Privilege?*, ATLANTIC (Sept. 18, 2012), <https://www.theatlantic.com/national/archive/2012/09/voting-right-or-privilege/262511/> (highlighting that the Constitution's explicitly mentioning that voting is a right several times suggests it is indeed a right).

to their parents, the reproductive rights they receive, and all other decisions that impact them and their communities. State legislators should revise their laws to allow those under community supervision to vote.

States should also eliminate unnecessary fees, appointments, and petty restrictions that come along with community supervision.<sup>135</sup> These mandates are unnecessary impediments to the lives of people who are already dealing with other side effects of the criminal justice system, like obtaining and maintaining gainful employment. When community supervision results in the imposition of unnecessary restriction, it creates a gateway to prison and jail for petty violations.<sup>136</sup> Community supervision impedes the right to vote for those who live in states where they are prohibited from voting while under supervision.<sup>137</sup> It is a threat to the right to vote for those who are placed under difficult restrictions, the violation of which leads to jail where there are barriers to voting or prison where voting is prohibited.<sup>138</sup> States must reform the use of community supervision to protect the voting rights of those under the system and their communities.

### C. Jails

Most people in jail maintain the right to vote.<sup>139</sup> They are disenfranchised not by law, but by barriers that make voting impractical.<sup>140</sup> Jails differ from prisons. Prisons typically house people who have been convicted of a felony. As described above, these people are disenfranchised in all but two states.<sup>141</sup> Jails typically house three categories of people: (1) those convicted of misdemeanors; (2) those awaiting trial (referred to as pretrial detention); and (3) those who have been convicted of a felony and are awaiting transfer to a prison.<sup>142</sup> People serving jail time for misdemeanors typically do not lose their right to vote, and people awaiting trial never lose their

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<sup>135</sup> See Christopher Uggen & Robert Stewart, *Piling on: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871, 1872 (2015).

<sup>136</sup> See Klingele, *supra* note 122, at 1030–36.

<sup>137</sup> Uggen & Stewart, *supra* note 135, at 1902–07.

<sup>138</sup> See *id.*

<sup>139</sup> See Barthel, *supra* note 120.

<sup>140</sup> See Klingele, *supra* note 122, at 1034–35.

<sup>141</sup> *Felon Voting Rights*, *supra* note 59.

<sup>142</sup> See Dana Paikowsky, *Jails As Polling Places: Living up to the Obligation to Enfranchise the Voters We Jail*, 54 HARV. C.R.-C.L. L. REV. 829, 834–35 (2019).

right to vote as they have not been convicted of a crime.<sup>143</sup> The Supreme Court has affirmed that misdemeanants and pretrial detainees who are eligible to vote must be provided a means to do so.<sup>144</sup>

The laws regarding voting in jail vary from state to state. Most states do not disenfranchise those convicted of a misdemeanor unless the conviction is tied to election fraud. States like South Carolina, which prohibits those serving time for a criminal misdemeanor from voting, are rare.<sup>145</sup> Most states permit those serving time in jail to vote.<sup>146</sup> In general, a jail detainee votes in one of two ways: in person at the polling site inside the jail or by absentee ballot.<sup>147</sup> Jails that allow voting to take place inside the jail, like in Cook County, Illinois, are in the minority.<sup>148</sup> The Cook County Jail became the first jail in the country to have an official polling location.<sup>149</sup> The Cook County Jail is one of the largest jails in the country and houses approximately 6,100 people on any given day.<sup>150</sup> More than 1,200 detainees voted in person at the new jail polling site during the 2020 primary election.<sup>151</sup>

Other jails, like the District of Columbia Jail, facilitate in-person voting via an absentee ballot that the detainee completes and gives to an election official.<sup>152</sup> Detainees are given the option to register to vote during intake.<sup>153</sup> Election officials hand-deliver ballots to the detainees a week before the election.<sup>154</sup> An election official is present to answer questions and collect the ballots after the detainees have

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<sup>143</sup> See *id.*

<sup>144</sup> See *O'Brien v. Skinner*, 414 US 524, 531 (1974).

<sup>145</sup> See S.C. CODE ANN. § 7-5-120 (West, Westlaw through 2020 Act No. 142).

<sup>146</sup> See Paikowsky, *supra* note 142, at 834–35.

<sup>147</sup> See Porter, *supra* note 112, at 6–10.

<sup>148</sup> See *id.*

<sup>149</sup> Marin Scott, *Pretrial Detainees to Vote at First Polling Place in Cook County Jail*, CHI. SUN TIMES (Feb. 20, 2020, 4:32 PM), <https://chicago.suntimes.com/2020/2/20/21141112/pretrial-detainees-to-vote-at-first-polling-place-in-cook-county-jail>.

<sup>150</sup> *Corrections*, COOK COUNTY SHERIFF'S OFF., <https://www.cookcountysheriff.org/cook-county-department-of-corrections/> (last visited Dec. 2, 2020).

<sup>151</sup> Don Babwin, *Detainees Walk Out of Cells, into Voting Booths in Chicago*, U.S. NEWS (Mar. 16, 2020, 5:03 PM), <https://www.usnews.com/news/politics/articles/2020-03-16/detainees-walk-out-of-cells-into-voting-booths-in-chicago>.

<sup>152</sup> *Voting Guide for Incarcerated and Returning Citizens*, D.C. BOARD ELECTIONS, [https://dcboe.org/getattachment/Data-Resources-Forms/Forms-and-Resources/ReturningCitizens\\_4-30-18.pdf.aspx?lang=en-US](https://dcboe.org/getattachment/Data-Resources-Forms/Forms-and-Resources/ReturningCitizens_4-30-18.pdf.aspx?lang=en-US) (last visited Dec. 2, 2020).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

completed them.<sup>155</sup> Unfortunately, most jail detainees do not have the benefit of a polling place in their jail nor election officials who arrive with ballots to assist with voting.<sup>156</sup>

