



To: The Government, Military and Veterans Affairs Committee  
From: John Cartier  
Date: February 22, 2017  
Topic: Testimony in Support of LB1027

Dear Members of the Government, Military and Veterans Affairs Committee,

Please accept this testimony in support of LB1027 in my official capacity as Director of Voting Rights for Civic Nebraska; a nonpartisan, nonprofit organization dedicated to creating a more modern and robust democracy through increasing civic engagement and improving the civic health of Nebraska.

Members of this Committee are familiar with last year's attempt to restore voting rights to returning citizens by LB75. After an extensive hearing on March 1, 2017, where not a single individual or group voiced their opposition, this bill passed final reading 27-13-9 in a great display of bipartisanship. Unfortunately, due to some last minute political maneuvering the bill was unable to overcome Governor Rickett's subsequent veto.

In this testimony, I would like to address the Governor's two primary objections; One, restoring the right to vote does not relate to criminal justice reform; And two, his underlying constitutional concerns.

For the first objection, the Governor unilaterally states that this issue does not relate to criminal justice reform. This objection ignores history, existing research and the personal testimony of Nebraskans who are directly affected by voter disenfranchisement.

From a historical perspective, Senator Wayne spoke repeatedly in last year's hearing and in floor debates about the clear legislative record left behind by proponents of felon disenfranchisement. Looking back, the intent of these laws was to eliminate as many African Americans from voting as possible.<sup>1</sup> That is the irrefutable reality.<sup>2</sup>

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<sup>1</sup> Enacting poll taxes, literacy tests, felon disenfranchisement and other barriers to voting were proposed by state legislatures as a means of controlling the newly granted powers to African Americans. In the post-reconstruction period, several southern states tailored disenfranchisement laws in order to prevent black male voters, targeting offenses believed to be committed most frequently by the black population. *See* Holloway, P., 'A chicken-stealer shall lose his vote': Disenfranchisement for larceny in the South, 1874-1890. *Journal of Southern History*, 75 (4), 931-962 (2009); Mauer, M., Mass imprisonment and the disappearing voters. In M. Mauer & M. Chesney-Lind (Eds.), *Invisible punishment: The collateral consequences of mass imprisonment* (pp. 50-58). New York, NY: The New Press (2002) (Party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft and arson but not for robbery or murder); Shapiro, A., Challenging criminal disenfranchisement under the Voting Rights Act: A new strategy. *Yale Law Journal*, 103 (2), 537-566 (1993) (Author of Alabama's disenfranchisement provision estimated "the crime of wife-beating alone would disqualify sixty percent of the Negroes").

<sup>2</sup> Although some states before the Civil War had some form of disenfranchisement, 15 years later we see states passing much broader consequences for all felonies, rather than a few select crimes. In the period between 1865 and 1880, at least 13 states enacted broad felony disenfranchisement laws. *See* Alec C. Ewald, 'Civil Death': The Ideological Paradox of Criminal Disenfranchisement Law in the United States, 2002 *WIS. L. REV.* 1059-61; *See also* Angela Behrens et al., Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002, 109 *AM. J. SOC.* 565-66 (2003).

Today, while I don't think the good members of the Nebraska Legislature intend to continue voter disenfranchisement laws to the detriment of communities of color, the undeniable effect is that this still disproportionately takes away votes from minorities.<sup>3</sup>

Mentioned before the Legislature already were two reports by the Florida Parole Commission ("FPC") released in 2011 and 2012. These reports found a significant drop in recidivism rate for ex-felons whose voting rights were restored.<sup>4</sup> Additional studies conclusively show that voters are less likely than nonvoters to commit new crimes.<sup>5</sup>

Opponents are quick to say that correlation does not equate to causation, however, this is precisely why I rely on the expertise of those whose lives are dedicated to reducing recidivism rates across the country.

Last year, the American Probation and Parole Association sent a letter to this Committee regarding LB75. In this letter the case was clearly laid out for why restoring the right to vote is instrumental in strengthening public safety.

Voting allows those with prior convictions to participate more in their community and to create supportive bonds with others. Research strongly supports this notion that ex-felons who are able to re-enter society with stable work and familial relations are less likely to engage in criminal activity.<sup>6</sup> Research also indicates that active participants in the democratic process are more likely to adopt the shared values of their communities.<sup>7</sup>

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<sup>3</sup> Black Americans are more than four times more likely to lose their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally. In four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent – more than one in five black adults is disenfranchised. In total, 2.2 million black citizens are banned from voting. Uggen, C., Larson, L., & Shannon, S., 6 million lost voters: State-level estimates of felony disenfranchisement, 2016. Washington, DC: The Sentencing Project (2016).

<sup>4</sup> The first report found a 11.1% recidivism rate for ex-felons whose rights were restored which was contrasted with a 2010 Florida Department of Corrections report that found 33.1% of all state prisoners released from 2001 to 2008 reoffended within three years. The second report found a 11.3% recidivism rate which included some overlapping data from the 2009-2010 report. Reutter, D., Florida Reports Indicate Restoration of Civil Rights Reduces Recidivism published in Prison Legal News August, 2012, page 30, retrieved from <https://www.prisonlegalnews.org/news/2012/aug/15/florida-reports-indicate-restoration-of-civil-rights-reduces-recidivism/> on February 21, 2018.

