

~LEGISLATIVE NOTE: STATE OF WASHINGTON~

## DEBT TO SOCIETY? THE WASHINGTON STATE LEGISLATURE'S EFFORTS TO RESTORE VOTING RIGHTS TO PERSONS WITH FELONY CONVICTIONS

Nicolas L. Martinez\*

### INTRODUCTION

Nearly a half-century has passed since President Lyndon Johnson declared, “[t]his right to vote is the basic right without which all others are meaningless.”<sup>1</sup> However, only two states allow this “basic right” to extend unequivocally to citizens regardless of whether or not they are incarcerated.<sup>2</sup> Washington, like forty-seven other states in the Union, revokes a citizen’s right to vote while imprisoned on a felony conviction. Although many states have tempered their felony voting laws over the past decade,<sup>3</sup> state legislatures on balance remain committed to the disenfranchisement of those who are in prison

---

\* B.A. 2007, Stanford University; J.D. Candidate 2013, Stanford Law School.

1. Remarks in the Capitol Rotunda on the Signing of the Voting Rights Act (Aug. 6, 1965), in 1 WEEKLY COMP. PRES. DOCS. 27, 52 (1965).

2. ERIKA WOOD & RACHEL BLOOM, ACLU & BRENNAN CTR. FOR JUSTICE, DE FACTO DISENFRANCHISEMENT 1 (2008), available at <http://www.brennancenter.org/page/-/publications/09.08.DeFacto.Disenfranchisement.pdf>. As of April 2011, the only two states that allow felons to vote while in prison are Maine and Vermont. *Id.*

3. See NICOLE D. PORTER, THE SENTENCING PROJECT, EXPANDING THE VOTE: STATE FELONY DISENFRANCHISEMENT REFORM, 1997-2010 1 (2010), available at [http://www.sentencingproject.org/detail/sentencingproject.org/doc/publications/publications/vr\\_ExpandingtheVoteFinalAddendum.pdf](http://www.sentencingproject.org/detail/sentencingproject.org/doc/publications/publications/vr_ExpandingtheVoteFinalAddendum.pdf) (finding that since 1997, twenty-three states, including Washington, have amended their felony disenfranchisement laws in order to expand voter eligibility); see also Krissah Thompson, *Felon Voting Rights Expanded in 23 States*, WASH. POST, Oct. 19, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/19/AR2010101904133.html> (describing the conclusions of the October 2010 Sentencing Project study, including the finding that an estimated 800,000 former felons have regained the right to vote since 1997).

or on probation.<sup>4</sup>

Fewer states disenfranchise persons no longer serving a criminal sentence. In fact, prior to May 2009, Washington was one of only ten states to require payment of all legal financial obligations, such as restitution and court fees, before persons with felony convictions could vote again.<sup>5</sup> With the enactment of H.B. 1517, the Voting Rights Restoration Act, Washington now automatically restores voting rights to persons with felony convictions as soon as they complete their criminal sentences.<sup>6</sup> Previously, the state denied voting rights to persons with felony convictions who had completed their mandated terms of prison, probation, or parole, but who still owed fees and costs associated with their sentence, including interest.<sup>7</sup> But thanks to the legislative compromise embodied in H.B. 1517, Washington now has a simpler and more compassionate system for determining voter eligibility for formerly incarcerated persons.

Even with H.B. 1517 now part of state law, restoring the voting rights of tens of thousands of Washington citizens, questions still loom as to whether this law has gone far enough: Has the burden on former felons really been eliminated? What obstacles remain to the permanent restoration of voting rights for persons with felony convictions in Washington? In order to answer these questions, this Note will sketch the backdrop against which H.B. 1517 was introduced, recount the bill's legislative history, examine the positive and negative effects of the new law, and briefly discuss the potential for future reforms in light of national trends to reduce the severity of felony disenfranchisement laws.

#### I. WASHINGTON'S PRIOR FELONY DISENFRANCHISEMENT SCHEME AND FAILED COURT CHALLENGES TO THAT SCHEME

In a region of the country known for its progressive views toward felony voting rights,<sup>8</sup> Washington's felony disenfranchisement rate is remarkably one-and-a-half times the national average and seven times as high as neighboring

---

4. *See, e.g.*, THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 3 (2011), available at [http://www.sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinusJan2011.pdf](http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusJan2011.pdf) (showing that forty-eight states plus the District of Columbia deny voting rights to those who are in prison; thirty-five states deny voting rights to persons on parole; and thirty states deny voting rights to persons on probation).

