

Written Testimony of
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To the
Washington House Committee on State Government & Tribal Relations
Concerning House Bill 1078

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The Brennan Center is grateful for the opportunity to submit testimony in support of House Bill 1078, which would allow all Washingtonians living in the community to vote.

The Brennan Center has worked to reform criminal disenfranchisement laws at the state and federal levels for decades, including in Washington, through research, legislative and executive advocacy, and public education.¹ We commend this Committee for considering this legislation and urge you to move the bill to a floor vote as quickly as possible.

The Committee will hear live testimony from several others today, who will surely speak powerfully and eloquently about the damaging impact of Washington's law barring community members from voting. My testimony will focus on why the current policy reflects a misguided approach to criminal justice and also provide some background on the issue nationally and in Washington.

A. Denying voting rights is contrary to the purpose of community supervision.

Community supervision is meant to encourage rehabilitation and reduce recidivism.² Restoring voting rights serves those purposes. On the other hand, there is no legitimate criminal justice goal served by denying the right to vote to Washingtonians living in the community. It will not make anyone safer. Indeed, studies have shown that voting and civic engagement

¹ The Brennan Center for Justice at NYU School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice. The Brennan Center's work on rights restoration has been widely cited by legislators, government agencies, academic journals, and the media, and our experts have testified frequently before Congress and state legislatures across the country. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law.

² *Supervision in the Community*, WASH. STATE DEP'T. OF CORR., <https://www.doc.wa.gov/corrections/community/supervision.htm> (last visited Jan. 14, 2021).

reduces rates of re-arrest, re-incarceration, and self-reported criminal behavior.³ There is also evidence that restoring voting rights can lead to increased trust in government and the criminal justice system, views of the government as being fairer and more representative, as well as increased willingness to cooperate with law enforcement.⁴

We all benefit when everyone living in the community is engaged in a healthy and productive way. Yet Washington's law sends a message to people on community supervision that we are not truly interested in their participation, that we do not trust them to be a part of our democracy, and that we do not consider them to be full citizens. Instead, we should encourage behaviors that require people to contemplate what is best for society and how they fit into the bigger picture. There are few activities that fit that description better than voting.

It is precisely because community supervision is meant to reintegrate that we should also reject calls for carveouts—that is, denying restoration to people convicted of certain offenses. Such a policy would be misguided for at least two reasons. First, the criminal legal system already accounts for the severity of one's crime during sentencing. People with more serious convictions spend more time in prison, but everyone who is on community supervision has been deemed fit to live and work among us. We should respect the criminal justice system's determination and encourage reintegration and rehabilitation, consistent with the purpose of community supervision. Second, excluding some community members with particular convictions from voting but not others will be difficult to administer because elections officials are not trained to draw lines based on complex criminal laws. Such a policy would only cause further uncertainty about who is eligible to vote. House Bill 1078, on the other hand, would provide a simple, clear rule: if you are living in the community, you can vote.

B. Criminal Disenfranchisement Nationwide.

Eighteen states, both red and blue, automatically restore voting rights to everyone upon release from prison.⁵ Maine, Vermont, and Washington, D.C. never take the right to vote away. The remaining thirty states fall somewhere in between, with the varied state laws forming a patchwork across the country. As a result of these policies, there are as many as five million

³ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193 (2004); see also FLA. PAROLE COMM'N, STATUS UPDATE: RESTORATION OF CIVIL RIGHTS (RCR) CASES GRANTED 2009 AND 2010, at 7, 13 (2011), <https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

⁴ Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Restoring Voting Rights Increases Both Trust and Cooperation with Government*, U. PITTSBURGH 4–5 (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

⁵ Those states are California, Colorado, Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. See *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUSTICE (last revised Dec. 3, 2020), <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states>.

Americans who are barred from voting just because of a past conviction.⁶ And most of those citizens are no longer incarcerated; they live in our communities, work, pay taxes, go to school, and raise families.

Fortunately, momentum has been building on this issue across the country. Over the past twenty years, over a dozen states have taken some action, whether through legislation, executive order, or constitutional amendment, to restore voting rights for residents with past convictions. In the last two years alone, the last three states with a policy of blanket and permanent disenfranchisement for everyone convicted of a felony—Florida, Kentucky, and Iowa—each provided for automatic rights restoration for some people living in the community. Five states—California, Colorado, Nevada, New Jersey, and New York—all enacted policies like House Bill 1078. Washington D.C. also changed its policy, joining Maine and Vermont in never taking the right to vote away. As the passage of Proposition 17 in California by nearly 9 points last year demonstrates, this momentum is fueled by overwhelming public support for rights restoration.⁷

This year, there appears to be even more opportunity for change at the state⁸ and federal level.⁹ Washington should pass House Bill 1078 and help keep this national momentum at a fever pitch.

C. Criminal Disenfranchisement in Washington.

Washington currently prohibits people convicted of a felony from voting while they are in prison or on community supervision.¹⁰ As a result, there are thousands of Washingtonians—some of whom were never sentenced to prison—who are living in the community but cannot vote even though they are working, paying taxes, going to school, and raising families. And because of racial disparities in the criminal legal system, Washington’s law disproportionately silences the voices of the state’s Black/African American, Latino, Indigenous, Southeast Asian, and Pacific Islander residents.¹¹

⁶ CHRIS UGGEN, ET AL., THE SENTENCING PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION (2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

⁷ *Statewide Ballot Measures – Statewide Results*, CALIFORNIA SECRETARY OF STATE, <https://electionresults.sos.ca.gov/returns/ballot-measures> (last visited Jan. 14, 2021).

