



April 9, 2019

*Via California Legislature Advocates Online Portal*

Assembly Elections and Redistricting Committee  
Legislative Office Building  
1020 N Street, Room 365  
Sacramento, CA 95814  
(916) 319-2094

**Re: Support for Assembly Bill 787 (Gipson) – Voter Registration in Jails**

Dear Members of the Committee on Elections and Redistricting:

The NAACP Legal Defense & Educational Fund, Inc. (LDF),<sup>1</sup> writes in strong support of Assembly Bill (A.B.) 787 (Gipson), which would expand effective access to the franchise in California by requiring city and county jails to allow organizations to conduct in-person voter registration activities—including provision of vote-by-mail applications—and would update state law to facilitate the contemporaneous identification of eligible voters released from imprisonment or parole.<sup>2</sup> A.B. 787 now is pending before your committee.

California incarcerates more than 80,000 people in its city and county jails.<sup>3</sup> People of color are severely overrepresented among this population. In Los Angeles County, for example, a staggering 80 percent of the people held in jails in 2017 were Black or Latinx.<sup>4</sup> Detained individuals have historically been excluded from civic engagement and participation. Yet the vast

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<sup>1</sup> An **appendix** to this letter includes a brief description of LDF's work.

<sup>2</sup> Sections 2 and 3 of A.B. 787 would amend the text of Cal. Elec. Code § 2212 to increase the frequency of reports to the Secretary of State and harmonize the statutory reporting requirements with the current text of Cal. Elec. Code § 2101, as amended by A.B. 2466 (2016).

Last year, LDF supported A.B. 3115, which would have required each county jail to allow organizations to provide a voter education program that would include, but is not limited to, providing both written and verbal information about voting rights upon release from jail, providing affidavits of registration, and assisting eligible voters in returning the complete voter registration cards to the county elections official. LDF provided letters in support of A.B. 3115 both to this committee and to the Committee on Public Safety. Ltr. from Leah C. Aden, *et al.*, NAACP Legal Defense & Educational Fund, Inc., to Members of the Committee on Elections & Redistricting Re: Assembly Bill 3115 (Gipson) – Support (Apr. 17, 2018) (on file with LDF); Ltr. from Leah C. Aden, *et al.*, NAACP Legal Defense & Educational Fund, Inc., to Public Safety Committee Members Re: Assembly Bill 3115 (Gipson) – Support (Apr. 6, 2018) (on file with LDF).

<sup>3</sup> See Prison Policy Initiative, *California profile* (last visited Apr. 8, 2019), <https://www.prisonpolicy.org/profiles/CA.html>.

<sup>4</sup> L.A. County Sheriff's Dep't., *Custody Division Year End Review 3* (2017), [http://www.la-sheriff.org/s2/static\\_content/info/documents/PMB\\_YER2017.pdf](http://www.la-sheriff.org/s2/static_content/info/documents/PMB_YER2017.pdf).

majority—including people who are awaiting trial, in jail for a misdemeanor conviction, in jail on a probation violation, or serving a county jail sentence under realignment—are eligible to vote under California law.<sup>5</sup> Too often, eligible voters in local jails face systemic barriers that prevent them from exercising their right to register and vote. By allowing organizations to offer eligible voters in jails the opportunity to register to vote and apply for vote-by-mail ballots, A.B. 787 will assist the state in advancing democracy for all Californians.

Moreover, to the extent that inadequate access to registration or voting opportunities in California’s jails currently results in the disproportionate denial or abridgment of the rights of Black or Latinx voters, the Voting Rights Act of 1965 (VRA) and the U.S. Constitution may be implicated. The VRA prohibits voting practices or procedures that are either motivated by racially discriminatory intent or have racially discriminatory results.<sup>6</sup> The Fourteenth and Fifteenth Amendments to the U.S. Constitution prohibit voting practices adopted or maintained with a discriminatory purpose, as well as policies or episodic practices that make voting unreasonably burdensome for people of color, including the failure to provide voters in jail with an effective means of registering and casting their ballots.<sup>7</sup> And, regardless of race, the Constitution forbids state or local jurisdictions from denying the voting rights of eligible voters in jails.<sup>8</sup> Indeed, “individuals held in county jail that are otherwise eligible to register or vote must be given some means to do so.”<sup>9</sup> Thus, the practical reforms of A.B. 787 may be necessary to ensure that eligible voters of color in California’s jails are not denied their rights under the Constitution, the VRA, and other laws.