5. DEBORAH J. VAGINS & ERIKA WOOD, AM. CONST. SOC'Y, THE DEMOCRACY RESTORATION ACT: ADDRESSING A CENTURIES-OLD INJUSTICE 2 (2010), available at <http://www.acslaw.org/files/ACS%20Issue%20Brief%20Vagins%20and%20Wood.pdf>.

6. WASH. REV. CODE ANN. § 29A.08.520(1) (West 2011).

7. PORTER, *supra* note 3, at 30.

8. Both Oregon and California have a less restrictive felony disenfranchisement scheme than Washington, allowing persons with felony convictions to vote while on probation. THE SENTENCING PROJECT, *supra* note 4, at 3.

Oregon.<sup>9</sup> Nearly one in five of the state's African Americans cannot vote because of a felony conviction, more than twice the frequency of California.<sup>10</sup> Much of this statistical disparity stems from the relatively draconian felony disenfranchisement scheme that existed in Washington prior to the enactment of H.B. 1517.

Washington's felony disenfranchisement scheme derives its authority from the state constitution, which proscribes persons convicted of an "infamous crime" from voting in any election unless their civil rights have been restored.<sup>11</sup> Moreover, all felonies fit Washington's constitutional definition of an infamous crime because they are "punishable by . . . imprisonment in a state correctional facility."<sup>12</sup> At the time H.B. 1517 was introduced, the state restored voting rights to persons with felony convictions only after they fully completed the requirements of their sentence, including payment of all legal financial obligations (LFOs).<sup>13</sup> These LFOs may include victim restitution, crime victims' compensation fees, costs of defense, court-appointed attorneys' fees, and fines.<sup>14</sup> Under the prior law, the county clerk would notify the sentencing court when all of the LFOs had been paid, and the court would then issue a certificate of discharge restoring the offender's right to vote.<sup>15</sup>

While the previous law arguably served the retributive function of compelling persons with felony convictions to literally "repay" their debt to society before regaining their voting rights, it also disenfranchised tens of

---

9. *Map of National and State Prison Statistics*, THE SENTENCING PROJECT, <http://sentencingproject.org/map/map.cfm#map> (last visited Feb. 13, 2011). Washington's felony disenfranchisement rate stands at 3.6%, compared to the national average of 2.4%. The rates in Oregon, California, and Idaho are 0.5%, 1.1%, and 1.8% respectively. *Id.*

10. *Id.* Washington revokes the voting rights of 17.2% of its African-American residents due to felony convictions, while California does so at a rate of 7.6%. The national rate of African-American felony disenfranchisement is 8.3%. *Id.*

11. WASH. CONST. art. VI, § 3 ("All persons convicted of infamous crime unless restored to their civil rights . . . are excluded from the elective franchise."). In addition to voting rights, "civil rights" revoked upon incarceration in Washington include the right to serve on a jury, WASH. REV. CODE ANN. § 2.36.070 (West 2011), and the right to bear arms, WASH. REV. CODE ANN. § 9.41.040(2)(a)(i) (West 2011). *See also* Jill E. Simmons, Note & Comment, *Beggars Can't Be Voters: Why Washington's Felon Re-Enfranchisement Law Violates the Equal Protection Clause*, 78 WASH. L. REV. 297, 301 & nn.26-27 (2003).

12. WASH. REV. CODE ANN. § 29A.04.079 (West 2011); Simmons, *supra* note 11, at 302.

13. Simmons, *supra* note 11, at 302. Former felons also could have petitioned the state's governor to sign a civil rights restoration certificate. *Id.* at 302 n.34.

14. STAFF OF H. COMM. ON STATE GOV'T & TRIBAL AFF., FINAL BILL REPORT: H.B. 1517, S. 61, Reg. Sess. (Wash. 2009) [hereinafter FINAL BILL REPORT], available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bill%20Reports/House%20Final/1517%20HBR%20FBR%2009.pdf>. For a detailed analysis of the nature and impact of LFOs in Washington prior to H.B. 1517's enactment, see KATHERINE BECKETT ET AL., WASH. STATE MINORITY AND JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE (2008), available at [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf).