<sup>5</sup> Uggen, C., Inderbitzin, M., "The Price and the Promise of Citizenship: Extending the Vote to Nonincarcerated Felons." Pages 61-68 in Contemporary Issues in Criminal Justice Policy: Policy Proposals From the American Society of Criminology Conference, edited by Natasha A. Frost, Joshua D. Freilich, and Todd R. Clear. Belmont, CA: Cengage/Wadsworth (2010) (One Minnesota study found that voters in the 1996 elections were significantly less likely than non-voters to be rearrested from 1997 to 2000; about 16 percent of non-voters were rearrested, relative to only 5 percent of voters (Uggen and Manza, 2004). For those under supervision, Oregon permits probationers and parolees to vote. After matching Oregon voting and crime records researchers found that probationers and parolees did vote when given the chance and that turnout rates were nontrivial and increased over time off supervision (Uggen, Inderbitzin, and Vuolo 2007). More importantly, they found that probationers and parolees who exercise their right to vote have significantly lower recidivism rates than those who do not") retrieved from [http://users.soc.umn.edu/~uggen/uggen\\_inderbitzin\\_asc\\_09.pdf](http://users.soc.umn.edu/~uggen/uggen_inderbitzin_asc_09.pdf) on February 21, 2018.

<sup>6</sup> Uggen, C., Manza, J., Voting and Subsequent Crime and Arrest: Evidence From a Community Sample, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004).

<sup>7</sup> *Id.*, supra note 59, at 198.

Other empirical research supports that democratic participation is positively associated with a reduction in recidivism. One such study showing “that voting behavior was significantly correlated with subsequent measures of incarceration, re-arrests, and self-reported criminality.”<sup>8</sup> In other terms, disenfranchisement is counterproductive when trying to foster the skills and capacities required for rehabilitation that are proven to help them become law-abiding citizens.<sup>9</sup>

Opponents will criticize our use of empirical studies and still use the argument that requiring convicted felons to wait before allowing them to vote provides an incentive to maintain a clean record and to avoid subsequent convictions. This is a statement that is not supported by any research.

The Governor also dismissed testimony by several Nebraskans with felony records who repeatedly said that depriving them their right to vote stands in the way of normalcy needed to fully engage them in their communities and to provide the necessary tools to turn their lives around.

Here, the message was clear that giving people the immediate right to vote after completing their sentence can help them feel a part of the community which directly leads to lower recidivism rates.

The Governor’s second objection lies with specific constitutional concerns governing the powers of the Board of Pardons and separation of powers provision found in Article II, Section 1. Presented alongside this testimony is a letter dated January 20, 2005, addressed to this same committee regarding LB53, which would later be passed after amended into providing the two-year waiting period.

A fantastic argument is laid out supporting that LB1027 falls safely within the constitutional powers of the Legislature. The one thing that I would add is if only the Board of Pardons is granted the ability to restore voting rights, then the original two-year waiting period passed is unconstitutional. If this is really the case, we would have already seen challenges to the current practice in place.

This added to the fact we still haven’t seen an advisory opinion from the Attorney General’s office on this issue following a seminal case, *State v. Spady*, it appears that the arguments in favor of upholding the constitutionality of voting restoration by the Legislature are stronger than the Governor would lead you all to believe.

Therefore, to say that restoring the right to vote has no impact on criminal justice reform and is unconstitutional ignores a great weight of the evidence which points to the contrary. It is clear from the legislative history that the two-year limitation placed on returning citizens was an arbitrary number that only accomplished getting the original lifetime ban lifted in the first place.

There is no data that supports the opposition’s argument that leaving in place the two-year waiting period is an incentive to prevent future crimes. In fact, it has been repeatedly demonstrated to the members of

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<sup>8</sup> *Id.*, supra note 43, at 37; quoting Vogel, M., The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism, Berkeley La Raza Law Journal Vol. 22 Art. 3 (2012).

<sup>9</sup> Uggen, C., Manza, J., Voting and Subsequent Crime and Arrest: Evidence from a Community Sample, Columbia Human Rights Law Review 36:193-215 (2004) (“Voting appears to be part of a package of pro-social behavior that is linked to desistance from crime.... To the extent that felons begin to vote and participate as citizens in their communities, it seems likely that many will bring their behavior into line with the expectations of the citizen role, avoiding further contact with the criminal justice system”).

this Committee and the Legislature at large that there are benefits to granting individuals their rights back with the hopes that it will help facilitate their return to society.

Committee Members, LB1027 is simply adding a new tool to aid reintegration back into society, civic engagement. This comes at no cost to the taxpayer and with significant benefits to thousands of Nebraskans who just want a second chance to do what's right.

Thank you for the opportunity to testify and we respectfully ask the Committee to advance LB1027 to general file.

Sincerely,

John Cartier  
Director of Voting Rights  
(954) 319-9832  
[john.cartier@civicnebraska.org](mailto:john.cartier@civicnebraska.org)

Enclosure:  
Brennan Center for Justice Constitutional Review of LB53