



August 31, 2016

*By Email*

The Honorable Edmund G. Brown, Jr.  
Governor, State of California  
c/o Dan Seeman & Melinda McClain, staff  
State Capitol Building  
Sacramento, CA 95814  
Daniel.Seeman@gov.ca.gov  
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**RE: Assembly Bill 2466 (Weber) – Request for Signature**

Dear Governor Brown:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I respectfully urge you to sign Assembly Bill (AB) 2466, which will codify a recent court decision, *Scott v. Bowen*,<sup>1</sup> concerning voter eligibility and eliminate residual ambiguity in state law regarding the impact that a felony conviction has on voting. AB 2466 would amend California's Elections Code to codify the *Scott* ruling and ensure that more than 50,000 people under mandatory and post-release community supervision can vote and participate in our democracy. It will also clarify that, consistent with the California Constitution, eligible voters serving a term in the county jail for low-level, nonviolent offenses are not denied the fundamental right to vote.

Enacting AB 2466 into law will help California address the current confusion surrounding voter eligibility for people with felony convictions, which unfortunately exists in other parts of our country,<sup>2</sup> that threatens the integrity of California's

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<sup>1</sup> Order (1) Granting Petition of Petitioners for Writ of Mandate and (2) Setting Hearing on Issue of Remedy, Case No. RG14-712570 (Cal., May 7, 2014), available at <https://www.brennancenter.org/sites/default/files/legal-work/2014%2005%2007%20Scott%20v%20%20Bowen%20ORDER.pdf> (last updated Aug. 2015).

<sup>2</sup> While restoring voting rights in certain states can and should be straightforward, in far too many, such as Alabama and Iowa, restoring voting rights is confusing, complicated, and, thus, effectively off-limits. See, e.g., Gigi Douban, *New Law Could Simplify Restoring Voting Rights for Felons*, NPR, (Feb. 8, 2016), <https://news.wbhm.org/feature/2016/new-law-could-simplify-restoring-voting-rights-for-felons/> (explaining that unclear guidelines for defining what crimes disfranchise people with felony convictions results in subjective answers within all 67 Alabama counties); LDF Amicus Brief in *Kelli Jo Griffin v. Paul Pate*, No. 15-1661, at 20, (Iowa, Dec. 8, 2015), available at



elections and results in the exclusion of eligible voters, a disproportionate number of whom are Black and other people of color. It also will bring the state's election laws into greater conformity with fundamental principles of an inclusive democracy, and allow California to continue to lead the nation in legislating to ensure equal opportunity to participate in the political process.<sup>3</sup>

Since its founding in 1940, by Thurgood Marshall, the first African-American U.S. Supreme Court Justice, LDF has been a leader in the effort to secure, protect, and advance voting rights for African-American people. LDF has worked to reform the nation's antiquated and discriminatory felony disfranchisement laws,<sup>4</sup> which were adopted and proliferated in the late 19<sup>th</sup> century and during the era of Jim Crow to bar newly freed African-American citizens from exercising their right to vote based

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[http://www.naacpldf.org/files/case\\_issue/Kelli%20Jo%20Griffin%20vs.%20Paul%20Pate%20Amicus%20Brief\\_0.pdf](http://www.naacpldf.org/files/case_issue/Kelli%20Jo%20Griffin%20vs.%20Paul%20Pate%20Amicus%20Brief_0.pdf) (explaining that regaining the right to vote in Iowa involves a comprehensive process that includes an application, a criminal background check, and providing proof of paid fines).

<sup>3</sup> With the enactment of AB 2466, California can continue to lead the nation in protecting voting rights as it does in many respects. For example, in 2002, California became the first and only state to pass its own Voting Rights Act, Elections Code §§ 14025 *et seq.* After *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), litigated by LDF, among others, which removed a core federal protection for millions of voters of color, California's Voting Rights Act remains a critical tool to challenge voting practices that dilute the ability of people of color to participate equally in the political process and elect their candidates of choice. California also is one of only four states to have enacted legislation, AB 420 (2011), that ends prison-based gerrymandering, the dilutive and unconstitutional practice of counting incarcerated people as "residents" of the prison communities where they are held for purposes of redistricting, rather than where they actually lived before and maintain ties during incarceration.