15. FINAL BILL REPORT, *supra* note 14, at 1-2.

thousands of indigent Washingtonians who were unable to satisfy their LFOs.<sup>16</sup> As a result, the Washington state and federal courts, as well as the Ninth Circuit, have witnessed a protracted battle over the statutory and constitutional validity of the state's felony disenfranchisement law on behalf of plaintiffs whose voting rights remained revoked even after their release from prison.<sup>17</sup> For example, Beverly DuBois, a disabled former park ranger who served a nine-month prison sentence for growing and selling marijuana, made headlines when she was denied the right to vote in the 2004 presidential election because of outstanding court fees.<sup>18</sup> Despite her apparent good-faith effort to make monthly payments, Ms. DuBois's LFOs had ballooned to nearly \$1,900 due to the twelve percent interest assessed annually on her legal debt.<sup>19</sup> Nonetheless, the Washington Supreme Court in *Madison v. State* concluded that individuals with felony convictions, including Ms. DuBois, do not have a constitutionally protected right to vote and upheld the state's repayment requirement under the state constitution's Privileges and Immunities Clause and the federal Constitution's Equal Protection Clause.<sup>20</sup>

The federal courts have also heard challenges to the validity of Washington's felony disenfranchisement scheme. The minority plaintiffs in *Farrakhan v. Gregoire* have argued since 1996 that, due to racial discrimination inherent in the criminal justice system, the state's law automatically revoking the voting rights of persons convicted of a felony effectively denies citizens of Washington the right to vote on account of race, a violation of section 2 of the Voting Rights Act (VRA).<sup>21</sup> The Ninth Circuit sitting en banc, however, recently upheld the validity of Washington's felony disenfranchisement scheme under the VRA.<sup>22</sup> With the state and federal courts unwilling to strike down Washington's requirement that people with felony convictions pay off their LFOs prior to recouping their right to vote, reform

---

16. Simmons, *supra* note 11, at 306.

17. See *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010) (en banc) (per curiam); *Farrakhan v. Washington*, 338 F.3d 1009 (9th Cir. 2003); *Madison v. State*, 163 P.3d 757 (Wash. 2007).

18. *Madison*, 163 P.3d at 762; see also Adam Liptak, *Debt to Society Is Least of Costs for Ex-Convicts*, N.Y. TIMES, Feb. 23, 2006, at A1.

19. Liptak, *supra* note 18.

20. 163 P.3d at 757; see also Jason H. Weber, *Equal Protection—Felony Disenfranchisement Scheme That Requires Completion of All Terms of Sentence Including Full Payment of Any Legal Financial Obligations Is Constitutional Under Both Washington's Privileges and Immunities Clause and the Equal Protection Clause of the Federal Constitution*. *Madison v. State*, 163 P.3d 757 (Wash. 2007), 39 RUTGERS L.J. 1101, 1101 (2008). The U.S. Supreme Court has upheld the constitutionality of felony disenfranchisement laws under the Equal Protection Clause more generally. See *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974) (holding that the Fourteenth Amendment permits states to deny voting rights to citizens based on felony convictions).

21. 590 F.3d 989, 993 (9th Cir. 2010), *vacated*, 623 F.3d 990 (9th Cir. 2010) (en banc) (per curiam).

22. *Farrakhan*, 623 F.3d at 994.

would have to come from the state legislature instead.

While the courts wrestled with the legality of the state's felony disenfranchisement scheme, the public debate over felony voting reached a fever pitch following the 2004 gubernatorial election. Due to widespread confusion over implementation of the old disenfranchisement law, an estimated 1678 illegal ballots<sup>23</sup>—1392 of them from people with felony convictions who had unpaid court debts<sup>24</sup>—were cast in a race that saw Democrat Christine Gregoire prevail by a record-close margin of 133 votes.<sup>25</sup> This controversial election was a critical turning point for Washington's felony re-enfranchisement movement because it revealed the many deficiencies of the state's complicated old law. Above all, the Secretary of State's committed public stance in favor of automatically restoring voting rights to persons no longer serving criminal sentences for a felony conviction gave the movement a credible, high-profile supporter for the ensuing push in the state legislature.<sup>26</sup>

## II. THE LEGISLATIVE BATTLE OVER H.B. 1517

Against this background of political and judicial controversy, Representative Jeannie Darneille, a Democrat from Tacoma, introduced H.B. 1517 on January 22, 2009.<sup>27</sup> The original bill would have restored voting rights to persons convicted of a felony in Washington state court so long as they were not under the authority of the state Department of Corrections (DOC).<sup>28</sup>

---

23. Gregory Roberts, *Judge upholds Gregoire's election; Rossi won't appeal*, SEATTLE POST-INTELLIGENCER, June 6, 2005, at A1, [http://www.seattlepi.com/local/227307\\_judgerules06ww.html](http://www.seattlepi.com/local/227307_judgerules06ww.html).

