



PRISONERS' LEGAL SERVICES
OF MASSACHUSETTS



September 30, 2020

William Galvin
Secretary of the Commonwealth

Michelle Tassinari
Director and Legal Counsel, Office of the Secretary of the Commonwealth

Cc' Attorney General Maura Healey

Dear Secretary Galvin and Director Tassinari,

More than 40 years ago, in *O'Brien v. Skinner*, the Supreme Court affirmed that states cannot deny eligible incarcerated voters access to the ballot simply because they are incarcerated. Yet, every election cycle including in this month's primary election, eligible voters in Massachusetts did not or could not vote while incarcerated.

As in all states, Massachusetts citizens 18+ who are held on pre-trial detention maintain the right to vote, and additionally, those held on misdemeanor convictions or civil commitments maintain the right to vote as well. That these citizens have access to the ballot is a fundamental democracy issue - the right to vote maintained on paper must not be denied in practice to thousands of citizens. What's more, civic participation reduces the likelihood of re-arrest, and, protecting and promoting access to the ballot is in the interest of public safety.¹

As the rest of the nation mobilizes around ensuring justice-involved citizens can exercise their constitutional right to vote, Massachusetts should be able to take pride in leading on this issue. **We are writing to you today to ask that you issue clear guidance to systematize and secure access to the ballot for those who maintain their right to vote while held in state custody. Our letter details the problems that must be addressed in that guidance, and we are attaching best practices that we urge you to consider.**

Our coalition has found that eligible voters who are incarcerated on Election Day are unable to participate in our elections for two main reasons, also detailed in a [2019 Report from the Emancipation Initiative](#):

- *A lack of systems to enable voting*: Incarcerated voters often have inconsistent or no access to the internet, government offices, and other information essential for voting, such as election deadlines, voting registration records, absentee ballot applications, and

¹ The Sentencing Project, *Felony Disenfranchisement: A Primer* (2019):
<https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>

information on candidates. They rely on others to provide them with these resources. Without guidelines or regulations requiring sheriffs and local election officials to provide this information and these resources to voters in jails, voters in jails cannot be assured access to the ballot box. We ask that you provide such guidance - our suggestions are attached and we would welcome the opportunity to discuss these matters with your office.

- *Registration and Residency determinations:* In Massachusetts, incarcerated voters are specially qualified and allowed to request and cast an absentee ballot - and do so without being previously registered.² However, to our knowledge, the Secretary of Commonwealth has not issued any clear guidelines or communications to local elections officials affirming this right, or how they are to determine both eligibility and residency of incarcerated voters.

As a result of this lack of clarity, election officials across the state make inconsistent decisions granting absentee ballot applications. This happens when incarcerated voters request a ballot using their previous address, either because election officials do not believe they can grant absentee ballots to these individuals generally; because they do not know that these voters are specially qualified, so not required to be registered; or if they determine that there is insufficient evidence of the voter's residence - but there is little guidance or transparency for voters and election officials alike on how to make determinations. Just this month, a town clerk informed us that without regulations issued by the Secretary of State, she would not be convinced to grant absentee ballots to incarcerated voters not previously registered. Many of these rejections happen without adequate time for an incarcerated would-be voter to reapply. Therefore, clear standards are needed for ensuring requests for absentee ballots by incarcerated persons are not wrongly rejected and that these individuals are not denied their constitutionally protected right to vote, either because of their incarceration or because they claim a residence.

Finally, incarcerated voters also have their absentee ballot applications rejected when they apply to vote in the community where they are incarcerated. We support the right of incarcerated citizens to establish domicile in their community of incarceration, as allowed by Massachusetts law, especially for voters who are incarcerated for extended periods of time. While the Supreme Judicial Court ruled in 1978 that incarcerated voters may

² General Laws Section 1: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter50/Section1>

"Specially qualified voter", a person (a) who is otherwise eligible to register as a voter; and (b) (1) whose present domicile is outside the United States and whose last domicile in the United States was Massachusetts; or (2) whose present domicile is Massachusetts and who is:

(i) absent from the city or town of residence and in the active service of the armed forces or in the merchant marine of the United States, or a spouse or dependent of such person;

(ii) absent from the commonwealth; or

(iii) confined in a correctional facility or a jail, except if by reason of a felony conviction.

Section 91A: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter54/Section91A>

Section 89: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter54/Section89>

change their domicile to their community of incarceration, the Court indicated that merely completing an affidavit to this effect may not be sufficient to require elections officials to accept this claim of residence, but no further guidance has been provided. Incarcerated eligible voters need clear guidelines on the requirements for establishing domicile, and the criteria that elections officials use to make their determinations must be clear, publicly available, and transparent.

This is what is known as “de facto disenfranchisement,” where, although the law says these citizens can vote, functional barriers make it difficult or impossible. In light of these findings, it is clear that a statewide process must be in place for protecting and promoting access to the ballot for incarcerated eligible voters. We believe that your office is well-positioned to usher in this much needed change, and we offer our support in working with you to create and disseminate these guidelines.

