



PROTECTING THE VOTE FOR ALL AMERICANS

## TESTIMONY TO NEW MEXICO HOUSE OF REPRESENTATIVES

### IN SUPPORT OF HB 74

January 29, 2021

Fair Elections Center submits this testimony in support of HB 74 because it will bring New Mexico's laws in line with eighteen other states that restore voting rights upon release from incarceration; it is consistent with a current nationwide trend in favor of making restoration easier, so as to facilitate and secure offenders' reentry; and it will reduce public confusion surrounding the state's voter eligibility requirements.

Fair Elections Center is a national, nonpartisan voting rights and election reform organization which works to remove barriers to registration and voting for traditionally underrepresented constituencies. Formed in 2017 to continue the work of the Fair Elections Legal Network, the Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations. In 2018, the Center obtained a first-of-its-kind ruling in federal court holding Florida's former, arbitrary felon disenfranchisement and restoration scheme was unconstitutional. The Center engages in legislative advocacy campaigns and litigation seeking to reform state felony disenfranchisement and restoration systems across the country.

Fair Elections Center urges the passage of this bill for the following reasons:

**New Mexico will join many states that restore voting rights upon release from incarceration.** Eighteen states plus the District of Columbia currently restore voting rights to persons with felony convictions upon their release from prison. These states include a number of Western states: Colorado, Utah, Nevada, and Montana.<sup>1</sup> According to an October 2020 report by The Sentencing Project, over 11,000 parolees and probationers in New Mexico remain disenfranchised even though they have rejoined society.<sup>2</sup>

Some may have concerns regarding those who have committed serious, violent, and repeat felonies. The proper way to address those concerns is through the state's criminal code and judicial sentencing, not by tinkering with the laws of voting eligibility and adding more complexity and differentiation of felons who have already completed their prison terms. Stripping felons of their right to vote is merely a collateral consequence of conviction and sentencing. It is not disenfranchisement that deters crime; nor does withholding the right to vote disincentivize repeat

offenses. By contrast, people who have studied the issue have in fact found promising evidence that restoration of the right to vote is positively correlated with a reduction in recidivism. Controlling for other factors, the study found that those with a previous arrest who subsequently voted were considerably less likely to be rearrested than those who did not.<sup>3</sup> This makes sense. If we want people to rejoin society and live productive, law-abiding lives, then we should reintegrate them into society. As that study's authors write, "[v]oting appears to be part of a package of pro-social behavior that is linked to desistance from crime."<sup>4</sup> These returning citizens work, pay taxes, raise families, go to church, coach sports, and yet cannot participate in our civic life.

**HB 74 is part of a nationwide trend.** This bill is also consistent with the overwhelming nationwide trend. In 2019, Colorado enacted HB 1266 and Nevada passed AB 431, amending the states' reenfranchisement laws to restore the right to vote to individuals on parole and probation.<sup>5</sup> New Jersey adopted the same restoration rule just last year.<sup>6</sup> In 2016, Maryland changed its laws to effect restoration of the right to vote following release from incarceration, and in 2006, Rhode Island did the same.<sup>7</sup> In 2018, though the statute has not been amended, Governor Andrew Cuomo restored the voting rights of parolees by executive order.<sup>8</sup> In other states that have not adopted restoration after release from incarceration, the trend has still pointed towards earlier restoration. In 2018, Florida adopted an amendment to its Constitution that restored the right to vote to felons who have completed all terms of their sentence, excluding those convicted of murder and sex offenses.<sup>9</sup> In a year of closely-divided U.S. Senate and gubernatorial elections that were decided by less than 1 percent of the vote, this amendment passed with 64.5 percent of the vote, showing the broad bipartisan support for earlier restoration.

Additional recent changes to restoration laws include Louisiana moving up the point of restoration for parolees and probationers,<sup>10</sup> and Texas and Delaware eliminating their waiting periods for restoration.<sup>11</sup> And Kentucky and Iowa's Governors have issued executive orders restoring tens of thousands of residents with felony convictions.<sup>12</sup> The trend is towards easing, not delaying, felons' path back into civic life.

**HB 74 will eliminate confusion.** Finally, HB 74 will clear up public confusion over the rules of voting eligibility in New Mexico. Many felons released from incarceration assume that their right to vote has been restored. After all, they have rejoined society, so it is a reasonable assumption. This bill will create a simple rule, thereby greatly reducing, if not eliminating, instances of unwitting registration by ineligible felons. The state's only disenfranchised felons will be those who are presently incarcerated and who typically lack easy access to voter registration forms and resources. This greatly minimizes the risk that any ineligible person will register in error.

Thank you for considering these points. Fair Elections Center urges passage of HB 74. If you have any questions or need further information, please contact Jon Sherman, Senior Counsel, Fair Elections Center, (202) 248-5346, [jsherman@fairelectionscenter.org](mailto:jsherman@fairelectionscenter.org).