24. *Id.*

25. *Id.* On December 30, 2004, Secretary of State Sam Reed certified the results of a manual recount, which awarded the election to Christine Gregoire by 129 votes. See David Ammons, *Gregoire Declared Governor-Elect, But Rossi Wants New Vote*, SEATTLE TIMES, Dec. 30, 2004, at B1, [http://seattletimes.nwsource.com/html/politics/2002135337\\_webguvrace30.html](http://seattletimes.nwsource.com/html/politics/2002135337_webguvrace30.html). After months of further investigation, Chelan County Superior Court Judge John Bridges issued a ruling on June 6, 2005, changing the final margin to 133 votes. See *Elections & Voting: 2004 Governor's Race*, WASH. SEC'Y OF STATE, [http://www.sos.wa.gov/elections/2004gov\\_race.aspx](http://www.sos.wa.gov/elections/2004gov_race.aspx) (last visited Jan. 22, 2011). Republican Dino Rossi chose not to appeal Judge Bridges' decision.

26. *Scores of Felons Voted Illegally*, SEATTLE TIMES, Jan. 23, 2005, at A1 ("In Washington, Secretary of State Reed said, the simplest way to fix confusion over tracking felons would be to automatically restore voting rights when people are released from prison, regardless of whether they've paid all their court debts.").

27. H.R. 1517, 61st Leg., Reg. Sess. (Wash. 2009), available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20Bills/1517.pdf>. H.B. 1517 was not Representative Darneille's first legislative attempt to restore voting rights to persons with felony convictions. For example, on January 19, 2007, she introduced H.B. 1473 to the 60th Legislature, though the bill never made it out of committee. H.R. 1473, 60th Leg. Reg. Sess. (Wash. 2007), available at <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/House%20Bills/1473.pdf>.

28. H.R. 1517, 61st Leg., Reg. Sess. (Wash. 2009). "Under the authority" of the DOC means one is serving a sentence of confinement in the custody of the DOC, or one is subject

Furthermore, the original bill would have reinstated the voting rights of persons convicted of a felony in federal court or any state court other than Washington provided that they were not incarcerated.<sup>29</sup> No longer would the state deny persons with felony convictions the right to vote simply for not paying their LFOs in full, although they would have to re-register to vote with either the Secretary of State or a county auditor after completing their criminal sentence in order to vote again.<sup>30</sup> Supporters of the original bill included the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), and the Washington Secretary of State's office, all of whom had representatives testify in favor of the bill at a February 12 hearing of the House Committee on State Government & Tribal Affairs.<sup>31</sup>

The March 10 floor debate on the original bill exercised the passions of lawmakers from both sides of the aisle, leading one Republican representative to observe: "More people have spoken on this bill than [on] any bill in our fifty-eight days here thus far."<sup>32</sup> But aided by the Democrats' supermajority in the House and with the support of the Secretary of State,<sup>33</sup> the original bill passed 53-43 despite unanimous Republican opposition.<sup>34</sup> Unable, however, to secure the requisite twenty-five votes to pass the original version of H.B. 1517 in the Washington Senate, where enough conservative Democrats opposed the bill's unqualified restoration of voting rights as insensitive to victims' concerns, legislators devised a bipartisan compromise under the label "trust but verify."<sup>35</sup>

---

to community custody, community placement, or community supervision. WASH. REV. CODE ANN. § 29A.08.520(7) (West 2011).

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

30. *Id.* at 6.

31. STAFF OF H. COMM. ON STATE GOV'T & TRIBAL AFF., HOUSE BILL REPORT: H.B. 1517, S. 61, Reg. Sess., at 4 (Wash. 2009) [hereinafter HOUSE BILL REPORT], available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bill%20Reports/House/1517%20HBR%20PL%2009.pdf>.

32. Remarks of Rep. Kevin Parker, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available at <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhcp=1> (statement beginning at 01:07:01). Immediately prior to the March 10 House floor debate on the original bill, Republican Representative Charles Ross introduced a substitute bill in the form of an amendment that would have directed the Secretary of State's office to review its current practices for purging ineligible former felons from voting and implement any necessary changes to conform with the previous law. H. Amend. 295 (Wash. 2009), available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Amendments/House/1517%20AMH%20ERIC%20REIL%20020.pdf>. With the Democrats eager to discuss H.B. 1517, the substitute bill failed to pass on a largely partisan vote.

33. SEATTLE TIMES, *supra* note 26.

34. H.B. 1517 - 2009-10: *Changing Requirements for the Restoration of the Right to Vote for People Convicted of Felonies*, WASH. STATE LEG. [hereinafter H.B. 1517 History], <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1517&year=2009> (last visited Jan. 22, 2011).