That the fundamental barrier is administrative for would-be voters who are in state and county custody is unacceptable. **We understand the great many burdens on election officials and your office especially during this time, but *incarcerated eligible voters are eligible voters whose right to vote means little without true access to the ballot.*** And the regulations we request you provide are essential for protecting Massachusetts citizens’ constitutional right to vote in our elections.

With your guidance in place ensuring would-be voters have access to the ballot, those organizations that work with incarcerated Bay Staters can conduct the same kind of GOTV programs that we do in other communities across the state, by disseminating information about candidates and races. In counties that have allowed volunteers to bolster ballot access efforts in Massachusetts and other states, we’ve seen significant participation. The effort of these volunteers is laudable, but their energy should be reserved for motivating incarcerated citizens to exercise a right to vote that is actively protected by the state, rather than calling Sheriffs’ offices to try to negotiate access to hand out registration forms, or hand-delivering ballot applications to town clerks offices across the state.

We also urge you to consider this issue in light of the mass mobilization for racial justice and renewed civil rights movement. In our state, Black communities make up just six percent of our total population, but constitute over 26 percent of our incarcerated population. Latino Bay Staters constitute ten percent of our state population but 24 percent of our incarcerated population.³⁴ The issue of ballot access in jail is fundamentally an issue about civil rights and racial equity, and an issue you can take action on in support of Black lives.

We understand that 2020 is an extremely challenging year for election administration, and we appreciate all that you are doing to protect ballot access for eligible voters in our state. We also understand that much of this work is currently left to the jurisdiction of sheriffs, whereas other states, like Colorado, have had success promoting ballot access with such regulations from their Secretaries of State. A statewide process is crucial so that accidents of geography do not

³ Daniel Nichanian, *In Massachusetts, the Democratic Party Shifts Toward Supporting Voting Rights for All*. The Appeal (August 2020): <https://theappeal.org/politicalreport/massachusetts-voting-rights-primaries/>

⁴ Prison Policy Initiative, Massachusetts Profile: <https://www.prisonpolicy.org/profiles/MA.html>

determine whether incarcerated voters are denied their constitutional rights. We urge you to take into consideration what we know from years past: that without regulations and guidelines, many Massachusetts citizens' right to vote will be rendered meaningless if they are incarcerated on Election Day.

The State must ensure that Black and brown communities who are disproportionately impacted by hyper-policing and mass incarceration do not also remain de facto disenfranchised due to fundamentally administrative barriers and a lack of oversight.

We would welcome the opportunity to discuss these matters.

Sincerely,

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Elly Kalfus, Emancipation Initiative

Rahsaan D. Hall, ACLU of Massachusetts

Jesse White, Prisoners' Legal Services

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Lois Ahrens, The Real Cost of Prisons Project

Kathleen Talbot, Holyoke Chapter Neighbor to Neighbor

Amy Harris, The League of Women Voters of the Cape Cod Area

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Judith Reilly, The League of Women Voters of Salem Jail Voting Working Group

MA Prisoners and Organizers Working for Enfranchisement and Restoration (Mass

POWER) Charles Hamilton Houston Institute for Race and Justice at Harvard Law School

Isabel Gonzalez-Webster, Worcester Interfaith

Noemi Ramos, New England United 4 Justice
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Congregation Dorshei Tzedek, Criminal Justice Task Force
Lisa Owens, City Life/Vida Urbana
Sasha Goodfriend, Massachusetts Chapter of the National Organization for Women
Frances Moore Lappé, Small Planet Institute
Robin Chen, League of Women Voters of Boston
Mehreen N. Butt, Planned Parenthood Advocacy Fund
Carla Cooper, Indivisible Martha's Vineyard
Casey Bowers, Environmental League of Massachusetts
Winnie Minjae Lee, Black & Pink Boston
Honorable Jay D. Blitzman, Juvenile Court (Ret.)
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Cindy Rowe, Jewish Alliance for Law and Social Action
Criminal Justice Committee - Arise for Social Justice
Michael Chen, Sunrise Movement - Boston
Showing Up for Racial Justice Boston (SURJ Boston)
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Diane G Drake, Chair, DTC Edgartown, MA
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Lucy M. Candib, M.D. Co-Chair, Peace and Social Concerns and Outreach Committee,
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Tristan Grieve, March For Our Lives: Massachusetts
Judy Diamondstone, Renewable Energy Worcester

The Massachusetts Women of Color Coalition

Rev. Jose Encarnacion, Christian Community Church and Shalom Neighborhood Center

Ron Bell, Dunk the Vote 2020

Reverend Dr. Rodney L. Peterson, Cooperative Metropolitan Ministries

Dennis and Katrina Everett, POSE: Power of Self Education

Detective Larry Ellison, Massachusetts Association of Minority Law Enforcement Officers