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<sup>1</sup> The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction 5* (Oct. 30, 2020), *available*

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at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>. There are four groups of states that restore voting rights by operation of law, *i.e.* not in a discretionary manner: (1) D.C. MUN. REGS. tit. 3 § 500.2; COLO. REV. STAT. § 1-2-103(4); HAW. REV. STAT. § 831-2(a)(1); ILL. CONST. art. III, § 2, 730; ILL. COMP. STAT. 5/5-5-5; IND. CODE §§ 3-7-13-4, 3-7-13-5; MD. CODE ANN. ELEC. LAW § 3-102(b)(1); MASS. CONST. amend. art. III, MASS. GEN. LAWS ch. 51, § 1; MICH. COMP. LAWS § 168.758b; MONT. CONST. art. IV, § 2, MONT. CODE ANN. § 46-18-801(2); NEV. REV. STAT. § 213.157(1); N.H. REV. STAT. ANN. §§ 607-A:2, 607-A:3; N.J. STAT. ANN. §§ 2C:51-3, 19:4-1(8); New York Executive Order No. 181 (2018), [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_181.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf); N.D. CENT. CODE ANN. §§ 12.1-33-01, 12.1-33-03; OHIO REV. CODE ANN. § 2961.01(A); OR. REV. STAT. § 137.281(7); 25 PA. CONS. STAT. §§ 2602(t), 2602(w) 3146.1, <http://www.votespa.com/en-us/Pages/Convicted-Felon.aspx>; R.I. CONST. art. II, § 1; UTAH CODE ANN. § 20A-2-101.5(2) (restoration upon release from incarceration); (2) CAL. ELEC. CODE § 2101(a); CONN. GEN. STAT. §§ 9-46, 9-46a (restoration after completion of parole, but prior to the end of probation); (3) ALASKA STAT. § 15.05.030; ARK. CONST. amend. 51, § 11(d); DEL. CODE ANN. tit. 15, §§ 6103, 6104; DEL. CONST. art. 5, § 2 (automatic restoration except permanent disenfranchisement for certain disqualifying felony convictions); GA. CONST. art. II, § I, para. III; IDAHO CODE ANN. § 18-310(2); KAN. STAT. ANN. §§ 21-6613, 22-3722; LA. CONST. art. I, §§ 10, 20; MINN. STAT. § 609.165; MO. REV. STAT. § 115.133; N.M. STAT. ANN. § 31-13-1; N.C. GEN. STAT. ANN. §§ 13-1, 13-2; OKLA. STAT. tit. 26, § 4-101; S.C. CODE ANN. § 7-5-120(B); S.D. CODIFIED LAWS § 24-5-2; TEX. ELEC. CODE ANN. § 11.002; WASH. REV. CODE § 29A.08.520(1); W. VA. CODE § 3-2-2; WIS. STAT. § 304.078(2) (restoration following completion of parole and probation); and (4) NEB. REV. STAT. ANN. § 29-112 (restoration two years after completion of sentence). Alabama and Tennessee have complex systems for restoration, but they have created a path for non-discretionary restoration of the right to vote based on objective criteria for felons who are not permanently disenfranchised. The permanently disenfranchised must seek a pardon. ALA. CODE §§ 15-22-36, 15-22-36.1; TENN. CODE ANN. §§ 40-29-202–40-29-204. Finally, an additional two states, Maine and Vermont, do not disenfranchise felons even during incarceration. ME. CONST. art. II, § 1; VT. STAT. ANN. tit. 28, § 807(a).

<sup>2</sup> *Locked Out 2020*, at 16.

<sup>3</sup> Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004); *see also* Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 427 (2012).

<sup>4</sup> Uggen & Manza, *Voting and Subsequent Crime and Arrest*, at 195.

<sup>5</sup> [https://leg.colorado.gov/sites/default/files/2019a\\_1266\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2019a_1266_signed.pdf);  
[https://www.leg.state.nv.us/Session/80th2019/Bills/AB/AB431\\_EN.pdf](https://www.leg.state.nv.us/Session/80th2019/Bills/AB/AB431_EN.pdf).

<sup>6</sup> <https://legiscan.com/NJ/bill/A5823/2018>

<sup>7</sup> MD. CODE ANN. ELEC. LAW § 3-102(b)(1).

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<sup>8</sup> [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_181.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf).

<sup>9</sup> See Fla. Dept. of State, Voting Restoration Amendment, 14-01, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Dec. 4, 2018), full text of Amendment 4 *available at* <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf>.

<sup>10</sup> Disenfranchisement News: Louisiana Expands Voting Rights to People on Probation and Parole, The Sentencing Project (May 24, 2018), <https://www.sentencingproject.org/news/6243/>.

<sup>11</sup> <https://legiscan.com/DE/bill/HB10/2013>; Jean Chung, Felony Disenfranchisement: A Primer, The Sentencing Project (June 27, 2019) (Table 2), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

<sup>12</sup> [https://governor.ky.gov/attachments/20191212\\_Executive-Order\\_2019-003.pdf](https://governor.ky.gov/attachments/20191212_Executive-Order_2019-003.pdf); [https://governor.iowa.gov/sites/default/files/documents/EO7%20-%20Voting%20Restoration.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://governor.iowa.gov/sites/default/files/documents/EO7%20-%20Voting%20Restoration.pdf?utm_medium=email&utm_source=govdelivery).