35. Telephone Interview with Katie Blinn, Co-Director of Elections, Wash. Sec'y of

As a result of the House accepting the negotiated amendments from the Senate on April 22,<sup>36</sup> the compromise bill that Governor Gregoire signed into law on May 4, 2009 modified the original bill's language with regard to persons convicted of felonies in Washington state courts.<sup>37</sup> First, the new law qualifies the original bill's text by "provisionally" restoring voting rights to those no longer serving a criminal sentence under the DOC's authority.<sup>38</sup> Second, the new law allows sentencing courts to re-revoke a formerly incarcerated person's provisional right to vote if the court finds that he or she had "willfully failed to comply" with the court's order to pay his or her LFOs.<sup>39</sup> Such willful failure is presumed if the person with a felony conviction neglects to make three payments in a twelve-month period, and, if the county clerk or restitution recipient so requests, the prosecutor must seek the revocation of the offender's provisionally restored voting rights from the court.<sup>40</sup> Finally, under the new law, this revocation would remain in effect until the formerly incarcerated person demonstrated to the court a "good faith effort" to repay his or her LFOs.<sup>41</sup> In this context, a good faith effort means that the formerly incarcerated person has either paid the principal amount in full or made twenty-four consecutive monthly payments on his or her LFOs.<sup>42</sup>

### III. H.B. 1517 REPRESENTS A MAJOR STEP FORWARD FOR DEMOCRACY, ADMINISTRATIVE EFFICIENCY, AND COMMUNITY SAFETY

#### A. H.B. 1517 Expands Voter Participation in Washington

Voting is a fundamental right in American society.<sup>43</sup> Since robust, vibrant democracies require the broadest possible base of voter participation,<sup>44</sup> sensible laws designed to expand suffrage and encourage civic engagement should be

---

State (Jan. 10, 2011); *see also* Remarks of Sen. Mike Carrell, *Senate Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Apr. 15, 2009), *available at* <http://www.tvw.org/media/mediaplayer.cfm?evid=2009040095A&TYPE=V&CFID=2256544&CFTOKEN=22028110&bhcp=1> (statement beginning at 01:01:47).

36. H.B. 1517 History, *supra* note 34. The Senate passed the amended bill 29-19 on April 15, and the House concurred 52-44 one week later. *Id.*

37. The version passed by the Senate and eventually adopted by the legislature maintained the original bill's language pertaining to felons convicted in either federal or non-Washington state courts. WASH. REV. CODE ANN. § 29A.08.520(1) (West 2011).

38. *Id.*

39. *Id.* § 29A.08.520(2)(a) (West 2011).

40. *Id.* § 29A.08.520(2)(b) (West 2011).

41. *Id.* § 29A.08.520(3) (West 2011).

42. *Id.* § 10.82.090 (West 2011).

43. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

44. ERIKA WOOD, BRENNAN CTR. FOR JUSTICE, RESTORING THE RIGHT TO VOTE 4 (2010), *available at* <http://www.brennancenter.org/page/-/Democracy/Restoring%20the%20Right%20to%20Vote.pdf>.

applauded. With the stroke of a pen, Governor Gregoire restored voting rights to a significant portion of the estimated 167,000 Washingtonians who had been disenfranchised under the state's erstwhile felony voting law.<sup>45</sup> Consequently, Washington has taken a dramatic step toward expanding the state's electorate, especially among minority communities, and thus rendering the state's government more responsive to the diverse needs of its constituents.<sup>46</sup> The more opportunity for Washington citizens to shape the political institutions that represent them, the stronger the state's democracy will become.

#### B. H.B. 1517 Improves Election Administration by Creating a Bright-Line Eligibility Rule

The adoption of a bright-line rule restoring voting rights upon sentence completion will reduce voter fraud and eliminate problems arising from the Secretary of State's inability to determine which persons with felony convictions have satisfactorily paid their LFOs.<sup>47</sup> From an administrative standpoint, the new law reduces much of the confusion surrounding voter eligibility that has plagued recent state elections.<sup>48</sup> Under the previous law, election officials had to retrieve criminal files from each of the state's thirty-nine county clerks in order to assess a former felon's eligibility to vote.<sup>49</sup> Voter eligibility of persons with felony convictions often turned on the completeness of their court file and the election officials' ability to attain that file in a timely fashion.<sup>50</sup> As a result, hundreds of persons with felony convictions mistakenly voted in 2004 and 2008, while countless more were improperly denied the right to vote in those elections due to incomplete files.<sup>51</sup>

The simplified new law eliminates much of the prior uncertainty and protects against voter fraud by requiring the Secretary of State's office to compare voter registration lists at least twice a year with a catalog of persons

---

45. HOUSE BILL REPORT, *supra* note 31, at 3.

46. See WOOD, *supra* note 44, at 4.

47. See, e.g., Remarks of Rep. Sam Hunt, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available at <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhcp=1> (statement beginning at 01:02:30).