Most detainees are limited to voting by absentee ballot without assistance from officials. There are many complications for detainees voting in this manner. First, detainees generally must request a ballot. Figuring out how to request a ballot can be challenging for a detainee with limited or no access to the internet or phone. Seventeen states provide an online absentee ballot application.<sup>157</sup> Many other states require a detainee to write to the election officials in their jurisdiction to request an absentee ballot.<sup>158</sup> Inmates have limited and restricted internet access if they have any at all.<sup>159</sup> This makes it almost impossible to complete a form online and difficult to figure out where to mail a request for a ballot. To further complicate matters, some jails have mail restrictions that may unintentionally impact a detainee's ability to receive a ballot.<sup>160</sup>

There are many other reasons why a detainee would be discouraged from voting that are not imposed by the system, but result from the system.<sup>161</sup> For those detainees that manage to obtain a ballot, they are faced with making the difficult choices we all make when choosing a candidate or a position on an issue. Except detainees must make these decisions with limited access to information.<sup>162</sup> They do not have the benefit of gathering information about candidates and initiatives from the internet, televised debates, political advertisements,

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<sup>155</sup> Mark Segaves, *Non-Felon Prisoners Vote at DC Jail* (NBC News 4 television broadcast Nov. 2, 2016), <https://www.nbcwashington.com/news/local/non-felon-prisoners-vote-at-dc-jail/111940/>.

<sup>156</sup> *Id.*

<sup>157</sup> *VOPP: Table 6: States with Web-Based and Online Absentee Ballot Applications*, NAT'L CONF. ST. LEGISLATORS (July 15, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-6-states-with-web-based-and-online-absentee-ballot-applications.aspx>.

<sup>158</sup> *See id.*

<sup>159</sup> Bianca C. Reisdorf, *Unlocking Potential: Internet and Prisons*, BENTON INST. FOR BROADBAND & SOC'Y (Apr. 15, 2016), <https://www.benton.org/blog/unlocking-potential-internet-and-prisons>.

<sup>160</sup> *E.g.*, 83 N.Y. JUR. 2d *Penal and Correctional Facilities* § 239 (West 2020) [hereinafter *Penal and Correctional Facilities*] (summarizing inmates' mail restrictions in N.Y.).

<sup>161</sup> Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here's Why Few Do.*, MOTHER JONES (June 11, 2019), <https://www.motherjones.com/politics/2019/06/prisoners-in-just-two-states-can-vote-heres-why-few-do/>.

<sup>162</sup> *See* Reisdorf, *supra* note 159; *Penal and Correctional Facilities*, *supra* note 160.

community events, or campaign events with the candidates.<sup>163</sup> Choosing a candidate can be an overwhelming task for anyone. This task is especially challenging for a detainee who has limited access to information.

Some may have lost faith in a system they view as unjust as a result of pre-trial detention simply because they are unable to pay bail or are serving time for a minor crime.<sup>164</sup> Detainees may avoid voting because they are occupied with current detainment and impending trial, or they mistakenly assume they are unable to vote.<sup>165</sup>

There are many ways to address the de facto disenfranchisement of detainees. Reducing the jail population is certainly one way to address the issue.<sup>166</sup> This solution may seem terrifying to those who envision jail as a place where dangerous criminals are held. The reality is that the overwhelming majority of people in jail are those who have not been convicted of a crime.<sup>167</sup> Local jails house approximately 630,000 people on a given day.<sup>168</sup> Of those 630,000, around 470,000 are in jail awaiting trial.<sup>169</sup> The remaining 160,000 have been convicted of misdemeanors that result in less than a year of jail time.<sup>170</sup> In Cook County's Jail, ninety-eight percent of the inmates were there awaiting trial.<sup>171</sup> Many of those awaiting trial are held in jail not because they are deemed too dangerous to be released, but mostly

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<sup>163</sup> See Reisdorf, *supra* note 159; *Penal and Correctional Facilities*, *supra* note 160 (stating that detainees are restricted not only physically, but also in access to multiple sources of information).

<sup>164</sup> Miriam Krinsky, *Elected Prosecutors File Amicus Brief Urging Appellate Court to Affirm Right to Counsel in Bail Hearings*, FAIR & JUST PROSECUTION (Feb. 14, 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/02/Galveston-Brief-Release-FINAL.pdf> (discussing how a lack of counsel during bail proceedings results in outcomes that "erode[] public trust in the integrity of the criminal justice process").

<sup>165</sup> Naila S. Awan & Shruti Banerjee, *How to End De Facto Disenfranchisement in the Criminal Justice System*, DĒMOS (May 2020), [https://www.demos.org/sites/default/files/2020-05/How%20to%20End%20De%20Facto%20Disenfranchisement%20in%20the%20Criminal%20Justice%20System\\_0.pdf](https://www.demos.org/sites/default/files/2020-05/How%20to%20End%20De%20Facto%20Disenfranchisement%20in%20the%20Criminal%20Justice%20System_0.pdf).

<sup>166</sup> See Alexi Jones, *Does Our County Really Need a Bigger Jail?*, PRISON POL'Y INITIATIVE (May 2019), <https://www.prisonpolicy.org/reports/jailexpansion.html>.

<sup>167</sup> Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL'Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Scott, *supra* note 149.

because they are unable to pay bail.<sup>172</sup> One report estimates that 400,000 people are in jail because they could not afford bail.<sup>173</sup>

The laws and practices related to pretrial detention vary from state to state. In general, after a person is charged with a crime, they go before a judge who will determine whether the accused should remain in jail until their court date.<sup>174</sup> If a judge decides that the person can be released, they next determine the conditions of the release, which could include the requirement to pay a certain amount of money (bail) to ensure their return to court or require the accused to adhere to certain conditions during their release.<sup>175</sup> If bail is required and the person is unable to afford the bail, they remain in jail. If the accused has money to pay the bail, they are released. Essentially, the accused, who has not been convicted of a crime, is detained for their inability to pay when bail is ordered.<sup>176</sup>

Studies show that an individual can spend between 50 and 200 days in jail awaiting trial for a felony offense.<sup>177</sup> Those who are familiar with the jail system know that pretrial detention can last much longer than 200 days.<sup>178</sup> Take the popular case of Kalief Browder, who spent three years at Riker's Island awaiting trial while he was a teenager.<sup>179</sup> He was released after the case was dismissed, and he committed suicide two years later at the age of twenty-two.<sup>180</sup> Browder's case may seem like an extreme anomaly, but his case is not an outlier. In 2015, one year before the 2016 presidential election, Riker's Island held more than 400 detainees who had been awaiting

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<sup>172</sup> See, e.g., Patrick Liu et al., *The Economics of Bail and Pretrial Detention*, HAMILTON PROJECT 3 (2018), [http://www.hamiltonproject.org/assets/files/BailFineReform\\_EA\\_121818\\_6PM.pdf](http://www.hamiltonproject.org/assets/files/BailFineReform_EA_121818_6PM.pdf).

