



PROTECTING THE VOTE FOR ALL AMERICANS

## Testimony Regarding HB 1078

### **State of Washington House Committee on State Government & Tribal Relations Hearing Held Thursday, January 14, 2021**

Fair Elections Center submits this testimony in support of HB 1078 because it will allow Washington to join the many states that currently end disenfranchisement when persons with felony convictions are no longer incarcerated; it will reduce the impact of racial bias in the criminal justice system on voting; it is consistent with a national trend enfranchising more Americans with felony convictions; and it will reduce public confusion surrounding the voter eligibility requirements.

Fair Elections Center is a national, nonpartisan voting rights and election reform organization which works to remove barriers to registration and voting for traditionally underrepresented constituencies. Formed in 2017 to continue the work of the Fair Elections Legal Network, the Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations. In 2018 the Center obtained a first-of-its-kind ruling in federal court holding that Florida's former felon disenfranchisement scheme was unconstitutional. The Center engages in legislation and litigation seeking to reform state felony disenfranchisement laws across the country.

Fair Elections Center urges you to move this bill forward for the following reasons:

**Join Many States with This Approach.** At least eighteen states currently restore voting rights to persons with felony convictions upon their release from prison. These states include Oregon, Colorado, Utah, Nevada, Pennsylvania, and Indiana, among many others. The Sentencing Project estimates that 45,090 people with felony convictions are disenfranchised in Washington, making up 0.87% of Washington's total voting age population ("VAP").<sup>1</sup> The same source estimates that 3.56% of Washington's Black VAP and 1.04% of Washington's Latinx VAP is disenfranchised.<sup>2</sup> In comparison, Oregon disenfranchises smaller percentages of all populations. Oregon disenfranchises an estimated 15,871 people, making up 0.53% of their total VAP.<sup>3</sup> The

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<sup>1</sup> The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 16 (Oct. 30, 2020), available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

<sup>2</sup> *Id.* at 17-18.

<sup>3</sup> *Id.* at 16.

Sentencing Project estimates that 2.77% of Oregon's Black VAP and 0.92% of Oregon's Latinx VAP is disenfranchised.<sup>4</sup>

**Reduce the Impact of Racial Bias.** This change would reduce the impact of racial bias on voting and elections and the resulting systematic disproportionate disenfranchisement of BIPOC voters. As of 2014, Black, Latinx, and Native American individuals were sentenced to legal financial obligations (LFOs) related to their convictions more frequently and at higher rates than White and Asian/Pacific Islander individuals.<sup>5</sup> Differences in LFO collection trends in Washington suggest that Black, Latinx, and Native American individuals are unable to pay those LFOs.<sup>6</sup> Since then, Washington has made some changes to LFO laws, but the ongoing impact of previous inequality likely continues to place Black, Latinx, and Native American individuals at higher risk of disenfranchisement. Active community supervision also disproportionately affects Black and American Indian/Alaska Native individuals. Of all individuals under active community supervision by the Washington State Department of Corrections, 12.1% are Black and 4.3% are American Indian/Alaska Native.<sup>7</sup> Meanwhile, the Census Bureau estimates that 4.4% of Washington's population is Black and 1.9% is American Indian/Alaska Native.<sup>8</sup>

Amplified by these differences in LFOs and sentencing, Washington's current disenfranchisement scheme disproportionately affects Black and Latinx individuals, as noted above.<sup>9</sup> By disassociating the right to vote from the completion of fines, fees, probation or parole, racial and economic biases that are currently endemic in these processes have a reduced impact on voting and democracy, and on these communities.

**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. In 2018, Florida voters amended the state's Constitution by restoring the right to vote to people with felony convictions who have completed all terms of their sentences, 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 person with a felony conviction has done everything the

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<sup>4</sup> *Id.* at 17-18.

<sup>5</sup> Alexes Harris, Presentation to the Washington State Minority and Justice Commission Supreme Court Symposium 12-17 (2018), *available* at <https://www.courts.wa.gov/subsite/mjc/docs/2018/WA%20Sup%20Ct%202018%20Monetary%20Sanctions%20Harris%20Slides.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> Wash. State Dep't. of Corr., Agency Fact Card - Expanded (Sept. 30, 2020), *available* at <https://www.doc.wa.gov/docs/publications/reports/100-QA002.pdf>.

<sup>8</sup> U.S. Census Bureau, QuickFacts Washington, *available* at <https://www.census.gov/quickfacts/WA> (last visited Jan. 13, 2020)

<sup>9</sup> The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 16-18 (Oct. 30, 2020), *available* at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

criminal justice system asked of the individual. In 2020, 58.6% of California voters approved a constitutional amendment to allow people on parole for felony convictions to vote.

Furthermore, since 2018, New York and Louisiana have moved up the point of restoration for many people with felony convictions; Texas and Delaware have eliminated their waiting periods for restoration. The trend is towards easing returning citizens' path back into civic life.

**Eliminating Confusion.** This bill will dramatically reduce, if not eliminate, instances of eligible, restored individuals with felony convictions not registering for fear of running afoul of voter qualifications and risking criminal penalties. For example, Dr. Alexes Harris, professor of sociology at the University of Washington and author of "A Pound of Flesh: Monetary Sanctions as Punishment for the Poor" found that, under the current disenfranchisement scheme, many Washington residents with LFOs were not aware that they could vote as long as their LFO account was in good standing, and thus assumed they could not vote.<sup>10</sup> This deterrent effect to actually-eligible voters multiplies the existing disenfranchisement.

Fair Elections Center urges you to move this bill forward. If you have any questions or need further information, please contact Michelle Kanter Cohen, Senior Counsel, Fair Elections Center, (202) 331-0114, [mkantercohen@fairelectionscenter.org](mailto:mkantercohen@fairelectionscenter.org).

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<sup>10</sup> The Sentencing Project, *Disenfranchisement News: Re-Enfranchised Black Voters Helped Push Doug Jones to Victory* (Dec. 21, 2017), available at <https://www.sentencingproject.org/news/disenfranchisement-news-re-enfranchised-black-voters-helped-push-doug-jones-victory/>.