

“Social justice should be the underlying goal of all humanity.”
-Alan V. Lowenstein, Institute Founder



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do social justice.

TESTIMONY OF EMILY SCHWARTZ
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
IN OPPOSITION TO S3043
NEW JERSEY SENATE JUDICIARY COMMITTEE
DECEMBER 7, 2023

Chair Stack and Vice-Chair Pou and members of the Senate Judiciary Committee:

Thank you for the opportunity to present this testimony in opposition to S3043.

My name is Emily Schwartz and I am senior counsel with the Criminal Justice Reform Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute’s advocacy empowers people of color by building reparative systems that create wealth, transform justice, and harness democratic power—from the ground up—in New Jersey. I am also a former public defender and have represented clients in jury trials.

The Institute opposes S3043. When initially introduced by Chairman Stack, S3043 was a landmark piece of legislation, finally addressing the enormous imbalance in our jury pools due to the lifetime ban on eligibility for individuals with prior convictions. In its original form, S3043 recognized that voir dire was the proper channel to ensure that each individual’s potential bias was addressed, and that every juror demonstrated to the court and parties that they could be fair and impartial.

We proudly supported that bill.

However, as it is being considered today, S3043 undermines the original benefits envisioned by this legislation.

Excluding individuals with criminal convictions from jury service is fundamentally unjust, and it has profound negative effects on our communities and the justice system. Studies show that this prohibition

excludes 7-8% of the overall New Jersey population, and a staggering 23-29% of the Black population, from participating in jury service.¹

By connecting jury service to criminal convictions, New Jersey imports racism into jury service, as it has the highest racial disparity in incarceration rates in the nation for adults and youth.² In fact, according to a study conducted by the New Jersey Supreme Court, Black jurors are underrepresented in 14 of the state's counties.³ Until this legislation is passed, our juries will continue to be whitewashed and will not provide individuals with a jury of their peers. By continuing the bar individuals under supervision, S3043 will not adequately stop the whitewashing of jury pools. Unsurprisingly, New Jersey's probation and parole systems also face staggering racial disparities. Of the estimated 30,000 individuals under supervision, around 71% are people of color.

While this bill could have opened a door to jury service for approximately half a million New Jerseyans, it is now standing in its own way.

Continuing a lifetime ban for certain offenses and for individuals under supervision ignores the reality that the *voir dire* process remains a constant in our legal system. *Voir dire* allows attorneys and the presiding judge to question jurors, identify bias and present arguments to exclude any juror who demonstrates they cannot be fair and impartial in that case. In other words, *voir dire* already exists as a safeguard against partial jurors. With these carve-outs, our jury panels will continue to fail at reflecting a "fair cross-section" as required by the Sixth Amendment.⁴

The carve-outs here are also simply nonsensical. Jury duty is not only a right – but also an obligation. Penalizing people who have committed what you consider the most serious offenses by removing citizenship obligations from them is illogical.

It also undermines work this Legislature correctly done to reintegrate people released from prison back into society. In 2019, this Legislature restored voting rights to 83,000 people.⁵ It is only logical that that everyone who has the right to vote should be permitted to serve on a jury. Moreover, people who serve on juries are more likely to vote in subsequent elections⁶ and it can aid in their successful reentry back into their communities.⁷

Research shows that the perceived bias of individuals with convictions is unfounded.⁸ In fact, in a study in Maine, court personnel recounted how jurors with felony convictions brought experience to juries and were impartial.⁹ Studies have shown that diverse juries deliberate longer, consider more facts and "have the benefit of a broader pool of life experiences and experience to draw upon so they can better understand the evidence."¹⁰

Although all states have some type of exclusion on jury service,¹¹ New Jersey is among the most restrictive states.¹² Indiana, North Dakota and Washington, for example, have no exclusion once an individual is free from incarceration.¹³

In conclusion, we strongly urge you to oppose S3043. If New Jersey is serious about building a more equitable and inclusive system, it must simply end the lifetime ban for all individuals with convictions. Including carve-outs to the legislation for particular convictions and/ or for people supervision perpetuates the existence of this injustice when we have an opportunity to remedy it – while undermining the goal of having more representative juries to ensure fair trials.

Thank you for the opportunity to testify before you all today.

¹ N.J. INST. FOR SOC. JUST., JURY OF OUR PEERS 3 (2022), https://assets.nationbuilder.com/njisj/pages/698/attachments/original/1661347891/Jury_of_Our_Peers_Brief_Web.pdf?1661347891.

² JOSHUA ROVNER, BLACK DISPARITIES IN YOUTH INCARCERATION, THE SENT’G PROJECT (Jul. 15, 2021), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>; JOSHUA ROVNER, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS, THE SENT’G PROJECT (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/> (showing that New Jersey has a 17.5 to 1 ratio between Black to white youth incarceration, the worst in the nation); ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENT’G PROJECT (Oct. 13, 2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (showing that New Jersey has a 12 to 1 ratio between Black to white adult incarceration, the worst in the nation).

³ Mary R. Rose, Ph.D., *Final Report on New Jersey’s Empirical Study of Jury Selection Practices and Jury Representativeness*, Prepared for the New Jersey Supreme Court, at 10 (June 1, 2021) https://www.njcourts.gov/courts/assets/supreme/judicialconference/Mary_Rose_Final_Report.pdf?c=Og.

⁴ *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

⁵ Jessica Corbett, *New Jersey restores voting rights of people on parole and probation*, Salon (Dec. 20, 2019, 7:30 AM) <https://www.salon.com/2019/12/20/newjersey-restores-voting-rights-of-people-on-parole-and-probation/>.

⁶ James M. Binnall, *Cops and Convicts: An Exploratory Field Study on Jurymanering*, 166 Ohio St. J. Crim. L. 221, 226 (2018) (citing John Gastil et al., *Civic Awakening in the Jury Room: A Test of the Connection between Jury Deliberation and Political Participation*, 64 J. of Pol. 585, 592 (2002); John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Value of Institutionalized Deliberation*, 34 Pol’y Stud. J. 605, 615 (2006); John Gastil et al., *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation* (2010)).

⁷ James A. Binnall, *Felon-Jurors in Vacationland: A Field Study of Transformative Civic Engagement in Maine*, 71 Maine L.R. 72, 76 (2019)

⁸ *Id.* at 91.

⁹ *Id.*

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<https://courses2.cit.cornell.edu/sociallaw/FlowersCase/racialmakeupjuries.html#:~:text=Social%20science%20indicates%20that%20diverse,can%20better%20understand%20the%20evidence>.

¹¹ Ginger Jackson-Gleitch, *Rigging the Jury: How each state reduces jury diversity by excluding people with criminal convictions*, Prison Policy Initiative (Feb. 18, 2021), <https://www.prisonpolicy.org/reports/juryexclusion.html> (citing Samuel R. Sommers, On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, 90 J. of Personality & Soc. Psychol. 597, 606 (2006)).

¹² N.J. INST. FOR SOC. JUST., JURY OF OUR PEERS 3 (2022), https://assets.nationbuilder.com/njisj/pages/698/attachments/original/1661347891/Jury_of_Our_Peers_Brief_Web.pdf?1661347891.

¹³ *Id.*