<sup>173</sup> *Id.* at 13.

<sup>174</sup> See, e.g., *id.* at 3.

<sup>175</sup> *Id.*

<sup>176</sup> See, e.g., *id.* at 4.

<sup>177</sup> *Id.* at 5.

<sup>178</sup> See Spencer Woodman, *Incarcerated for Years Without Trial*, TYPE INVESTIGATIONS (Nov. 16, 2016), <https://www.typeinvestigations.org/investigation/2016/11/16/incarcerated-years-without-trial/>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*



trial for more than two years.<sup>181</sup> In 2019, more than 1,800 people were detained in New York City for more than a year before their trial.<sup>182</sup>

These votes matter. In some cases, they can make or break an election. Florida Senator Rick Scott won the 2018 election for senator by approximately 10,000 votes over the incumbent, Bill Nelson.<sup>183</sup> During the 2018 midterm elections, Florida housed more than 50,000 detainees in jail awaiting trial.<sup>184</sup> The number of detainees who voted is unknown.<sup>185</sup>

It should come as no surprise that Blacks are more likely to be detained before trial and receive higher bail amounts when they are offered.<sup>186</sup> Women are not immune to the system either. While women were increasing their participation at the polls, the number of women in jail also began to increase.<sup>187</sup> The number of women in jail has increased by 787% since 1980, double the increase in men.<sup>188</sup> There are approximately 101,000 women in jail.<sup>189</sup> Like men, the majority of women are in jail for a non-violent crime. Sixty thousand of them have not been convicted.<sup>190</sup> The unnecessary detention of women,

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<sup>181</sup> Michael Schwirtz & Michael Winerip, *New Plan to Shrink Rikers Island Population: Tackle Court Delays*, N.Y. TIMES (Apr. 13, 2015), [https://www.nytimes.com/2015/04/14/nyregion/mayor-de-blasios-plan-to-shrink-rikers-population-tackle-court-delays.html?\\_r=0](https://www.nytimes.com/2015/04/14/nyregion/mayor-de-blasios-plan-to-shrink-rikers-population-tackle-court-delays.html?_r=0).

<sup>182</sup> *Biannual Report on Progress Towards Closing Jails on Rikers Island*, MAYOR'S OFF. CRIM. JUST. (Mar. 5, 2020), <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/03/LL192-Report-Final.pdf>.

<sup>183</sup> *November 6, 2018 General Election*, FLA. DEP'T ST., <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=> (last visited Dec. 2, 2020).

<sup>184</sup> See *Florida County Detention Facilities Average Inmate Population November 2018*, FLA. DEP'T CORRECTIONS (2018), <http://www.dc.state.fl.us/pub/jails/2018/jails-2018-11.pdf>.

<sup>185</sup> Cf. *id.* (illustrating the lack of data on the number of detainees awaiting trial who voted during the 2018 midterm election).

<sup>186</sup> See Léon Digard & Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, VERA INST. JUST. 7 (2019), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

<sup>187</sup> Hannah Hartig, *In Year of Record Midterm Turnout, Women Continued to Vote at Higher Rates than Men*, PEW RES. CTR. (May 3, 2019), <https://www.pewresearch.org/fact-tank/2019/05/03/in-year-of-record-midterm-turnout-women-continued-to-vote-at-higher-rates-than-men/>; Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Oct. 29, 2019), <https://www.prisonpolicy.org/reports/pie2019women.html>.

<sup>188</sup> *Incarceration Trends in Florida*, VERA (2019), <https://www.vera.org/downloads/pdf-downloads/state-incarceration-trends-florida.pdf>.

<sup>189</sup> Kajstura, *supra* note 187.

<sup>190</sup> *Id.*

in particular, can be detrimental to the gains they have made at the polls.

### 1. Reform

Many jurisdictions are beginning to publicly acknowledge that their pretrial detention policies are problematic for numerous reasons.<sup>191</sup> Pretrial detainees are more likely to be convicted, plead guilty, receive longer sentences, and commit new crimes.<sup>192</sup> Additionally, pretrial detainees are at a disadvantage when it comes to preparing for their trial since they have limited access to information, limited contact with the outside world, including their attorney, and are unable to work to pay legal fees.<sup>193</sup>

Pretrial detention can lead to job loss, housing loss, and disruptions to families and communities for an individual who has not been convicted of a crime.<sup>194</sup> These disruptions impact not only the detainee's ability and willingness to vote, but that of the detainee's immediate family as well. Family members of a defendant who is detained are often faced with a loss of income due to the detainment and the additional need to make money to cover expenses associated with detainment, such as legal representation and money for calls, or e-mails to and from the detainee.<sup>195</sup> These additional burdens make it difficult for a family member to consider taking unpaid leave to vote.

Incarcerating an individual because they are unable to pay for their release violates the Equal Protection Clause of the Fourteenth Amendment.<sup>196</sup> The Bail Reform Act of 1966 mandates that judges consider the conditions of pretrial release on a case-by-case basis, and it requires judges to consider the defendant's danger to the community and what is necessary to ensure that the defendant will return to

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<sup>191</sup> See Cindy Redcross et al., *Evaluation of Pretrial Justice System Reforms that Use the Public Safety Assessment*, MDRC CTR. FOR CRIM. JUST. RES. 3 (2019), [https://www.mdrc.org/sites/default/files/PSA\\_Mecklenburg\\_Brief1.pdf](https://www.mdrc.org/sites/default/files/PSA_Mecklenburg_Brief1.pdf).

<sup>192</sup> Digard & Swavola, *supra* note 186, at 3–4.

<sup>193</sup> *Id.* at 1.

<sup>194</sup> *Id.* at 6.

<sup>195</sup> *Id.* at 7.

