



PROTECTING THE VOTE FOR ALL AMERICANS

TESTIMONY TO SENATE COMMITTEE ON JUDICIARY IN SUPPORT OF A.B. 431

My name is Jon Sherman, and I am Senior Counsel at Fair Elections Center, a non-partisan non-profit organization working on election reform and voting rights in Washington, D.C. In this capacity, I have worked on both legislation and litigation to reform state felon disenfranchisement and reenfranchisement laws across the country.

I am submitting this testimony in support of A.B. 431 because it will bring Nevada's laws in line with those adopted by an overwhelming majority of states; it is consistent with a current nationwide trend in favor of making restoration contingent upon fulfillment of the terms of one's sentence, not the granting of a petition; and it will reduce public confusion surrounding the voter eligibility requirements.

Mainstream. First and foremost, I want to emphasize that A.B. 431 is very much in the mainstream of state felon rights restoration systems nationwide. Today, thirty-eight states plus D.C. have laws that restore voting rights to felons in a non-discretionary manner, based on objective criteria such as release from incarceration or the completion of parole or probation.¹ In

¹ There are four groups of states that restore voting rights by operation of law: (1) D.C. MUN. REGS. tit. 3 § 500.2; HAW. REV. STAT. § 831-2(a)(1); ILL. CONST. art. III, § 2, 730 ILL. COMP. STAT. 5/5-5-5; IND. CODE §§ 3-7-13-4, 3-7-13-5; MD. CODE ANN. ELEC. LAW § 3-102(b)(1); MASS. CONST. amend. art. III, MASS. GEN. LAWS ch. 51, § 1; MICH. COMP. LAWS § 168.758b; MONT. CONST. art. IV, § 2, MONT. CODE ANN. § 46-18-801(2); N.H. REV. STAT. ANN. §§ 607-A:2, 607-A:3; N.D. CENT. CODE ANN. §§ 12.1-33-01, 12.1-33-03; OHIO REV. CODE ANN. § 2961.01(A); OR. REV. STAT. § 137.281(7); 25 PA. CONS. STAT. §§ 2602(t), 2602(w) 3146.1, <http://www.votespa.com/en-us/Pages/Convicted-Felon.aspx>; R.I. CONST. art. II, § 1; UTAH CODE ANN. § 20A-2-101.5(2) (restoration upon release from incarceration); (2) CAL. ELEC. CODE § 2101(a); COLO. CONST. art. 7, § 10; COLO. REV. STAT. § 1-2-103(4); CONN. GEN. STAT. §§ 9-46, 9-46a; N.Y. ELEC. LAW § 5-106(3) (restoration after completion of parole, but prior to the end of probation); (3) ALASKA STAT. § 15.05.030; ARK. CONST. amend. 51, § 11(d); DEL. CODE ANN. tit. 15, §§ 6103, 6104 (restoration upon sentence completion except permanent disenfranchisement for certain disqualifying felony convictions); GA. CONST. art. II, § I, para. III; IDAHO CODE ANN. § 18-310(2); KAN. STAT. ANN. §§ 21-6613, 22-3722; LA. CONST. art. I, §§ 10, 20; MINN. STAT. § 609.165; MO. REV. STAT. § 115.133; N.J. STAT. ANN. §§ 2C:51-3, 19:4-1(8); N.M. STAT. ANN. § 31-13-1; N.C. GEN. STAT. ANN. §§ 13-1, 13-2; OKLA. STAT. tit. 26, § 4-101; S.C. CODE ANN. § 7-5-120(B); S.D. CODIFIED LAWS § 24-5-2; TEX. ELEC. CODE ANN. § 11.002; WASH. REV. CODE § 29A.08.520(1); W. VA. CODE § 3-2-2; WIS. STAT. § 304.078(2) (restoration following completion of parole and

these states, restoration is not subject to a state official or state judge's discretion. Indiana, Montana, North Dakota, and Utah all restore felons' rights upon release from incarceration. An ever-shrinking minority of eight states, including Nevada, force some or all felons to petition a state official, agency, or court to regain their voting rights.² This process is costly and used by a dwindling minority of states. Virginia is technically on this list because the Governor has sole discretion to grant or deny restoration of the right to vote, but over the last few years, Virginia's Governors have individually restored over 184,000 felons upon completion of their sentences.³

I understand that some may have concerns regarding those who have committed serious, violent, and repeat felonies. In my view, the proper way to address those concerns is through the

probation); and (4) NEB. REV. STAT. ANN. § 29-112 (restoration two years after completion of sentence). This tally does not include Alabama and Tennessee's complex, hybrid systems of restoration. Alabama and Tennessee have created a path for non-discretionary restoration of the right to vote based on objective criteria for felons who are not permanently disenfranchised. The permanently disenfranchised can only regain their voting rights through a pardon. ALA. CODE §§ 15-22-36, 15-22-36.1; TENN. CODE ANN. §§ 40-29-202–40-29-204. Finally, an additional two states, Maine and Vermont, do not disenfranchise felons even during incarceration. ME. CONST. art. II, § 1; VT. STAT. ANN. tit. 28, § 807(a).

