Testimony of the Civil Justice Clinic, Quinnipiac University School of Law

In Support of SB233

Government Administration and Elections Committee

February 28, 2020

Dear Members of the Government Administration and Elections Committee:

We submit this testimony in support of SB233, An Act Concerning Elections. The bill would restore voting rights to people convicted of felonies who are on parole. Connecticut already allows people convicted of felonies who are on probation to vote, and it is the only state in the Northeast that still disenfranchises people on parole. Although this bill represents an important step forward towards correcting Connecticut’s long history of voter disenfranchisement, we urge the Committee to amend the bill to eliminate felony disenfranchisement entirely in Connecticut and restore voting rights for incarcerated citizens as well.

I. CURRENT LAW IN CONNECTICUT

Connecticut disenfranchises citizens who are incarcerated for felonies or on parole following release from incarceration.\(^1\) Individuals may vote if they are on probation, held in pre-trial detention, or incarcerated for misdemeanors. In addition, under current Connecticut law, those confined in federal facilities or in the facilities of other states are required to pay fines associated with their cases before they can vote.\(^2\) Bills were introduced in the 2019 legislative session that would have restored voting rights to those in prison and on parole (or in halfway houses) and eliminated the fine requirement for those with federal and out-of-state convictions.\(^3\) H.B. 7160, which restored voting rights upon release from prison and eliminated the fine requirement, passed the House last year but died in the Senate.\(^4\)

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\(^1\) See Conn. Gen. Stat. § 9-46(a) (“A person shall forfeit such person’s right to become an elector and such person’s privileges as an elector upon conviction of a felony and committal to the custody of the Commissioner of Correction for confinement in a correctional institution or facility or a community residence, committal to confinement in a federal correctional institution or facility, or committal to the custody of the chief correctional official of any other state or a county of any other state for confinement in a correctional institution or facility or a community residence in such state or county.”); id. § 9-46a(b) (“Upon the release from confinement in a correctional institution or facility or a community residence of a person who has been convicted of a felony and committed to the custody of the Commissioner of Correction and, if applicable, the discharge of such person from parole, (1) the person shall have the right to become an elector . . . .”).

\(^2\) See Conn. Gen. Stat. § 9-46a(a) (“A person who has been convicted of a felony and committed to confinement in a federal or other state correctional institution or facility or community residence shall have such person's electoral privileges restored upon the payment of all fines in conjunction with the conviction and once such person has been discharged from confinement, and, if applicable, parole.”).

\(^3\) S.B. 53 (Conn. 2019) (prisoner voting rights); S.B. 25 (Conn. 2019) (parolee voting rights); S.B. 22 (Conn. 2019) (eliminating fine requirement).

\(^4\) H.B. 7160 (Conn. 2019).
II. APPROACHES OF OTHER STATES

Connecticut has the most restrictive felony disenfranchisement laws in the Northeast. In Maine and Vermont, individuals convicted of felonies retain their vote, even during their time in prison. In Massachusetts, New Hampshire, New Jersey, Pennsylvania, and Rhode Island, voting rights are restored automatically when people are released from incarceration. In New York, the governor recently issued an executive order restoring voting rights to parolees.

There is a growing national movement to eliminate felony disenfranchisement entirely. In 2019, bills were introduced in multiple states around the country that would permit incarcerated citizens to vote including in Connecticut, Hawaii, Massachusetts, Nebraska, New York, New Mexico, New Jersey, Virginia, and Washington D.C. Around the world, many countries do not restrict the voting rights of prisoners.

In Maine and Vermont, incarcerated people register to vote in the towns where they lived before they were incarcerated. Individuals request absentee ballots from the town clerks in those towns, and receive their absentee ballots at the prison by mail. They then complete the ballots and return them by mail. Volunteers from groups such as the NAACP and the League of Women Voters help by holding voting registration drives and informational sessions.

III. HISTORY OF DISENFRANCHISEMENT IN CONNECTICUT

Historically, Connecticut has restricted voting rights on numerous grounds including based on race, gender, literacy, English language abilities, intellectual capacity, mental illness, and criminal record.

- **Race-Based Exclusion:** Connecticut’s original 1818 Constitution provided that only “white male” citizens over the age of twenty-one who owned property, paid taxes, or served in the military could vote. Connecticut denied African-Americans the right to vote until 1876, when the state was forced to extend the franchise by the Fifteenth Amendment to the U.S. Constitution. In contrast, by the start of the Civil War, all other New England states allowed African-Americans to vote.

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9 Conn. Const. art. VI.
10 Conn. Const. of 1818, amend. XXIII; U.S. Const. amend. XV.
• **Gender-Based Exclusion:** Connecticut denied women the franchise until the Nineteenth Amendment to the U.S. Constitution was ratified in 1920.\(^{12}\)

• **Literacy/English-Only Test:** In 1855, Connecticut became the first state in the nation to adopt a literacy requirement, which restricted the right to vote to those who could read the state’s Constitution and statutes.\(^{13}\) In 1897, the Constitution was amended to require that voters be able to read in the English language.\(^{14}\) Those requirements disenfranchised recent immigrants and minority voters at disproportionate rates. Congress’s amendments to the federal Voting Rights Act in 1970 eventually brought an end to those practices.\(^{15}\) Connecticut was one of the few states at the time that still had literacy and English-only voting restrictions.\(^{16}\)

• **Mental Illness/Disability Exclusion:** From 1877 until 1975, a Connecticut statute provided that “[n]o idiot or mentally ill person shall be admitted as an elector.”\(^{17}\)

• **Criminal History Exclusion:**
  - Prior to the 1818 Constitution, individuals were required to demonstrate “quiet and peaceable behavior and civil conversation” to qualify to vote. The provision was invoked in 1803 to prevent a formerly enslaved man from voting. (This was before Connecticut explicitly banned African Americans from voting. The man was accused of raping a white woman.)\(^{18}\)
  - The 1818 Constitution provided that voting rights were forfeited upon various convictions, including those for which “infamous punishment” was inflicted.\(^{19}\) In 1948, the Constitution was amended to provide that the General Assembly would determine forfeiture rules.\(^{20}\) Legislation enacted in 1949 retained that “infamous punishment” language,\(^{21}\) but it was amended in 1963 to disenfranchise any person

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\(^{13}\) Conn. Const. of 1818 amend XI; see also Keyssar, *supra* note 8 at 86, 142, 227.