<sup>196</sup> See Alison M. Smith, *U.S. Constitutional Limits on State Money-Bail Practices for Criminal Defendants*, CONG. RES. SERV. 2–3 (Feb. 26, 2019), <https://fas.org/sgp/crs/misc/R45533.pdf>.

face trial.<sup>197</sup> Additionally, the Act prohibits the judge from ordering a bail amount that the defendant is unable to pay.<sup>198</sup> Despite these reforms, the number of people held in pretrial detention increased 433% between 1970 and 2015 even though violent crimes, property crimes, and arrests decreased.<sup>199</sup>

Many reformers argue that the solution to the overwhelming growth in pretrial detention is the elimination of cash bail.<sup>200</sup> Proponents of cash bail argue that it is a way to ensure the accused returns to court.<sup>201</sup> If the accused does not return, they forfeit the money posted for bail. In cases where the accused used a bail bondsman, the bondsman becomes a bounty hunter who seeks out the accused. Other studies have shown that cash bail is unnecessary. One study found that cash bail is ineffective at reducing failure to appear.<sup>202</sup> There are other penalties for failure to appear in court. A court can issue a bench warrant and additional charges for failure to appear.

The District of Columbia effectively eliminated cash bail in 1992 with positive results.<sup>203</sup> More than ninety percent of the defendants released pretrial returned for their court appearance; eighty-seven percent were not arrested for a new crime while awaiting trial.<sup>204</sup> Many states are choosing to reform their pretrial detention policies by moving towards the presumption that defendants should be released, eliminating commercial bail, and eliminating or reducing the

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<sup>197</sup> Bail Reform Act of 1966, Pub. L. No. 89-465, § 2, 80 Stat. 214.

<sup>198</sup> *Id.*; see also Brief for U.S. as Amici Curiae Supporting Plaintiffs at 1, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC (M.D. Ala. Sept. 14, 2015), <https://www.justice.gov/file/340461/download>.

<sup>199</sup> Digard & Swavola, *supra* note 186, at 1–2.

<sup>200</sup> See Adureh Onyekwere, *How Cash Bail Works*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/how-cash-bail-works> (last updated June 2, 2020).

<sup>201</sup> *Id.*

<sup>202</sup> See Aurèlie Ouss & Megan Stevenson, *Bail, Jail, and Pretrial Misconduct: The Influence of Prosecutors*, SSRN (June 20, 2020), <http://dx.doi.org/10.2139/ssrn.3335138>.

<sup>203</sup> See Teresa Wiltz, *Locked Up: Is Cash Bail on the Way Out?*, PEW CHARITABLE TR. (Mar. 1, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2017/03/01/locked-up-is-cash-bail-on-the-way-out>.

<sup>204</sup> See *PSA's Risk Assessment Ensures Fair Administration of Pretrial Justice in the District of Columbia*, PRETRIAL SERVS. AGENCY FOR D.C. (2020), <https://www.psa.gov/sites/default/files/Pretrial%20Risk%20Assessment%20in%20DC-Status%20Statement-May%202020%20FINAL.pdf>.

use of their cash bail system.<sup>205</sup> New Jersey, Cook County, Illinois, and California are just a few jurisdictions that have made the move towards reducing their pretrial detention population by eliminating or reducing the use of cash bail.<sup>206</sup>

Even if detainees are given adequate access to voting through jail polling sites or absentee ballots, detaining them for their inability to pay fosters an apathetic sentiment or disdain toward political participation. It builds distrust in the government. Pretrial detention has morphed into a system that is wholly unnecessary to achieve its purported goal—protecting the community from dangerous people and ensuring a defendant will return to court.<sup>207</sup> It is essential to reform the policies that create barriers for people in jail. The best reform efforts must include eliminating the cash bail system, which impacts the majority of those in jail today. Jail detainees will benefit from access to polling sites in jail or at least assistance from election officials by handing out absentee ballots in jail and collecting them.<sup>208</sup> Additionally, jail detainees would benefit from voter education to clarify the voting laws.

#### *D. Criminalizing the Vote*

The laws on who can vote vary from state to state. It is the voter's responsibility to know whether their state permits them to vote. The consequences of voting in a state where you are ineligible to vote can be devastating. For example, Crystal Mason cast a provisional ballot in a Texas election while she was on supervised release. Mason was unaware that being on supervised release prohibited her from voting.<sup>209</sup> She was charged with illegal voting, a second-degree felony with a sentence ranging from two to twenty years of incarceration.<sup>210</sup> The Texas Court of Appeals held that it was irrelevant whether

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<sup>205</sup> See *Where Pretrial Improvements Are Happening*; PRETRIAL JUST. INST 1 (Jan. 17, 2019), [https://www.prisonpolicy.org/scans/pji/where\\_pretrial\\_improvements\\_are\\_happening\\_jan2019.pdf](https://www.prisonpolicy.org/scans/pji/where_pretrial_improvements_are_happening_jan2019.pdf).

<sup>206</sup> *Id.* at 1, 19–20.

<sup>207</sup> See Digard & Swavola, *supra* note 186, at 2–6; Liu et al., *supra* note 172, at 3.

<sup>208</sup> Porter, *supra* note 112, at 5–6, 13–14.

<sup>209</sup> *Mason v. Texas*, 598 S.W.3d 755, 763–65, 770 (Tex. App. 2020).

<sup>210</sup> *Id.* at 766.

Mason knew she was ineligible to vote.<sup>211</sup> She was sentenced to five years of imprisonment.<sup>212</sup>

Mason was the caretaker for her three children, her brother's four children, and her grandchildren.<sup>213</sup> Her daughter put off college to help take care of the family after her mother's conviction.<sup>214</sup> Her story exemplifies how the criminal justice system can impact a family. It is also a horror story that serves as an intimidation tactic to voters who are unsure about their right to vote. Mason was quoted as stating, "I'll never vote again."<sup>215</sup> It should be noted that Mason's vote was never counted.<sup>216</sup> Her provisional ballot, like all provisional ballots, was reviewed to determine whether she was an eligible voter.<sup>217</sup>

Mason is not alone. A dozen people were arrested and charged with illegal voting in Alamance County, North Carolina, after they voted in the 2016 presidential election.<sup>218</sup> All twelve were either on probation or parole for a felony conviction.<sup>219</sup> Nine of the twelve were Black.<sup>220</sup> United States residents who vote are also subject to criminal penalties and deportation. For example, Rosa Maria Ortega was sentenced to eight years of prison<sup>221</sup> and subsequently sent to the U.S. Immigration Customs Enforcement (ICE) for deportation proceedings after she voted in the State of Texas.<sup>222</sup> Ortega's attorney

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<sup>211</sup> *Id.* at 770.