Democracy demands that the right to vote, a “fundamental political right” that is “preservative of all rights,” be made available to all eligible individuals on an equal basis.<sup>10</sup> All other rights, as the Supreme Court has memorably declared, “are illusory if the right to vote is undermined.”<sup>11</sup> In light of these principles, the Committee on Elections and Redistricting should do everything in its power to ensure that more, not fewer, Californians can exercise their fundamental right to vote by passing this common-sense bill to protect the constitutional rights of eligible voters who happen to be detained in city or county jails.

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<sup>5</sup> In California, to be eligible to vote, one must be a U.S. citizen, a resident of the state, and 18 years or older on Election Day. The only criteria that would preclude someone from being able to register are current incarceration in a federal or state prison, currently serving parole for the conviction of a felony, or currently being found mentally incompetent to vote by a court. *See* Cal. Elec. Code § 2101.

<sup>6</sup> *See* 52 U.S.C. § 10301; *see also Fair Elections Ohio v. Husted*, 47 F. Supp. 3d 607, 616-17 (S.D. Ohio), *vacated on other grounds*, 770 F.3d 456 (6th Cir. 2014).

<sup>7</sup> U.S. Const. amends. XIV & XV; *see, e.g., Ill. State Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173, 184; *North Carolina State Conference of NAACP v. McCrory*, 831 F. 3d 204, 233-33 (2016).

<sup>8</sup> *O’Brien v. Skinner*, 414 U.S. 524, 530 (1974).

<sup>9</sup> *Buroff v. Gladieux*, No. 1:17-CV-124-TLS, 2017 WL 5466872, at \*3 (N.D. Ind. Nov. 13, 2017) (citing *O’Brien*, 414 U.S. at 530).

<sup>10</sup> *See Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

<sup>11</sup> *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

We urge you to support A.B. 787. Thank you for your consideration.

Please feel free to reach out to us directly with any questions.

Sincerely,



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## APPENDIX

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the effort to secure, protect, and advance voting rights for Black Americans. LDF uses legal, legislative, public education, and other advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has advocated for policy reforms at the federal and state level to restore voting rights to previously incarcerated people. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

Central to LDF's work has been spearheading litigation, legislation, and education to eradicate felony disenfranchisement laws. In 2010, LDF challenged Washington state's felony disenfranchisement law. *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010) (en banc). Similarly, in 2004, LDF challenged New York's felony disenfranchisement law. *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010). More recently, LDF has submitted amici briefs to support state-based challenges in Louisiana and Iowa to felony disenfranchisement laws, including *Voice of the Ex-Offender v. State of Louisiana* and *Griffin vs. Pate*.<sup>12</sup> In 2016, LDF, along with the Sentencing Project, published *Free the Vote*, a public education guide about the history of felony disenfranchisement laws and their impact on individuals and communities across the United States.<sup>13</sup> Through its Prepared to Vote Initiative, LDF regularly provides non-partisan public education materials to assist returning citizens understand their voting rights, including in Alabama, South Carolina, and Texas.