\(^{14}\) Conn. Const. of 1818 amend. XXIX.


\(^{16}\) Keyssar, *supra*, note 10.

\(^{17}\) Public Act. 75-210 (repealing restriction).


\(^{19}\) Conn. Const. of 1818. art. VI. Voting rights were “forfeited by a conviction of bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offence for which an infamous punishment is inflicted.” The phrase “or other offence for which an infamous punishment is inflicted” was interpreted by the Connecticut Supreme Court to mean any felony offense. *Borino v. Gen. Registrars of Voters of City & Town of Bridgeport*, 86 Conn. 622 (1913).

\(^{20}\) Conn. Const. of 1818 amend. XLVI (“The general assembly shall by law prescribe the offenses on conviction of which the privileges of an elector shall be forfeited and the conditions on which and methods by which such rights may be forfeited.”). This language was amended in 1974 to read: “The general assembly shall by law prescribe the offenses on conviction of which the right to be an elector and the privileges of an elector shall be forfeited and the conditions on which and methods by which such rights may be restored.” Conn. Const. amend. VII.

\(^{21}\) Forfeiture occurred upon conviction of “bribery, forgery, perjury, or other offence for which an infamous punishment is inflicted,” except for the crime of nonsupport. The legislation also created a commission to consider
convicted of a felony. A 1975 amendment eliminated the commission that considered voting restoration petitions and provided instead for restoration upon proof of payment of fines and discharge from confinement, parole, or probation. Legislation enacted in 2001 restored the right to vote to those on probation but continued to disenfranchise parolees and those incarcerated for felonies. Those who had been incarcerated in Connecticut facilities no longer needed to pay their fines to have their voting rights restored. The statute continues to require payment of fines by those who were confined in federal facilities or in the facilities of other states.

IV. DISPROPORTIONATE IMPACT OF CONNECTICUT’S DISENFRANCHISEMENT LAW

Connecticut’s current felony disenfranchisement law, like many of the state’s previous restrictions on voter eligibility, has a disproportionate impact on people of color. White non-Hispanic residents in Connecticut represent approximately two-thirds of the state’s general population but only about a third of the state’s incarcerated population. African Americans and Latinos make up approximately two-thirds of Connecticut’s prison population. Despite recent reductions in our state’s incarcerated population, Connecticut continues to incarcerate at the highest rate of any New England state. Approximately 12,000 people are incarcerated in the state, with approximately 3,500 on parole or special parole. Of those incarcerated, approximately 4,000 are serving sentences for misdemeanors or are detained pretrial and have the ability to vote via absentee ballot.

V. ENDING FELONY DISENFRANCHISEMENT

SB233 is an important step towards ending felony disenfranchisement in Connecticut.

Rehabilitation can be best achieved by treating a person with dignity and fostering connection and engagement with society. Encouraging access to the political process promotes a sense of fairness and the legitimacy of institutions. In contrast, restrictions on voting foster feelings of exclusion and alienation and hinder reintegration into society for people with convictions. Going to prison should not mean that a citizen forfeits the right to care about his or her community, state, and country. Restoring the right to vote helps to restore a person’s social contract with society, and recognizes that those in prison are full citizens capable of rejoining society in productive ways. The reality is that most prisoners will be released at some point in

\[\text{(footnotes omitted)}\]
time. Giving individuals an opportunity to interact positively with government institutions will help reduce recidivism. Restoring voting rights recognizes a person’s humanity, and fosters greater connection and engagement with the communities where individuals return after prison.

“One can be punished without being subject to civic exile.”28 Incarceration punishes by depriving a person of physical liberty and isolating them from family and community. Our government recognizes, however, that prisoners are not stripped of all rights. Incarcerated individuals retain the right to marry and practice religion. The Supreme Court said in 1958 that “[c]itizenship is not a right that expires upon misbehavior.”29 What makes suffrage—the very cornerstone of democracy—different?

Suffrage is the most fundamental right in a democracy; it grants the government legitimacy by instilling power in citizens. Restoring the right to vote to people who have been convicted of felonies benefits society as a whole by ensuring that the government remains accountable to the people, without qualification. Moral, educational, racial, and gender-based qualifiers have historically existed in our country, but they have all ultimately been eliminated. The call to re-enfranchise people with felony convictions does not deny their past wrongs. It is instead an opportunity to allow those people to meaningfully participate in the political process so that they will be better prepared to exercise their civic duties and engage in civic activism when they return to society.

We urge that this Committee amend the SB233 to end felony disenfranchisement entirely and restore the voting rights of all Connecticut’s citizens. If the Committee declines to take this step, it should at least amend the bill to make clear that people in halfway houses have the right to vote. HB 7160, which passed the House last year, contained language covering those in halfway houses. Making clear that voting rights are restored on the day of release from prison will help eliminate confusion.

Respectfully Submitted,
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