⁸ Legislation to enact the same policy as House Bill 1078 is also being considered in New Mexico and New York. *See* H.B. 74, 55th Leg., First Sess. (N.M. 2021); S. 830, 2021-2022 Reg. Sess. (N.Y. 2021).

⁹ Congress is considering H.R. 1, a sweeping pro-democracy package that includes the Democracy Restoration Act (the “DRA”), which would require all states to adopt a rights restoration policy consistent with House Bill 1078 in federal elections. *See* H.R. 1, 117th Cong. (2021).

¹⁰ R.C.W. § 29A.08.520.

¹¹ While Washington’s Black/African American, Latino, Indigenous, Southeast Asian, and Pacific Islander citizens make up 4.4%, 13%, 1.9%, and 10.4% of Washington’s population, respectively, they make up 12.1%, 9.9%, 4.3%, and 3.3% of Washingtonians under community supervision. *QuickFacts: Washington*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/WA> (last accessed Jan. 14, 2021); WASH. STATE DEP’T. OF CORR., FACT CARD (Sept. 2020), available at <https://www.doc.wa.gov/docs/publications/reports/100-QA002.pdf>.

This is the case across the country, and there is a deep and troubling history of racism driving criminal disenfranchisement laws in the United States. Indeed, after the Civil War, states passed criminal disenfranchisement laws to evade the mandate of the Fifteenth Amendment and to systematically limit the political power of Black voters.¹² These “Jim Crow” laws were not just limited to the South—Washington’s law dates back to the Reconstruction Era.¹³

Advocates in Washington have fought for years to change the state’s criminal disenfranchisement law—both in the courts and the legislature. Early efforts included a lawsuit brought under the Voting Rights Act of 1965 in 1996¹⁴ that was ultimately unsuccessful even though the court found “uncontroverted” evidence¹⁵ of the law’s racially discriminatory impact.¹⁶ Several years later, in 2009, the legislature acted to improve the law by partially eliminating the state’s “pay-to-vote” requirement.¹⁷

But even under Washington’s current law, people who owe court debts are only “provisionally” restored the right to vote.¹⁸ This means that a person’s right to vote can be taken away if they fail to make timely payments.¹⁹ It also means that the right to vote could be conditioned on a person’s ability to pay, which is a violation of the fundamental principle that access to our democracy should not be conditioned on one’s wealth.²⁰ And while these revocations happen rarely, if ever, this “provisional restoration” policy causes confusion about who is eligible, and discourages even eligible voters from registering and voting.²¹ In fact, the

¹² ERIN KELLEY, BRENNAN CTR. FOR JUSTICE, RACISM AND FELONY DISENFRANCHISEMENT (2017), https://www.brennancenter.org/sites/default/files/publications/Disenfranchisement_History.pdf.

¹³ Washington’s first felony disenfranchisement law was passed in 1866, when Washington was a territory. Territorial Law of 1866 (Rem. & Bal. Code, § 4755) (“No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector.”); *see also* Territorial Law of 1881 (Rem. & Bal. Code, § 3054) (“A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary.”). The territorial law was written into the Washington Constitution as article VI, section 3 at the Constitutional Convention of 1889. 1941-42 Op. Wash. Att’y Gen. No. 209 (July 24, 1942). As originally enacted, article VI, section 3 provided, “[a]ll idiots, insane persons, and persons convicted of infamous crime unless restored to their civil rights, are excluded from the elective franchise.” *Id.*

¹⁴ *Farrakhan v. Locke*, 987 F.Supp. 1304 (E.D.Wa.1997). *See also* *Madison v. Washington*, 163 P.3d 757 (Wash. 2007) (rejecting challenge to Washington’s criminal disenfranchisement law under the equal protection clause of the U.S. Constitution and the privileges and immunities clause of the Washington Constitution).

¹⁵ *Farrakhan v. Gregoire*, 590 F.3d 989, 1015 (9th Cir. 2010).

¹⁶ *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

¹⁷ H.R. 1517, 61st Leg., Reg. Sess. (Wash. 2009).

¹⁸ R.C.W. § 29A.08.520(1).

¹⁹ *Id.* § 29A.08.520(2).

²⁰ *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966) (striking down a poll tax because “[v]oter qualifications have no relation to wealth. . .”).

²¹ *Disenfranchisement News: Re-Enfranchised Black Voters Helped Push Doug Jones to Victory*, THE SENTENCING PROJECT, Dec. 21, 2017, <https://www.sentencingproject.org/news/disenfranchisement-news-re-enfranchised-black-voters-helped-push-doug-jones-victory/> (noting that many impacted individuals in Washington were not aware they may vote as long as their LFO account is in good standing and, as a result, assumed they could not vote); *see also, generally*, ERIKA WOOD & RACHEL BLOOM, AM. CIVIL LIBERTIES UNION & BRENNAN CTR. FOR JUSTICE, DE FACTO DISENFRANCHISEMENT (2008), https://www.brennancenter.org/sites/default/files/2019-08/Report_DeFactoDisenfranchisement.pdf.

law is made even more confusing by the fact that provisional restoration applies only to people convicted of felonies in Washington state court and not federal or out-of-state courts.

Conclusion

For years, Washington has been a leader on many areas of democracy reform. Yet the state has the worst criminal disenfranchisement law on the West Coast, with a policy on par with Georgia and Texas. And until Washington passes this legislation, it is sure to fall even further behind on this issue as the rest of the country moves forward. But by passing House Bill 1078, Washington can continue to serve as a shining example of a healthy democracy, while also encouraging successful re-entry, reducing harm caused by a confusing law, and correcting historical injustices. For these reasons, we ask this Committee to approve this important legislation.

Thank you again for your time and consideration. I am happy to answer any questions.