In 2016, LDF urged the California Legislature's Committee on Elections and Redistricting to pass and then California's Governor to sign into law Assembly Bill 2466 to: codify a court ruling on voter eligibility; eliminate residual ambiguity in state law regarding the impact a felony conviction has on voting; and 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.<sup>14</sup>

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<sup>12</sup> NAACP LDF, *Louisiana Felony Disenfranchisement Case* (Nov. 7, 2017), <https://www.naacpldf.org/press-release/civil-rights-criminal-justice-reform-organizations-file-amicus-brief-in-louisiana-felony-disenfranchisement-case/>; NAACP LDF, *Iowa Felon Disenfranchisement* (Dec. 8, 2015), <https://www.naacpldf.org/press-release/iowas-felon-disfranchisement-law-is-one-of-the-worst-in-nation-time-to-change-says-ldf-in-amicus-brief-to-state-supreme-court/>.

<sup>13</sup> NAACP LDF & The Sentencing Project, *Free the Vote for People with Felony Convictions*, (2016), [https://www.naacpldf.org/wp-content/uploads/Free-the-Vote-2016\\_0.pdf](https://www.naacpldf.org/wp-content/uploads/Free-the-Vote-2016_0.pdf).

<sup>14</sup> Ltr. from Leah Aden, NAACP Legal Defense & Educational, Fund. Inc., to Assemblymember Dr. Shirley N. Weber and Members of the Committee on Elections and Redistricting, Support for Assembly Bill 2466 (Weber), (Mar. 28, 2016), available at <https://www.naacpldf.org/wp-content/uploads/CA-Rights-Restoration-Ltr-from-LDF-3.28-1.pdf>; Ltr. from Leah Aden, NAACP Legal Defense & Educational, Fund. Inc., to The Honorable Edmund G. Brown, Jr., Governor, State of California, Assembly Bill 2466 (Weber) – Request for Signature, (Aug. 31, 2016), available at <https://www.naacpldf.org/wp-content/uploads/CA-Rights-Restoration-Ltr-from-LDF-3.28-1.pdf>.

Moreover, LDF was also instrumental in reducing the devastating impact of California's 1994 "Three Strikes and You're Out" law, which sent thousands of people to life in prison for minor crimes and was widely considered the nation's harshest sentencing law. In 2012, LDF partnered with Stanford Law School's Three Strikes Project to sponsor a ballot campaign for the Three Strikes Reform Act of 2012 (Proposition 36), which shortened the sentences of those serving life terms for non-violent, non-serious offenses.<sup>15</sup> Proposition 36 passed with nearly 70 percent of the vote, winning majority support in each of California's 58 counties.<sup>16</sup> Since 2012, LDF has tracked California's progress implementing Proposition 36 and urged the state to expedite its review of Proposition 36 cases.<sup>17</sup> As part of that effort, in October 2013, LDF filed an amicus brief in *Coleman v. Brown* and *Plata v. Brown*, litigation that requires California to dramatically reduce its prison population to comply with the U.S. Constitution.<sup>18</sup>

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<sup>15</sup> See NAACP LDF, *Case: Reforming California's "Three Strikes" Policy* (Feb. 16, 2018), <https://www.naacpldf.org/case-issue/reforming-californias-three-strikes-policy/>.

<sup>16</sup> *Id.*

<sup>17</sup> NAACP LDF & Stanford Law School Three Strikes Project, *Progress Report: Three Strikes Reform (Proposition 36): 1,000 Prisoners Released* (Sept. 9, 2013), [https://dev.naacpldf.org/wp-content/uploads/ThreeStrikesReport\\_v6.pdf?\\_ga=2.109793221.130796450.1554819255-84881551.1554819255](https://dev.naacpldf.org/wp-content/uploads/ThreeStrikesReport_v6.pdf?_ga=2.109793221.130796450.1554819255-84881551.1554819255).

<sup>18</sup> Brief for NAACP LDF as Amici Curiae Supporting Plaintiffs, *Plata v. Schwarzenegger*, No. 3:01-cv-01351 (N.D. Cal. Oct. 10, 2013) (three-judge court), ECF No. 2731, <https://www.naacpldf.org/wp-content/uploads/Reforming-Californias-Three-Strikes-Policy-Amicus-Brief.pdf>.