48. See SEATTLE TIMES, *supra* note 26. After the bill cleared the penultimate legislative hurdle in the Senate, Secretary of State Sam Reed declared that H.B. 1517 would give Washington "a clearer system for tracking when ex-felons are eligible or ineligible." David Ammons, *WA Green-Lights Voting Rights for Ex-Cons*, WASH. SEC'Y OF STATE BLOGS: FROM OUR CORNER (Apr. 22, 2009), <http://blogs.secstate.wa.gov/FromOurCorner/index.php/2009/04/wa-green-lights-voting-rights-for-ex-cons/>.

49. Madelyn Fairbanks, *Bill Would Allow Freed Felons to Vote Again: Legal Debt Stands in Way, Lawmaker Says*, SEATTLE POST-INTELLIGENCER, Feb. 14, 2009, at A8.

50. *Id.*

51. Rachel La Corte, *Ex-Felons Face Roadblocks in Regaining Voting Rights*, SEATTLE POST-INTELLIGENCER, July 4, 2005, at B1, available at [http://www.seattlepi.com/local/231136\\_gfelon04.html](http://www.seattlepi.com/local/231136_gfelon04.html).



servicing criminal sentences for a felony conviction.<sup>52</sup> Should the Secretary of State's office find that a registered voter is ineligible to vote because he or she is still serving a criminal sentence for a felony conviction, the Secretary of State or county auditor must suspend the person's voting rights and make a reasonable effort to notify the person of the suspension as well as the conditions for restoring his or her voting rights.<sup>53</sup> Moreover, the state's Office of Financial Management estimates that H.B. 1517 would have an indeterminate fiscal impact on the court system while saving the Secretary of State's office \$4,000 in postage and printing expenses every two years.<sup>54</sup> In a state like Washington, where recent elections have produced exceptionally close results,<sup>55</sup> any measure to simplify voter eligibility and reduce costs should be welcomed.

### C. H.B. 1517 Seeks to Improve Community Safety by Reducing Recidivism

H.B. 1517 may actually improve community safety in Washington because felony re-enfranchisement eases the transition of formerly incarcerated persons back into society and correlates with lower rates of recidivism.<sup>56</sup> One published study examining the relationship between voting and recidivism found that formerly incarcerated persons who did not vote in the 1996 elections were more than twice as likely to return to prison during the next four years as those who voted.<sup>57</sup> Although a direct correlation between the restoration of voting rights and reduced crime rates remains difficult to prove, the Uggen and Manza study suggests that encouraging civic participation may foster law-

---

52. WASH. REV. CODE ANN. § 29A.08.520(5) (West 2011).

53. *Id.*

54. Fiscal Note to H.B. 1517, OFFICE OF FIN. MGMT., STATE OF WASH. (Apr. 16, 2009), available at <https://fortress.wa.gov/binaryDisplay.aspx?package=24346>. "Indeterminate" should not be construed as inconsequential. In fact, the Office of Financial Management's final report on H.B. 1517 lists an estimate by the Administrative Office of the Courts that the bill would necessitate additional judicial staffing in excess of \$50,000 annually, as well as approximately \$38,400 to update the computerized Judicial Information System (JIS), which reports certificate of discharge information to the Secretary of State. *Id.*

55. In addition to the record-close 2004 gubernatorial election, Washington's 2010 senatorial election also proved to be a tight race, with Republican challenger Dino Rossi conceding defeat to Democratic incumbent Patty Murray two days after Election Day. Jim Brunner, *Rossi Concedes; Sen. Patty Murray Wins Fourth Term*, SEATTLE TIMES, Nov. 5, 2010, at A1, available online at [http://seattletimes.nwsourc.com/html/localnews/2013349573\\_senate05m.html](http://seattletimes.nwsourc.com/html/localnews/2013349573_senate05m.html).

56. See, e.g., Remarks of Rep. Mary Lou Dickerson, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available at <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhpc=1> (statement beginning at 00:55:44); see also *Public Correctional Policy on Restoration of Voting Rights for Felony Offenders*, AM. CORR. ASS'N (last visited Jan. 12, 2005), <http://www.aca.org/government/policyresolution/view.asp?ID=39>.

57. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004).

abiding behavior.<sup>58</sup> In addition, the principles of “community policing,” whereby ordinary citizens and law enforcement officials work closely to bolster community safety, favor restoring voting rights to people with felony convictions once their sentences have been served.<sup>59</sup> Speaking on the issue of felony disenfranchisement, Hubert Williams, president of the Police Foundation, emphasized: “To have effective policing we need to bring people back as whole citizens, with both the rights and responsibilities that come with being members of the community.”<sup>60</sup> By easing the reintegration process for persons with felony convictions, H.B. 1517 rejects the tendency to treat them as social pariahs and encourages their constructive participation in the community.

#### IV. H.B. 1517 MITIGATES THE CONCERNS OF VICTIMS’ RIGHTS ADVOCATES AND THE POOREST OF FORMERLY INCARCERATED PERSONS

##### A. H.B. 1517 Does Not Undermine Victim Restitution Because Voting Rights Alone Are Not a Sufficient Incentive to Induce Repayment

In opposing the bill on the floor of the Washington House and Senate, Republican lawmakers repeatedly expressed concerns for victims’ rights.<sup>61</sup> One representative even asserted that the re-enfranchisement of persons with felony convictions before they have completed their restitution payments amounted to no less than re-victimization of those already wronged.<sup>62</sup> Although the civil rights of victims are of paramount importance, the law in Washington prior to H.B. 1517’s enactment was unlikely to increase the speed with which the victims of felonious activity received their restitution because the loss of one’s right to vote was simply not a powerful enough incentive to compel individuals with felony convictions, many of whom are destitute, to repay their LFOs.<sup>63</sup> Nonetheless, support for victims’ rights over the rights of persons with felony convictions was the most popular refrain among opponents of H.B. 1517.

---

58. WOOD, *supra* note 44, at 9.

59. *Id.* at 10.

60. *Id.*

61. See, e.g., Remarks of Rep. Mike Armstrong, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhcp=1> (statement beginning at 00:41:16).

62. Remarks of Rep. Ed Orcutt, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhcp=1> (statement beginning at 01:04:24).

63. See Remarks of Rep. Geoff Simpson, *House Floor Debate* (Wash. State Pub. Aff. TV Network broadcast Mar. 10, 2009), available <http://www.tvw.org/media/mediaplayer.cfm?EvId=2009030079D&bhcp=1> (statement beginning at 00:43:50); Telephone Interview with Katie Blinn, *supra* note 35.

B. While H.B. 1517 Only Provisionally Restores Voting Rights, No Formerly Incarcerated Persons Have Had Their Right to Vote Re-Revoked

Although the signing of Washington's Voting Rights Restoration Act represents a landmark achievement for felon re-enfranchisement, the new law continues to impose repayment demands on even the most indigent of formerly incarcerated persons. The legislature's ultimate choice to pass a compromise bill "provisionally" restoring voting rights to persons with felony convictions leaves open the possibility that penniless citizens will have their conditional right to vote re-revoked for failing to make three payments within a twelve-month period.<sup>64</sup> The fundamental right to participate in American democracy should never depend on a person's financial status.<sup>65</sup> However, H.B. 1517's final text still conditions a formerly incarcerated person's right to vote—albeit to a much lesser degree than before—on his or her ability to satisfy a payment schedule. Though H.B. 1517 might not have passed the legislature with such alacrity absent the Senate amendments,<sup>66</sup> a better law would have restored voting rights without qualification to people with felony convictions no longer serving a criminal sentence. Such a law would have provided even greater clarity to formerly incarcerated persons as to their voter eligibility and would have unequivocally eliminated a disenfranchisement scheme that some have likened to a modern-day poll tax.<sup>67</sup>

Perhaps, however, H.B. 1517 is more innovative than meets the critical eye of a voting rights advocate. Even though the new law only provisionally restores voting rights to persons with felony convictions upon sentence completion, not a single person has had his or her voting rights re-revoked for willful failure to repay LFOs in the twenty months since the new law's July 26, 2009, effective date.<sup>68</sup> Furthermore, the state's county clerks use their own separate procedures for recouping LFOs that have no bearing on voting rights.<sup>69</sup> As a result, the county clerks are unlikely to initiate the re-revocation process under the new law because they too recognize that canceling the voting rights

---

64. WASH. REV. CODE ANN. § 29A.08.520(2)(b) (West 2011).

65. Representative Darneille understood this point, observing after H.B. 1517 was enacted that "[v]oting rights should never be based on the ability to pay." Press Release, Rep. Jeannie Darneille, Voting-Rights Bill Signed into Law (May 4, 2009) (on file with author).

