

Chapter 21

POLITICAL DISENFRANCHISEMENT

This chapter details policy recommendations to address harms set forth in Chapter 4, “Political Disenfranchisement.” The Task Force recommends that the Legislature take the following actions:

- Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc
- Increase Funding to Support the California Department of Justice’s Enforcement of Voting Rights in California
- Pass Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities
- Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African Americans
- Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls
- Remove the Barrier of Proving Identity to Vote
- Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction
- Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

A. Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc

Political gerrymandering has a disproportionate impact on African American voters. The experience of African American voters, which is documented in Chapter 4, stems from the perception that African American voters pose a threat to the white political establishment, which historically aimed to maintain the racial hierarchy of enslavement. Researchers have found that the expansion and protection of Black political rights improved the socioeconomic position of “Black Americans” and may have indirectly created opportunities for “Black American” workers to move up the economic ladder.¹ The Voting Rights Act (VRA) is a national law that protects African American voters and others against attacks on their freedom to vote and their right to fair representation.² One of the law’s key enforcement mechanisms, Section 2, bans racial discrimination in voting.³ Because the U.S. Supreme Court weakened other protections offered

¹ Aneja and Avenancio-Leon, *The Effect of Political Power on Labor Market Inequality: Evidence from the 1965 Voting Rights Act* (Sept. 2019) Washington Center for Equitable Growth (as of Dec. 5, 2022).

² 52 U.S.C.A. § 10101 et seq.

³ 52 U.S.C.A. § 10301.

by the VRA, states and their subdivisions have taken the opportunity to pass more discriminatory district maps that unfairly silence the voices of African American voters.⁴

The California Voting Rights Act of 2001 (CVRA) is the state law that expanded on the VRA by making it easier for voters to prove that their votes are being diluted in at-large elections.⁵ Upon a finding of a violation, a court is required to implement appropriate remedies, including the imposition of district-based elections that are tailored to remedy the violation.⁶ The CVRA helped increase the number of by-district jurisdictions by making it easier for potential plaintiffs to force at-large-election jurisdictions into by-district elections.⁷ To date, over 170 cities and towns, over 300 school and community college districts, and over 50 hospital, fire, airport, water and other special districts shifted from at-large to by-district elections since the CVRA became law.⁸

In order to address the harms associated with the historical political disenfranchisement of African Americans, the Task Force recommends that the Legislature implement measures to protect the strength of the African American voting bloc by requiring district-based voting and independent redistricting commissions whose maps have binding effect. These independent redistricting commissions should be comprised of members who are representative of the districts being drawn or redrawn and they should be equipped with resources that are both adequate for their mandate and equal to those afforded to similarly charged commissions. The Task Force recommends that the Legislature take steps to counter political gerrymandering, which has a disproportionately disenfranchising and vote-diluting impact on African American voters. At-large voting in particular poses barriers to equal voting.⁹ More equitable and representative results are produced when subdivisions elect their officials by district.¹⁰ Independent redistricting commissions put citizens and commissioners in charge of the process, removing politicking and partisan deal making.¹¹ When the responsibility of drawing district lines is left with incumbents, concerns about gerrymandering arise, and special interests and protecting incumbency may prevail over fair and equal representation. The City of Los Angeles, for example, currently appoints a commission to draw district maps; however, those maps are subject to revision by councilmembers, and attempts to gerrymander certain districts can still occur.¹²

⁴ See *Shelby County, Ala. v. Holder* (2013) 570 U.S. 529 [133 S.Ct. 2612, 186 L.Ed.2d 651].

⁵ Elec. Code, § 14025 et seq.

⁶ Elec. Code, § 14029.

⁷ [California's Voting Rights Act Continues to Force More Local Governments into By-District Elections](#) (Undated) National Demographics Corporation (as of Dec. 5, 2022).

⁸ *Ibid.*

⁹ See *Shelby County, Ala. v. Holder* (2013) 570 U.S. 529, 563 [133 S.Ct. 2612, 2635, 186 L.Ed.2d 651] (dis. opn. of Ginsburg, J.).

¹⁰ See Vankin, [District vs. At-Large Races: The Final Frontier of Voting Rights](#) (June 7, 2021) California Local (as of Jan. 13, 2023).

¹¹ [Independent Redistricting](#) (Undated) Unite America (as of Dec. 5, 2022).

¹² Washington, [What I Learned About Redistricting In LA And Why It Matters](#) (Oct. 28, 2022) LAist (as of Dec. 5, 2022).

B. Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California

State attorneys general are uniquely positioned to monitor and take action on voting rights concerns within their jurisdictions. Voting rights investigations and lawsuits, however, are unusually onerous to prepare, sometimes requiring as many as 6,000 hours in staff time combing through registration records in preparation for trial.¹³ Moreover, with respect to federal lawsuits, “[e]ven when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration.”¹⁴ These concerns, along with the perverse incentive to prolong litigation in these matters, result in relatively few attorneys willing to bring complex voting rights cases, and even fewer attorneys who have an opportunity to develop expertise to litigate these cases well.¹⁵ Consequently, state attorneys general, who have a unique combination of law enforcement and state-level perspective, are better positioned to enforce, monitor, and investigate voting rights claims.¹⁶ This however, does not address the complexity and time resources required to undertake this work.

In order to root out and address the harms associated with the erosion of voting rights for African American voters, the Task Force recommends that the Legislature dedicate funding for the California Attorney General's Office to enforce the California Voting Rights Act and federal voting rights laws. This could include targeting at-large political subdivisions and reviewing efforts to transition to district-based representation where appropriate. This work should also include monitoring and collecting data on racially polarized voting, and publishing racially polarized voting analyses, a key component of demonstrating violations of the federal Voting Rights Act. The publication of racially polarized voting analyses may provide greater clarity and oversight of sensitive regions and lead to a concentration of resources for areas that are at risk of disenfranchising African American voters. Enforcement by the California Attorney General should seek to determine whether political subdivisions use the drawing or redrawing of district lines to substantially dilute or weaken the political power of African Americans.

C. Enact Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities

¹³ *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 314 [86 S.Ct. 803, 811, 15 L.Ed.2d 769]

¹⁴ *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 314 [86 S.Ct. 803, 811, 15 L.Ed.2d 769]

¹⁵ Grossman, [The Case For State Attorney General Enforcement of the Voting Rights Act Against Local Governments](#) (2017) 50 U. MICH. J. L. REFORM 565, 592 (as of March 15, 2023).

¹⁶ See Grossman, [The Case For State Attorney General Enforcement of the Voting Rights Act Against Local Governments](#) (2017) 50 U. MICH. J. L. REFORM 565, 599 (as of March 15, 2023).

As discussed in Chapter 4, “Political Disenfranchisement,” African Americans faced increased threats to their liberty after the end of Reconstruction. Groups like the National Association for the Advancement of Colored People organized and mobilized to assert equal rights, including securing the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution. To ensure that these efforts are not lost on younger generations, and to cultivate a sense of reverence in the journey of African American political power, the Task Force recommends that the Legislature provide funding and direction to support grants to county registrars of voters for programs that integrate voter registration and preregistration with civic education for high school students, including programs to allow students to serve as election workers, as was intended by Assembly Bill No. 2576.¹⁷ Through this recommendation, the Task Force intends for these programs to be institutionalized through legislation so that there is a long term and continued commitment to increase the importance of African American civic engagement by creating educational opportunities for young adults. In implementing this recommendation, the Legislature could fulfill the objectives of AB 2576 by providing separate funding with the intent to support African Americans, who have historically experienced disproportionate disenfranchisement.

AB 2576 would have required the Secretary of State to provide grants to county elections officials or other specified entities for voter registration efforts in counties where voter registration is less than 80 percent of eligible voters.¹⁸ AB 2576 would have also required the Secretary of State to make grants for learning and outreach, and to county registrars of voters for programs that integrate voter registration and preregistration with civic education for high school students, including programs to allow students to serve as election workers. While some of these programs have been implemented under California Secretary of State Dr. Shirley N. Weber, the aim of this recommendation is to institutionalize these programs such that they remain in place irrespective of future changes in administration. The Task Force recommends that the Legislature adopt the grant programs contemplated by AB 2576, with a directed focus on school districts and voting precincts whose eligible voting age populations do not reflect the proportionality of African American populations.

The Task Force recommends amendments to the Education Code and Elections Code, where appropriate, to provide opportunities for high school students to participate in live elections and take part in mock elections and other civic educational opportunities. The Task Force recommends that the Legislature establish a funding stream specifically for schools predominately attended by African Americans or establish annual funding for a broader statewide program. Student surveys for a similar program in Illinois have shown that 93 percent of students reported being more likely to vote in the future, with 90 percent reporting that they would be willing to serve again in the future.¹⁹

¹⁷ See Assem. Bill No. 2576 (2021-2022 Reg. Sess.).

¹⁸ *Ibid.*

¹⁹ [High School Student Election Judges](#) (Undated) Cook County Clerk’s Office (as of Dec. 5, 2022).

D. Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African Americans

From Ella Baker to John Lewis, and from the Organization of Colored Ladies to the Student Nonviolent Coordinating Committee, African Americans and African American organizations have long played an important role in organizing, educating, and registering African American voters. To support the initiatives discussed above, the Task Force recommends that the Legislature provide a funding stream for local organizations that focus on increasing civic engagement among African Americans. Nongovernmental organizations in turn could provide support in campaign strategy training, political discourse seminars, and workshops offering support and training for those wishing to organize within their communities. Funding could also support voter education and outreach campaigns in communities of low voter turnout and among youth to establish a pipeline of voter engagement. Selection and oversight of these organizations could be administered by the California American Freedman Affairs Agency, which may review grant proposals and program efficacy.

E. Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls

The Task Force recommends that the Legislature declare Election Day a paid state holiday. The aim of this recommendation is to address the historical barriers to voting, including the financial burdens that disproportionately affect African American voters and limit their ability to access the polls. While many voters take advantage of voting by mail, California could use this day to organize state-sponsored events on Election Day to facilitate voting, such as free public transportation and informational bulletins. The Task Force further recommends as a potential expansion of this recommendation that primary elections also be included for holiday consideration. This would recognize the history associated with excluding African American voters from state primary elections, as discussed in Chapter 4. For states that are dominated by a single political party, primary elections often determine who will ultimately hold office.

Further, to increase the impact of making Election Day a paid holiday, the Task Force recommends establishing a funding stream for the publication of voter education materials, such as fact sheets dispelling the myth of widespread voter fraud, and publications disseminating post-election statistics to promote confidence in state elections.

F. Remove the Barrier of Proving Identity to Vote

Claims of voter fraud have been used to justify laws that suppress African American voting—most prominently, voter identification laws. States disproportionately enforce voter ID laws against African American voters. This is so despite the fact that voter fraud is very rare. Indeed,

voter impersonation is virtually nonexistent, and many instances of alleged fraud are, in fact, mistakes by voters or administrators.²⁰ Voter ID laws have also served as a proxy for disenfranchising non-white voters.²¹ With respect to mail-in ballots, the votes of African Americans are often rejected at higher rates than those of white voters.²²

The Task Force recommends that the Legislature direct the undertaking of a study to identify, examine, and address barriers to voter registration that have been enacted in response to myths of voter fraud, such as by documenting the limited availability of DMV services in rural areas and the cost of obtaining identification or supporting documents to prove identity. In most cases, a California voter is not required to show identification to a polling place worker before casting a ballot. However, those voting for the first time after registering to vote by mail and who did not provide a driver's license number, California identification number, or the last four digits of their Social Security number on their registration form may be asked to show a form of identification when going to the polls.²³ Additionally, a voter may have their qualification to vote challenged as not being the person whose name appears on the roster, at which point the voter may be required to affirm their identity to resolve the challenge.²⁴

This recommendation seeks to recognize and address the harms in this area with respect to voter identification by cutting off an opportunity for voter disenfranchisement through identification requirements. The Task Force recommends that the Legislature provide African Americans with stipends or fee waivers to obtain government-issued documents such as driver's licenses, identification cards, birth certificates, and passports to meet any voter registration or identification requirement that may be promulgated.

G. Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction

In California, as of April 2020, the felony arrest rate of African Americans was 3,229 per 100,000 in the population.²⁵ Overall, African Americans remain overrepresented in California's prison population.²⁶ African American men are imprisoned at a rate 10 times higher than that of white men, while African American women are imprisoned at a rate five times higher than that of white women.²⁷ Across the United States, one-third of African American men have been

²⁰ [The Myth of Voter Fraud](#) (Undated) Brennan Center for Justice (as of March 15, 2023); See [Debunking the Voter Fraud Myth](#) (Jan. 2017) Brennan Center for Justice (as of March 15, 2023).

²¹ See [Voter ID laws discriminate against racial and ethnic minorities, new study reveals](#) (June 25, 2020) University of California, San Diego (citing Hajnal and Lajevardi, et al., [A disproportionate burden: strict voter identification laws and minority turnout](#) (2022) *Politics, Groups, and Identities*, 10:1, 126-134) (as of Jan. 17, 2023).

²² Lau and Nelson, et al., [Mail-in ballots flagged for rejection hit 21,000; Black, Latino voters rejected at higher rate](#), L.A. Times (Nov. 3, 2020) (as of Jan 17, 2023).

²³ [What to Bring to Your Polling Place](#) California Secretary of State (as of Jan. 17, 2023).

²⁴ See Elec. Code, § 14240 subd. (a)(1); see also Elec. Code, § 14243.

²⁵ Gumbs and Hayes, et al., [Felony Arrests in California](#) (April 2020) Public Policy Institute of California (as of Dec. 5, 2022).

²⁶ Gumbs and Goss, et al., [California's Prison Population](#) (July 2019) Public Policy Institute of California (as of Dec. 5, 2022).