<sup>212</sup> *Id.* at 762.

<sup>213</sup> Sam Levine, *Texas Upholds Sentence for Woman Who Didn't Know She Was Ineligible to Vote*, GUARDIAN, <https://www.theguardian.com/us-news/2020/mar/20/crystal-mason-texas-upholds-sentence-voter-suppression> (last updated Sept. 22, 2020, 2:22 PM).

<sup>214</sup> *Id.*

<sup>215</sup> Meagan Flynn, *Texas Woman Sentenced to 5 Years in Prison for Voting While on Probation*, WASH. POST (Mar. 30, 2018, 6:01 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2018/03/30/texas-woman-sentenced-to-5-years-in-prison-for-voting-while-on-probation/>.

<sup>216</sup> *Id.*; see also *Mason*, 598 S.W.3d at 774–75.

<sup>217</sup> *Id.*

<sup>218</sup> Jack Healy, *Arrested, Jailed and Charged with a Felony. For Voting.*, N.Y. TIMES (Aug. 2, 2018), <https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html>.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Ortega v. Texas*, No. 02-17-00039-CR, 2018 WL 6113166, at \*1 (Tex. App. Nov. 21, 2018).

<sup>222</sup> Gus Garcia-Roberts, *Texas Woman Sentenced to Eight Years for Illegal Voting Paroled, Faces Deportation*, USA TODAY, <https://www.usatoday.com/story/news/2020/02/21/rosa-maria-ortega-texas-woman-sentenced-8-years-illegal-voting-paroled-and-faces-deportation/4798922002/> (last updated Feb. 22, 2020, 12:45 PM).

argued that she was poorly educated and unaware that it was illegal for her to vote as a U.S. resident.<sup>223</sup>

Numerous studies, courts, and government investigations, including the Trump administration's investigation found that voter fraud is very rare.<sup>224</sup> Despite this, there is renewed interest in voter fraud, especially as it relates to felons and non-citizens. The practice of prohibiting non-citizens from voting is fairly new in the history of our democracy. The first federal law prohibiting noncitizens from voting in federal elections was passed in 1996.<sup>225</sup> Today, most jurisdictions prohibit non-citizens from voting.<sup>226</sup> According to the Heritage Foundation, a conservative research institution, there were only six cases of ineligible voting in North Carolina between 1986 and 2017.<sup>227</sup> By 2019, the United States Attorney for the Eastern District of North Carolina, Robert J. Higdon, Jr., charged nineteen foreign nationals with illegally voting.<sup>228</sup> He did not stop there. He also subpoenaed the North Carolina State Board of Elections for additional records related to non-citizens.<sup>229</sup> Higdon argues that these charges are necessary to protect the votes of citizens.<sup>230</sup>

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<sup>223</sup> *Id.*

<sup>224</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUST. (Jan. 31, 2017), <https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>; see also Marina Villeneuve, *Report: Trump Commission Did Not Find Widespread Voter Fraud*, AP NEWS (Aug. 3, 2018), <https://apnews.com/f5f6a73b2af546ee97816bb35e82c18d/Report:Trump-commission-did-not-find-widespread-voter-fraud>.

<sup>225</sup> *Can Noncitizens Vote in the United States?*, FINDLAW, <https://www.findlaw.com/voting/my-voting-guide/can-noncitizens-vote-in-the-united-states.html> (last updated July 30, 2020); 18 U.S.C. § 611 (2018).

<sup>226</sup> *Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEDIA, [https://ballotpedia.org/Laws\\_permitting\\_noncitizens\\_to\\_vote\\_in\\_the\\_United\\_States](https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States) (last visited Dec. 2, 2020).

<sup>227</sup> Heritage Found., *A Sampling of Election Fraud Cases From Across the Country*, WHITE HOUSE <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/pacei-voterfraud-cases.pdf> (last visited Dec. 2, 2020).

<sup>228</sup> *19 Foreign Nationals Indicted for Illegally Voting in 2016 Elections*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT: ICE NEWSROOM, <https://www.ice.gov/news/releases/19-foreign-nationals-indicted-illegally-voting-2016-elections> (last updated Sept. 3, 2020).

<sup>229</sup> Subpoena to Testify Before a Grand Jury, No.2017R00240(2) (E.D.N.C. Aug. 31, 2018), [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2018-09-07/State\\_Subpoenas\\_%5BPublic%5D.PDF](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2018-09-07/State_Subpoenas_%5BPublic%5D.PDF).

<sup>230</sup> *Nash County Man Sentenced for Voting by an Alien*, U.S. DEP'T JUST. (Aug. 9, 2018), <https://www.justice.gov/usao-ednc/pr/nash-county-man-sentenced-voting-alien>.

The integrity of elections should be protected. We can do this without harsh penalties for ineligible voters who mistakenly vote. Penalizing ineligible voters for improperly voting does not prevent ineligible voters who vote because they thought they were eligible. These penal laws only serve as intimidation tactics for voters, including eligible voters. In most cases, there is no harm because the ballots are not counted if the person is not an eligible voter.<sup>231</sup> A more practical and less invasive solution to prevent ineligible voters from voting would be voter education. Voter education is essential in clarifying the voter laws that apply to each jurisdiction, especially since they vary from state to state.<sup>232</sup> All voters would be better served by having access to clear concise information on who can vote and how.

Additionally, states should analyze why disenfranchised populations like felons and non-citizen immigrants are permitted to contribute to society through working and paying taxes but denied the benefits of participating in the democracy that governs them.<sup>233</sup> There is no constitutional prohibition against permitting felons to vote, and there is no constitutional prohibition against permitting non-citizens from voting either.