² See, e.g., ARIZ. REV. STAT. ANN. §§ 13-905–13-912 (discretionary judicial restoration for individuals with two or more felony convictions, but automatic restoration for first-time offenders); IOWA CODE § 914.2 (executive restoration for all felony convictions); KY. CONST. § 145 (executive restoration for all felony convictions); MISS. CONST., art. 12, § 241 (listing ten crimes that trigger lifelong disenfranchisement); *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998) (interpreting section 241 of the Mississippi Constitution to include certain felonies not expressly listed); see also Op. Atty. Gen. No. 2009-00210, 2009 WL 2517257 (Miss. A.G. July 9, 2009) (interpreting section 241 in light of *Cotton* to mean 22 felonies currently trigger lifelong disenfranchisement in Mississippi); NEV. REV. STAT. § 213.157 as amended by 2017 Nevada Laws Ch. 362 (A.B. 181) (discretionary judicial restoration for individuals with multiple felony convictions, if previously convicted for more serious, violent offenses and/or two or more offenses; otherwise, automatic restoration immediately upon release or following two-year waiting period for Category B felonies); VA. CONST. art. II, § 1 (executive restoration for all felony convictions); WYO. STAT. ANN. § 7-13-105 (amended by 2018 Wyo. Laws Ch. 108 (S.F. 70), 64th Leg., Budget Sess. (Wyo. 2018)) (discretionary executive restoration for all felony convictions but automatic restoration for non-violent first-time felony convictions). Florida is the tenth state on this list, because Amendment 4 excludes felons convicted of murder and sex offenses. As to those felons, Florida maintains a discretionary restoration system. FLA. CONST. art. VI § 4; Fla. Dept. of State, Voting Restoration Amendment, 14-01, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Dec. 4, 2018), full text of Amendment 4 available at <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf>.

³ Office of Virginia Governor, Press Release (Feb. 12, 2019), available at <https://www.governor.virginia.gov/newsroom/all-releases/2019/february/headline-838509-en.html>.

state's criminal code and judicial sentencing, not by tinkering with the laws of voting eligibility and adding more and more complexity and differentiation of felons who completed their prison terms. Stripping felons of their right to vote is merely a collateral consequence of conviction and sentencing. It is not disenfranchisement that deters crime; nor does withholding the right to vote disincentivize repeat offenses. By contrast, people who have studied the issue have in fact found promising evidence that restoration of the right to vote is positively correlated with a reduction in recidivism. Controlling for other factors, the study found that those with a previous arrest who subsequently voted were considerably less likely to be rearrested than those who did not.⁴ This makes sense. If we want people to rejoin society and live productive, law-abiding lives, then we should reintegrate them into society. As that study's authors write, "[v]oting appears to be part of a package of pro-social behavior that is linked to desistance from crime."⁵ They work, they pay taxes, raise families, go to church, coach sports, and yet cannot participate in our civic life.

Nationwide Trend. This bill is also consistent with the current nationwide trend. In 2016, Maryland changed its laws to effect restoration of the right to vote following release from incarceration, and in 2006, Rhode Island did the same.⁶ Last year Florida adopted an amendment to its Constitution that restored the right to vote to felons who have completed all terms of their sentence, excluding those convicted of murder and sex offenses. In a year of closely divided U.S. Senate and gubernatorial elections that were decided by less than 1 percent of the vote, this amendment passed with 64.5 percent of the vote, showing the broad bipartisan support for restoration once a felon has done everything the criminal justice system asked of him or her. Inspired by both Florida's evolution on this issue and Republican Governor Kim Reynolds' persuasion that this is the right thing to do, Iowa's legislature is considering a similar state constitutional amendment.

Furthermore, in the past year, New York and Louisiana have moved up the point of restoration for many felons, by executive order and statute, respectively. Texas and Delaware have eliminated their waiting periods for restoration.

Eliminating Confusion. With only the possible exceptions of Alabama and Arizona, Nevada has one of the most confusing felon reenfranchisement regimes in the entire country. This bill will create a simple rule for restoration and thereby reduce instances of unwitting registration by ineligible felons. It will also reduce instances of eligible, restored felons not registering for fear of running afoul of a complex statute that would take legal assistance to understand.

Thank you for considering these points, and please vote to pass A.B. 431.

⁴ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004); *see also* Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 427 (2012).

⁵ Uggen & Manza, *Voting and Subsequent Crime and Arrest*, at 195.

⁶ MD. CODE ANN. ELEC. LAW § 3-102(b)(1); R.I. CONST. art. II, § 1.