<sup>4</sup> LDF has litigated several challenges to discriminatory felony disfranchisement state laws that disproportionately deny voting rights to people of color with criminal records, including in Alabama, New York, and Washington State. *Chapman v. Gooden*, 974 So. 2d 972 (Ala. 2007); *Glasgow v. Allen*, No. 2:08-cv-801 (M.D. Ala. 2008); *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010); *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

In addition to litigation, LDF has, as here, advocated for policy reforms at the federal and state level to restore voting rights to previously incarcerated people. Most recently, LDF joined a coalition of advocates in support of the successful enactment of legislation in Maryland that restores voting rights to nearly 40,000 residents with felony convictions. See *In 50<sup>th</sup> Anniversary Year of Historic Voting Rights Act, LDF Urges Congress to Pass Federal Legislation to Restore Voting Opportunities to Formerly Incarcerated* (Mar. 18, 2015), available at <http://www.naacpldf.org/press-release/50th-anniversary-year-historic-voting-rights-act-ldf-urges-congress-pass-federal-legis>; *LDF Urges Maryland Legislature to Override Governor Hogan's Veto and Restore Voting Rights to People with Felony Convictions* (Jan. 20, 2016), available at <http://www.naacpldf.org/press-release/ldf-urges-maryland-legislature-override-governor-hogan%E2%80%99s-veto-and-restore-voting-right>.



on felony crimes disproportionately prosecuted against them.<sup>5</sup> That felony disfranchisement laws remain a lasting vestige of Jim Crow laws is reflected in the unfortunate reality that nationwide, one in 13 African-American people cannot vote due to disfranchisement policies.<sup>6</sup> In California, three of every four men in prison are either African American, Latino, or Asian American. Thus, overly expansive or inconsistent interpretations of the law defining who can vote with a felony conviction risk further disfranchisement of communities of color. By signing AB 2466, you can reverse this trend and ensure that *no* eligible California voter is excluded from our democracy.

In 1976, California's Constitution was amended to end permanent disfranchisement and prohibit only people who currently are "imprisoned or on parole for the conviction of a felony" from voting. The meaning of the terms "imprisoned" and "parole," however, has been the subject of ongoing litigation and confusion, particularly as criminal justice reforms and sentencing laws fortunately have evolved.<sup>7</sup> Most recently, voter eligibility was the subject of litigation following the

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<sup>5</sup> See generally NAACP LDF, *Free the Vote: Unlocking Democracy in the Cells and on the Streets*, available at <http://www.naacpldf.org/files/publications/Free%20the%20Vote.pdf> (last visited Mar. 25, 2016); see also *Summary of the Governor's Restoration of Rights Order Dated April 22, 2016*, at 1, Office of the Governor [https://commonwealth.virginia.gov/media/5843/restore\\_rights\\_summary\\_4-22.pdf](https://commonwealth.virginia.gov/media/5843/restore_rights_summary_4-22.pdf) (The Virginia Governor's Office acknowledged that, "despite the progress Virginia has made erasing the vestiges of slavery and segregation on so many fronts, [Virginia's felon disfranchisement] law continues to disenfranchise racial minorities and other citizens who have paid their debt to society and are otherwise qualified to vote.").

<sup>6</sup> Christopher Uggen and Sarah Shannon, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at p. 1 (July 2012), [http://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).

<sup>7</sup> There still is much work to be done with respect to criminal justice reform nationwide and in California. For example, within the past year, the disclosure of racially and otherwise inflammatory text messages sent by San Francisco police officers raised legitimate questions about the scope of racial bias within that police department. See *Timothy Williams, Inquiry to Examine Racial Bias in the San Francisco Police*, N.Y. TIMES (May 7, 2015), available at <http://www.nytimes.com/2015/05/08/us/san-francisco-police-department-racial-bias-investigation.html>; see also *Report of the Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement* at 1 (July 2016), [http://sfblueribbonpanel.com/sites/default/files/BRP\\_report.pdf](http://sfblueribbonpanel.com/sites/default/files/BRP_report.pdf) (an advisory body to the San Francisco District Attorney's office, formed to investigate the police department for potential institutionalized bias in the wake of revelations that 14 officers engaged in egregious racist and homophobic text messaging, recommending that the SFPD should pay greater attention to the potential for bias against people of color, with respect to both its own police officers and members of the public).



passage of the Criminal Justice Realignment Act of 2011 (CJRA), which created three new categories of sentencing for people convicted of low-level felonies: mandatory supervision, post-release community supervision, and a term in county jail.

