

United States Senate

WASHINGTON, DC 20510

March 28, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Ms. Colette Peters
Director
Federal Bureau of Prisons
320 First Street N.W.
Washington, DC 20534

Dear Attorney General Garland and Director Peters:

We write to inquire about voting access for adults in the custody of the Federal Bureau of Prisons (BOP).

In the three years since President Biden issued an Executive Order on “Promoting Access to Voting” (Executive Order 14019),¹ BOP has made progress toward fulfilling the Justice Department’s commitment to promoting voting access. The Executive Order (EO) required federal agencies to provide educational materials on voting, notify individuals of their eligibility to vote, and facilitate voter registration for those in federal custody.² In response to this directive, BOP has initiated a number of policy changes, such as providing informational handouts, to ensure that individuals in custody understand their eligibility to vote and ability to access the process for casting a ballot.³ Hundreds of individuals inside federal prisons have successfully registered and voted in recent elections,⁴ and leading advocacy groups note that BOP has made an “exemplary” commitment to implementing the EO that could “significantly increase voting access.”⁵

Nonetheless, there are additional opportunities to build on the progress that BOP has already achieved. Under current policies, BOP does not share important voter information with local election officials, and it can be difficult to know whether voter registration materials and ballots successfully reach incarcerated voters. Additional efforts and coordination are therefore required to ensure that individuals properly receive election information and submit election materials in a timely manner. BOP might consider pursuing an exception to the regulations prohibiting information sharing for election agencies,⁶ such as a Routine Use Exception to the Privacy Act.⁷ Additionally, although BOP has adopted a practice of treating some incoming mail from election

¹ Exec. Order No. 14019, 86 Fed. Reg. 13623 (March 7, 2021).

² *Id.*

³ District of Columbia Corrections Information Council And Board of Elections, *Implementation of the Restore the Vote Amendment Act of 2020* (March 8, 2023), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/CIC%20%26%20BOE%20Voting%20Report.pdf.

⁴ District of Columbia Corrections Information Council And Board of Elections, *supra* note 3, at 6.

⁵ Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting at 14 (2023), https://civilrights.org/wp-content/uploads/2023/03/ProgressReport_VotingAccess.pdf.

⁶ District of Columbia Corrections Information Council And Board of Elections, *supra* note 3, at 10 (“The BOP should pursue an exception to the regulations that prevent them from providing more specific information regarding the whereabouts of DC residents.”).

officials and all outgoing mail addressed to election officials as “legal mail” or “special mail,”⁸ this practice is not always followed.⁹ We encourage BOP to consider comprehensively adding election agencies to the list of offices for which all correspondence is considered “special mail.”¹⁰ We would also encourage BOP to build on existing work to support voters with disabilities and to provide incarcerated voters with important information on candidates and ballot initiatives.

To better understand BOP’s continued efforts to provide access to voting for adults in custody, we respectfully ask for responses to the following questions no later than April 12, 2024:

1. How is BOP ensuring local boards of elections are provided with necessary information regarding which of their voters are in BOP custody and at which facilities?
2. How is BOP ensuring that incarcerated voters can reliably receive their ballots and all other incoming mail from election agencies?
3. How is BOP working with election agencies on ensuring accessibility to remote ballots, where available, and other accommodations for voters with disabilities?
4. How is BOP communicating voter information in accessible formats, such as ASL interpreters, large text, braille, easy read formats, and audible announcements?
5. How is BOP providing information about candidates and initiatives on the ballot, and what avenues exist to provide this type of material to adults in custody so that they do not have to proactively request it?

Thank you for your response to these questions and for your continued efforts to ensure adults in custody have access to the materials needed to understand their eligibility to vote and their ability to cast a ballot. We look forward to receiving your response and to working together to build on BOP’s successful efforts over the past three years.

Sincerely,



Richard J. Durbin
United States Senator



Jeffrey A. Merkley
United States Senator

⁷ Letter to Attorney General Merrick Garland Re: Routine Usage Exception to Allow for Implementation of Universal Enfranchisement and Abolition of Prison Gerrymandering (Mar. 30, 2021), https://campaignlegal.org/sites/default/files/2021-03/DRAFT_03.30.2021_Routine%20Usage%20Exception%20Letter%20DOJ%20%5Bfinal%5D.pdf.

⁸ Federal Bureau of Prisons, *Voting Rights for Incarcerated Individuals* at 4-5, <https://www.justice.gov/file/1486226/download>.

⁹ District of Columbia Corrections Information Council And Board of Elections, *supra* note 3, at 11 (“Many ballots were not delivered as legal mail, which introduced more opportunities for the unsuccessful delivery of ballots.”).

¹⁰ Federal Bureau of Prisons, Program Statement, No. 5265.14 at 3-4 (Apr. 5, 2011), https://www.bop.gov/policy/progstat/5265_014.pdf.



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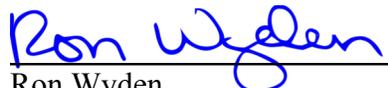
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