### *E. Prison Gerrymandering*

A discussion regarding disenfranchisement due to the criminal justice system would be incomplete if it did not include a discussion regarding prison gerrymandering. Prison gerrymandering is the practice of drawing election district lines based on an inmate's prison address instead of their pre-incarceration address.<sup>234</sup> The most notorious example is that of Ward 2 in Anamosa, Iowa, where Danny Young was

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<sup>231</sup> See 52 U.S.C.A. § 21082 (West 2002).

<sup>232</sup> Danielle Root & Liz Kennedy, *Increasing Voter Participation in America: Policies to Drive Participation and Make Voting More Convenient*, CTR. FOR AM. PROGRESS (July 11, 2018, 12:01 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/07/11/453319/increasing-voter-participation-america/>.

<sup>233</sup> Ron Hayduk, *Why Non-Citizens Should Be Allowed to Vote*, JACOBIN (Nov. 6, 2018), <https://jacobinmag.com/2018/11/noncitizen-voting-undocumented-immigrants-midterm-elections>.

<sup>234</sup> *Prison Based Gerrymandering*, LDF (Nov. 6, 2018), <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform/>.

elected to a City Council seat with only two votes.<sup>235</sup> The two votes were written in by his wife and neighbor.<sup>236</sup> Anamosa was divided into equal wards, each comprised of about 1,400 people.<sup>237</sup> Young's ward was comprised of 1,300 disenfranchised inmates and fifty-eight people who did not reside at the prison.<sup>238</sup> Effectively, the votes of those fifty-eight people held more weight than voters in other wards that were not comprised of inmates.<sup>239</sup> Anamosa is not an outlier. There are many more examples of this sort of prison gerrymandering that create electoral districts where most of the constituents are inmates.<sup>240</sup>

Most jurisdictions rely on census data to draw electoral districts with equal populations so that each person has an equal vote.<sup>241</sup> Since the first census, the Census Bureau has counted inmates as residents of the places they are incarcerated.<sup>242</sup> This results in many jurisdictions counting inmates as residents of the prison where they are incarcerated. Despite critique, the Census Bureau is determined to continue this practice. In its response to public comments about the policy, the Census Bureau stated:

The practice of counting prisoners at the correctional facility is consistent with the concept of usual residence, as established by the Census Act of 1790. . . . '[U]sual residence' is defined as the place where a person lives and sleeps most of the time, which is not always the same as their legal residence, voting residence, or where they prefer to be counted. Therefore, counting prisoners anywhere other than the facility would be less consistent with the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison.<sup>243</sup>

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<sup>235</sup> Sam Roberts, *Census Bureau's Counting of Prisoners Benefits Some Rural Voting Districts*, N.Y. TIMES (Oct. 23, 2008), <https://www.nytimes.com/2008/10/24/us/politics/24census.html>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> See Peter Wagner, *Breaking the Census: Redistricting in an Era of Mass Incarceration*, 38 WM. MITCHELL L. REV. 1241, 1243–46 (2012) (discussing list of electoral districts with a population that is majority inmates).

<sup>241</sup> *Id.* at 1247.

<sup>242</sup> Hansi Lo Wang & Kumari Devarajan, *'Your Body Being Used': Where Prisoners Who Can't Vote Fill Voting Districts*, NPR (Dec. 31, 2019, 5:00 AM), <https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts>.

<sup>243</sup> See Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525-01, 5528 (U.S. Dep't of Commerce Feb. 8, 2018).



The Census Bureau fails to take into account the changes in the prison system since 1790, the growth of the incarcerated population, and the impact the policy has on communities of color who are incarcerated at a significantly higher rate than Whites.<sup>244</sup> The issue with this policy is that many prisons are located in rural areas.<sup>245</sup> In contrast, inmates tend to come from cities.<sup>246</sup> When inmates are counted as residents of the areas where they are housed, the political representation in that area is bolstered, while it is diminished in the areas where the inmates come from.<sup>247</sup> Since Blacks and Latinx tend to be overrepresented in prisons, their communities end up losing political power.

### 1. Reform

Many districts have recognized that this policy creates unfair representation. The practice of counting inmates who have no right to vote as residents of the areas where they are confined to bolster the voting power of rural areas is reminiscent of the practice of counting slaves as 3/5 of a person to bolster the White southern vote.<sup>248</sup> Like the slaves, inmates are counted and represented by electors who have no incentive to represent their interests.

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<sup>244</sup> See *Prison Populations and the Census – FAQ*, PRISON POLY INITIATIVE: PRISON GERRYMANDERING PROJECT, <https://www.prisonersofthecensus.org/faq.html> (last updated Aug. 10, 2020); see also Peter Wagner & Daniel Kopf, *The Racial Geography of Mass Incarceration*, PRISON POLY INITIATIVE (July 2015), <https://www.prisonpolicy.org/racialgeography/report.html>.

<sup>245</sup> See Tracy L. Huling, *Prison As a Growth Industry in Rural America: An Exploratory Discussion of the Effects on Young African American Men in the Inner Cities*, in *THE CRISIS OF THE YOUNG AFRICAN AMERICAN MALE IN THE INNER CITIES: A CONSULTATION OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS* 15, 16 (2000); see also Sonya R. Porter et al., *Correctional Facility and Inmate Locations: Urban and Rural Status Patterns*, U.S. CENSUS BUREAU: CTR. FOR ADMIN. RECS. RES. & APPLICATIONS 2, 6–9, <https://www.census.gov/content/dam/Census/library/working-papers/2017/adrm/carra-wp-2017-08.pdf> (last visited Dec. 2, 2020); Wagner & Kopf, *supra* note 244 (noting that there were 161 counties across 31 states where incarcerated Blacks outnumbered Blacks who were not incarcerated, and 20 counties in 10 states where the number of incarcerated Latinos outnumbered Latinos who were not incarcerated).

<sup>246</sup> Porter et al., *supra* note 245, at 2, 9.

<sup>247</sup> See Wang & Devarajan, *supra* note 242.

<sup>248</sup> See ALEXANDER, *supra* note 22, at 193.