66. Telephone Interview with Katie Blinn, *supra* note 35.

67. See Remarks of Rep. Geoff Simpson, *supra* note 63; see also *Madison v. State*, 163 P.3d 757, 780 & n.1 (Wash. 2007) (Alexander, C.J., dissenting) (likening Washington's felony disenfranchisement scheme to a "poll tax"); cf. J. Whyatt Mondesire, *Felon Disenfranchisement: The Modern Day Poll Tax*, 10 TEMP. POL. & CIV. RTS. L. REV. 435, 437 (2001) (equating felony disenfranchisement more generally with a "modern day poll tax").

68. Telephone Interview with Katie Blinn, *supra* note 35. In the interview, Ms. Blinn noted that, to the best of her knowledge, the provision establishing a presumption of willful failure to repay LFOs if three payments are not made within a twelve-month period has never been utilized to re-revoke an indigent offender's voting rights.

69. *Id.*

of indigent persons with felony convictions will not create a powerful enough incentive for them to repay their LFOs.<sup>70</sup> But given the inherent unpredictability in the new law's allowing individual county clerks seemingly unfettered discretion to seek re-revocation, voting rights advocates should remain vigilant.

#### CONCLUSION

Washington's enactment of H.B. 1517 in May 2009 follows the encouraging nationwide trend of reducing restrictions on voting rights for persons with felony convictions. Previously one of only ten jurisdictions nationwide that required persons with felony convictions to pay court-imposed financial debts before being allowed to vote,<sup>71</sup> Washington is now one of twenty states that automatically restore a person's right to vote upon completion of the formerly incarcerated person's criminal sentence, including prison, probation, and parole.<sup>72</sup> With the enactment of H.B. 1517, Washington became the twenty-third state to lessen the severity of its felony disenfranchisement laws since 1997.<sup>73</sup>

The future trajectory of reform remains unclear in Washington. Considering that the passage of H.B. 1517 was the culmination of a nine-year effort on the part of Representative Darneille and her supporters,<sup>74</sup> further legislative re-enfranchisement of people with felony convictions will likely remain a gradual process at best.<sup>75</sup> At worst, Washington lawmakers could mirror the recent actions of Tennessee's legislature, which in June 2010 bucked the national trend by amending its felon voting law to require that persons with felony convictions pay all outstanding court costs and restitution before regaining the right to vote.<sup>76</sup>

---

70. *Id.*

71. VAGINS & WOOD, *supra* note 5, at 2.

72. *Id.*; *see also* WOOD, *supra* note 44, at 3. *But see* PROJECT VOTE, RESTORING VOTING RIGHTS TO FORMER FELONS 2 (2010), *available at* <http://www.projectvote.org/images/publications/Felon%20Voting/FelonRestoration-PolicyPaper2010.pdf> (counting Washington among only eighteen states that restore voting rights to felons after completion of sentence including parole and probation). Project Vote's April 2010 Policy Paper excludes Maryland and New Jersey from its classification of states that restore voting rights to persons with felony convictions upon completion of the offender's criminal sentence, while Erika Wood's two papers—*see* WOOD, *supra* notes 5 and 44—include them.

73. PORTER, *supra* note 3, at 1.

74. Telephone Interview with Nancy Ryan, Legislative Assistant to Rep. Jeannie Darneille (Jan. 6, 2011); Press Release, *supra* note 65.

75. Further legislative re-enfranchisement efforts might include removing the "provisional" tag on voting rights restoration or restoring voting rights to all persons with felony convictions so long as they are not in prison.

76. *See* TENN. CODE ANN. § 40-29-202 (West 2010); Josh Nelson, *Legislature Says Criminals Must Pay Full Restitution for Voting-Rights Restoration*, TENN. REP. (June 9, 2010, 9:29 PM), <http://www.tnreport.com/2010/06/legislature-says-criminals-must-pay-full->

2011]

*DEBT TO SOCIETY?*

341

Notwithstanding this uncertain future, voting rights advocates around the country should pay particular attention to the process through which Washington—formerly a state with one of the country’s most onerous felony disenfranchisement schemes—restored the right to vote to persons no longer serving sentences for a felony conviction. Although it remains too early to tell whether Washington’s model would translate well in other states looking to accomplish legislative re-enfranchisement, the compromise measure has thus far allowed lawmakers to claim a tough stance against crime while in practice restoring voting rights to formerly incarcerated persons on a permanent basis.