²⁷ *Ibid.*

convicted of a felony.²⁸ This data suggests that there may also be an overrepresentation of African Americans who have been excluded from jury service because of their prior felony conviction.

Existing California law now allows those with a prior felony conviction and those who have completed probation and parole to participate in jury service as long as they are not a registered felony sex offender.²⁹ One aim of this law was to ensure that underrepresented groups, including African Americans, truly have a jury of their peers. While the law in this area restored eligibility for jury service, the aim of this recommendation is to encourage *participation* in jury service. To accomplish this goal, the Task Force recommends that the Legislature offer guidance to courts disfavoring the disqualification of jurors based solely on their prior status as an incarcerated individual or a person's general opposition to the death penalty.³⁰ This should also include conducting ongoing surveys and analyses of excused jurors to identify trends. The Task Force further recommends that the Legislature implement measures or programs to provide greater support for those serving on juries, including free childcare and transportation during jury duty, and educational materials that highlight the importance of jury duty among African Americans and the implications of not serving on a jury.

To support this recommendation, the Task Force recommends that the Legislature consider eliminating peremptory challenges altogether, as is the case in Arizona,³¹ or encourage the modification of existing rules to emphasize that a prior felony conviction is an invalid basis for the exercise of a peremptory challenge.

H. Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

The right to vote is fundamental to American citizenship, but our unjust legal system has perpetuated the disenfranchisement of African Americans. That disenfranchisement has left this community at a comparative disadvantage in political representation, as discussed in Chapter 4. In October 2022, the California Department of Justice issued two Information Bulletins that relate to the voting rights of persons with a criminal history. One Information Bulletin was directed to all local law enforcement agencies in California detailing the categories of incarcerated individuals who are and are not eligible to vote.³² Incarcerated individuals in California who are not eligible to vote are those serving time in state prison, federal prison, or

²⁸ Trilling, [Number of U.S. felons tripled in three decades](#) (Dec. 1, 2017) Harvard Kennedy School Shorenstein Center on Media, Politics, and Public Policy (as of Dec. 5, 2022).

²⁹ Sen. Bill No. 310 (2019-2020 Reg. Sess.)

³⁰ A disproportionate number of “Black jurors” and jurors of faith, especially Catholics, are excluded from death penalty juries. See Hill and Stull, [The Sinister and Racist Practice Infecting Death Penalty Juries](#) (Aug. 30, 2022) ACLU (as of March 16, 2023).

³¹ Ariz. R. Crim. P. 18.4, 18.4; Ariz. R. Civ. P. 47(e); *In the Matter of Rules 18.4 and 18.5, Rules of Criminal Procedure and Rule 47(e), of the Arizona Rules of Civil Procedure* (2021) Ariz. Supreme Ct. No. R-21-0020 Order Amending Rules 18.4 and 18.5 of The Rules of Criminal Procedure, and Rule 47(e) of The Rules Of Civil Procedure, filed Aug. 8, 2021.

³² California Department of Justice, [Information Bulletin: Access to Voting for Eligible Persons With a Criminal History or Who are Incarcerated](#) (Oct. 11, 2022).

are in county jail under prison terms/conditions. Proposition 17 was approved in November 2020 and amended the California Constitution to permit people on parole for felony convictions the right to vote in California.³³ Another Information Bulletin was directed to all county probation departments in California to ensure access to voting for eligible persons who are under the supervision of probation departments.³⁴

In order to begin to correct this aspect of the legacy of an unjust legal system, the Task Force recommends that the Legislature enact legislation to *preserve and expand* the voting rights of incarcerated individuals. All eligible Californians deserve the right to vote, even those involved in the criminal justice system. Specifically, the Task Force recommends that the Legislature increase efforts to restore the voting rights of persons who have completed their terms or are on parole by increasing access to voter registration and polling precincts. Legislation should require the California Department of Corrections and Rehabilitation (CDCR) to affirmatively provide individuals being released from prison with voter registration information.³⁵ The Task Force further recommends that the CDCR and Secretary of State receive funding to facilitate voting in correctional settings by either establishing polling sites within correctional facilities or providing access to mail-in voting while incarcerated, consistent with eligibility.³⁶

Finally, the Task Force calls on the Legislature to take the re-enfranchisement movement further, and restore voting rights to all incarcerated persons, including those serving state or federal prison terms.

³³ Cal. Const., art. II, §§ 2, 4.

³⁴ California Department of Justice, [Information Bulletin: Access to Voting for Eligible Persons Under the Supervision of Probation Departments](#) (Oct. 11, 2022).

³⁵ See Elec. Code, § 2105.5.

³⁶ See, e.g., ACLU of Northern California and ACLU of Southern California, et al., [Voting in California Jails A Community Toolkit](#) (2021) (as of Feb. 17, 2023).