Anamosa decided to correct the problem by eliminating the prison from their district.<sup>249</sup> A dozen states have introduced legislation to either count incarcerated people as residents of their pre-incarceration address or exclude inmates from the population count altogether.<sup>250</sup> In 2012, the Supreme Court affirmed Maryland's state law that required inmates to be counted as residents of their pre-incarceration address to redistrict.<sup>251</sup> In doing so, the Court affirmed the lower court's holding that states are permitted to adjust census data when redistricting as long as the adjustment is nonarbitrary.<sup>252</sup> Therefore, states are not required to rely solely on census data when redistricting.

After the 2010 Census, the Census Bureau released data on incarcerated people to assist those districts that want to take the number into account when drawing their electoral districts.<sup>253</sup> After the 2020 Census, the Bureau will take the additional step of collaborating with states to provide them data to reallocate each inmate to their pre-incarceration address.<sup>254</sup> Critics argue that inmates should be counted where they are incarcerated because they utilize the resources (fire, ambulance, etc.) of that community.<sup>255</sup> There are other ways to account for funding without the practice of prison gerrymandering. Federal funding is generally given in blocks without regard to prison population counts.<sup>256</sup> Critics also argue that it would be too costly to count inmates as residents of their pre-incarceration address.<sup>257</sup> The reality is that the cost of counting inmates as residents of their pre-

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<sup>249</sup> See Roberts, *supra* note 235.

<sup>250</sup> See *Legislation*, PRISON POLY INITIATIVE: PRISON GERRYMANDERING PROJECT, <https://www.prisonersofthecensus.org/legislation.html> (last visited Dec. 2, 2020) (noting that California, Colorado, Delaware, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Tennessee, Virginia, and Washington have introduced such legislation).

<sup>251</sup> Fletcher v. Lamone, 831 F. Supp. 2d 887, 897 (D. Md. 2011), *aff'd*, 567 U.S. 930 (2012).

<sup>252</sup> *Id.* at 893–97.

<sup>253</sup> See Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5528 (U.S. Dept of Commerce Feb. 8, 2018).

<sup>254</sup> See *id.*

<sup>255</sup> See Wang & Devarajan, *supra* note 242.

<sup>256</sup> See, e.g., *The Census Bureau's Prison Miscount: It's About Political Power, Not Funding*, PRISON POLY INITIATIVE (Sept. 16, 2013), [https://www.prisonersofthecensus.org/factsheets/ny/political\\_power\\_not\\_money.pdf](https://www.prisonersofthecensus.org/factsheets/ny/political_power_not_money.pdf).

<sup>257</sup> See U.S. CENSUS BUREAU, REPORT: TABULATING PRISONERS AT THEIR "PERMANENT HOME OF RECORD" ADDRESS 1–2, 13 (2006), [https://images.procon.org/wp-content/uploads/sites/48/tabulating\\_prisoners.pdf](https://images.procon.org/wp-content/uploads/sites/48/tabulating_prisoners.pdf) (asserting it would cost around \$250 million to count inmates at their pre-incarceration address).

incarceration address is relatively small in comparison to a state budget. For example, it would cost \$50,000 for Maryland to count inmates as residents of the pre-incarceration address.<sup>258</sup> This cost would likely be reduced once the Census Bureau releases its data on prison populations.

One man, one vote is the mantra of our voting system. Prison gerrymandering extends the removal of inmates from the electoral process by weakening the voting power of the communities they come from.<sup>259</sup> Meanwhile, it bolsters the representation of the communities where they are incarcerated. Some jurisdictions have chosen to completely remove inmates from the counts when drawing electoral districts.<sup>260</sup> This resolves the issue of bolstering representation in rural areas. However, it negatively impacts Black and Latinx communities. These communities are overrepresented in prisons due to systematic racism. The voices of these communities are weakened when we remove them from the electoral count.

The solution is to count inmates as residents of their pre-incarceration address. This can be achieved by collecting addresses from inmates upon arrival and then collaborating with the Census Bureau to reallocate the inmates to the appropriate address. This way, the communities they return to maintain their representation.

#### IV. DEFUND THE POLICE

Activist have long been concerned with the detrimental impact police have on minority communities. W.E.B Dubois called for the abolition of the police in 1935.<sup>261</sup> The Black Panther Party renewed the calls for police reform in 1960s and 1970s by demanding an end to police brutality, harassment, and abuse.<sup>262</sup> These early calls for police reform were mostly ignored, until now.<sup>263</sup> In 2020, protestors,

<sup>258</sup> MD. GEN. ASSEMB. DEP'T LEGIS. SERVS., FISCAL AND POLICY NOTE, S. 2010-400, 1st Sess., at 1-2 (2010), [http://mlis.state.md.us/2010rs/fnotes/bil\\_0000/sb0400.pdf](http://mlis.state.md.us/2010rs/fnotes/bil_0000/sb0400.pdf).

<sup>259</sup> See Wang & Devarajan, *supra* note 242.

<sup>260</sup> See *id.*

<sup>261</sup> W.E.B. Du Bois, *Black Reconstruction in America*, 163-166 (Routledge 2017) (1935).

<sup>262</sup> See David Ray Papke, *The Black Panther's Party Narrative of Resistance*, 18 VT. L. REV. 645 (1994).

<sup>263</sup> See Maya King, *How 'Defund the Police' Went from Moonshot to Mainstream*, POLITICO (June 17, 2020, 4:30 AM), <https://www.politico.com/news/2020/06/17/defund-police-mainstream-324816>.

galvanized by the deaths of George Floyd, Breonna Taylor, and many others killed by police, filled the streets with calls to "defund the police" in an effort to end police brutality and institutional racism.<sup>264</sup> State legislatures in a handful of cities affirmatively responded to protestors by introducing legislation to reduce police budgets.<sup>265</sup>

A core tenet of calls to defund the police is that funds given to police should be reallocated towards services that benefit the community.<sup>266</sup> The concept of defunding the police is not limited to economic funds, instead it encompasses reforming how communities are policed.<sup>267</sup> When viewed from this perspective, calls to "defund the police" are aligned with reducing voter disenfranchisement and suppression caused by the criminal justice system. An effective method of limiting or eliminating the criminal justice system's role in voter disenfranchisement and suppression is to limit or eliminate the contact people have with the system. The more contact people have with the criminal justice system, the less likely they will be permitted to vote, and the more likely they will not want to vote.<sup>268</sup>