While courts consistently have interpreted the constitutional provision in favor of the enfranchisement of voters, California's voter eligibility laws should not be subject to litigation and clarification every time a sentencing reform is enacted. Elections officials and the Secretary of State need guidance and clarity to ensure consistent application of voter eligibility laws and accurate maintenance of the voter file. To that end, AB 2466 would (1) amend the state's Elections Code to codify decision in *Scott*, (2) clarify that the third category of CJRA sentencing – a term in county jail – likewise does not strip individuals of their fundamental right to vote, and (2) clarify the information that courts provide to elections officials.

Enacting AB 2466 would add California to the growing list of more than 20 states that have legislatively ensured that people with criminal convictions, particularly Black and other people of color, have meaningful access to the franchise.<sup>8</sup> Enacting AB 2466 also would demonstrate California's commitment to voting rights and to second chances for people with criminal convictions, and would serve as a powerful reaffirmation of the importance of the Voting Rights Act of 1965's mandate.<sup>9</sup>

Moreover, ensuring that eligible individuals with felony convictions can participate in the political process as they work, take care of their families, and otherwise reintegrate into their communities has public safety benefits for *all*

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In 2015, the U.S. Department of Justice also entered into a settlement with the Los Angeles County Sheriff's Department, after an investigation found patterns of excessive use of force, biased policing practices, including disparate policing among different housing communities, and unlawful searches and seizures. See U.S. Department of Justice, Press Release, *Justice Department and the Los Angeles County Sheriff's Department Agree to Policing Reforms and Settlement of Police-Related Fair Housing Claims in the Antelope Valley* (Apr. 28, 2015), available at <https://www.justice.gov/opa/pr/justice-department-and-los-angeles-county-sheriffs-department-agree-policing-reforms-and>.

<sup>8</sup> See Sentencing Project, *Felony Disenfranchisement: A Primer*, Tbl. 2, available at [http://sentencingproject.org/doc/publications/fd\\_Felony%20Disenfranchisement%20Primer.pdf](http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf) (identifying more than 20 states with felony disenfranchisement changes between 1997-2015).

<sup>9</sup> The nation's seminal civil rights legislation, the Voting Rights Act, was enacted to ensure that all citizens, including persons with felony convictions, have an equal opportunity to participate in the political process without regard to race.



communities. Indeed, research suggests that restoring the right to vote to eligible citizens reduces the likelihood that they will reoffend.<sup>10</sup>

For the above reasons, LDF strongly supports AB 2466 and urges you to sign this important legislation into law.

Thank you for considering this request. If you have any questions or concerns, please do not hesitate to contact Leah Aden at [laden@naacpldf.org](mailto:laden@naacpldf.org), or Kyle Barry at [kbarry@naacpldf.org](mailto:kbarry@naacpldf.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Leah C. Aden", written in a cursive style.

Leah C. Aden  
Senior Counsel  
NAACP Legal Defense & Educational  
Fund, Inc.

cc (by email): Scott Matsumoto, Office of Assembly member Shirley N. Weber  
Amanda Le, ACLU of San Diego and Imperial Counties

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<sup>10</sup> See Ram Subramanian, et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, Vera Institute of Justice (Dec. 2014), <http://www.vera.org/sites/default/files/resources/downloads/states-rethink-collateral-consequences-report-v3.pdf>; see also Christopher Uggen and Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193 (2004 - 2005), [http://as.nyu.edu/docs/IO/3858/Voting\\_and\\_Subsequent\\_Crime\\_and\\_Arrest.pdf](http://as.nyu.edu/docs/IO/3858/Voting_and_Subsequent_Crime_and_Arrest.pdf).