Many of the issues described in this Article start with police contact. Felon disenfranchisement, jail disenfranchisement, probation, even prison gerrymandering all start with police.<sup>269</sup> Police must also bear some responsibility for the disproportionate impact that the criminal justice system has on minorities.<sup>270</sup> Institutional racism within the police is an unavoidable consequence of a police force that was tasked with enforcing slavery, Jim Crow, Black codes, segregation, and racism.<sup>271</sup> The result is a police force that plays a significant role in voter disenfranchisement and suppression of the people who have a

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<sup>264</sup> See *id.*

<sup>265</sup> See *id.*

<sup>266</sup> See *id.*

<sup>267</sup> See *id.*

<sup>268</sup> Ariel White, *Even Very Short Jail Sentences Drive People Away from Voting*, WASH. POST (Mar. 28, 2019, 11:45 AM), <https://www.washingtonpost.com/outlook/2019/03/28/even-very-short-jail-sentences-drive-people-away-voting/>.

<sup>269</sup> See Maya King, *How 'Defund the Police' Went from Moonshot to Mainstream*, POLITICO (June 17, 2020, 4:30 AM), <https://www.politico.com/news/2020/06/17/defund-police-mainstream-324816>.

<sup>270</sup> See Alexi Jones, *Police Stops Are Still Marred by Racial Discrimination, New Data Shows*, PRISON POLY INITIATIVE (Oct. 12, 2018), <https://www.prisonpolicy.org/blog/2018/10/12/policing/>.

<sup>271</sup> See Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, NAT'L INST. JUST. 3-9 (1990), <https://www.ncjrs.gov/pdffiles1/nij/121019.pdf>.

vested interest in voting on how they are policed, and a community that loses faith in the system represented by the police, leaving them apathetic towards voting.

Police are generally the first and most prevalent contact with the criminal justice system.<sup>272</sup> There can be no solution to any of these issues without correcting the over-policing of minority communities. Any reform to the criminal justice system and mass incarceration must include police reform. For these reasons, defunding the police and changing the way the police interact with the public is essential to reducing mass incarceration and weakening the impact of the criminal justice system on voting.

Funding previously allocated toward police should be reallocated towards initiatives that eliminate voter disenfranchisement caused by, or resulting from, the criminal justice system. Such initiatives should include ending mass incarceration, removing barriers to voting, and voter education. These initiatives should be targeted at benefiting minority communities, as they have been most impacted by the criminal justice system. Reallocating police funds towards these initiatives can be a powerful tool to ameliorate the detrimental impact police imposed on the electoral process.

## V. CONCLUSION

The criminal justice system and mass incarceration have created a system that legalizes voter disenfranchisement and voter suppression. Mass incarceration has led to the disenfranchisement of millions of voters, predominantly Black voters.<sup>273</sup> Legislators must take a thorough look at current laws, practices, and policies that lead to the disenfranchisement of people who are under correctional control. Felon disenfranchisement can be eliminated. Maine and Vermont allow people in prison to vote.<sup>274</sup> Other states should follow suit or at least

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<sup>272</sup> Victor E. Kappeler, *What Is the Place of Police Within the Criminal Justice System?*, EASTERN KY. U. (Oct. 15, 2012), <https://plsonline.eku.edu/insideloook/what-place-police-within-criminal-justice-system>.

<sup>273</sup> See Robert D. Crutchfield & Gregory A. Weeks, *The Effects of Mass Incarceration on Communities of Color*, ISSUES SCI. & TECH. (2015), <https://issues.org/the-effects-of-mass-incarceration-on-communities-of-color/>.

<sup>274</sup> Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here's Why Few Do.*, MARSHALL PROJECT (June 11, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do>.

grant the right to vote to those who are no longer in prison. States should also evaluate their felony thresholds to determine whether the amount should be raised to account for inflation and to expand voting rights to people who are unjustly disenfranchised. Lastly, states should evaluate their felony laws that lead to disenfranchisement (e.g., states that disenfranchise as a result of marijuana possession).

While most states disenfranchise prisoners, people in jail generally maintain their right to vote. Yet these individuals face barriers to voting that are erected by the criminal justice system.<sup>275</sup> The majority of people impacted by these barriers have not been convicted of a crime.<sup>276</sup> States must take a close look at the pretrial detention policies to reduce jail populations. Community supervision is not the solution, it is part of the problem. Community supervision creates a path towards jail and prison when it implements unnecessary restrictions that lead to minor violations.<sup>277</sup> States should not only remove these unnecessary restrictions, but they should also end the practice of disenfranchising those on community supervision. People on probation or parole should be permitted to engage with their communities by participating in the electoral process.

Criminalizing voter errors is both voter disenfranchisement and voter suppression. Voters are disenfranchised and re-incarcerated for an honest mistake when they are sentenced to years in prison for voting. These laws only serve to intimidate voters. They do nothing to prevent from voting in error. States should educate voters, poll workers, prison officials, and probation and parole supervisors on voting laws instead of criminalizing honest mistakes. The practice of prison gerrymandering must end. It results in minority communities losing their voice and impacts their ability to play a role in democracy.<sup>278</sup> States should count inmates as residents of their pre-incarceration address, especially since the system has unjustly impacted those communities.

Many reforms can be made to refund the vote to those who have lost it as a result of the criminal justice system. The disenfranchisement of people under correctional control, criminalizing voting,

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<sup>275</sup> See *Felon Voting Rights*, *supra* note 59.

<sup>276</sup> Sawyer & Wagner, *supra* note 167.

<sup>277</sup> See Kingele, *supra* note 122, at 1015, 1019, 1044.

<sup>278</sup> See Patricia Okonta, *Race-Based Political Exclusion and Social Subjugation: Racial Gerrymandering As a Badge of Slavery*, 49 COLUM. HUM. RTS. L. REV. 254, 255 (2018).

and prison gerrymandering are all symptoms of a broken system. Legislation can work to cure some of these symptoms. To make true progress, the illness—the criminal justice system that employs mass incarceration—must be cured. We cure the illness by dismantling the system. This starts with defunding the police and allocating those funds towards rehabilitation and voter education.