



Rule of Law Clinic

at Yale Law School



Testimony in Support of Senate Bill 22

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Distinguished members of the Government Administration and Elections Committee,

Thank you for the opportunity to submit this written testimony in support of Senate Bill (SB) 22, which would abolish the requirement that some Connecticut residents pay fines in connection with a past conviction before regaining the right to vote. Current Connecticut law unfairly—and likely unconstitutionally—hinges the right to vote on wealth and discriminates against a particular group of people with criminal convictions. By eliminating the payment-of-fines requirement, SB 22 would make Connecticut’s voting system simpler and more just.

Background

Overbroad restrictions on the voting rights of people with convictions are widespread in the United States. But Connecticut is one of only a handful of states—a list that also includes Tennessee and Alabama, for example—that still explicitly hinge the right to vote on the payment of fines or fees.² Connecticut is also the *only* state in the country that singles out a particular class of individuals based on the jurisdiction where they were convicted, then withholds voting rights from those disfavored individuals until they are able to pay off their fines.

Connecticut law currently requires that individuals with prior out-of-state or federal felony convictions pay “all fines in conjunction with the conviction” before having their right to vote restored. Conn. Gen. Stat. Ann. § 9-46a(a). The same requirement to pay fines does not apply to individuals with prior in-state felony convictions. Conn. Gen. Stat. Ann. § 9-46a(b).

This complicated statutory scheme, which differentiates between individuals based on where they were convicted, is the result of a 2001 change to Connecticut law, when the legislature passed HB 5042, “An Act Restoring Voting Rights of Convicted Persons Who Are on Probation.” That bill

¹ This testimony does not purport to represent the views of Yale Law School.

² Danielle Lang & Thea Sebastian, Opinion, *Too Poor to Vote*, N.Y. TIMES (Nov. 1, 2018), <https://www.nytimes.com/2018/11/01/opinion/election-voting-rights-poverty.html>.

repealed the fines requirement for individuals with in-state felony convictions, but left intact the fines requirement for individuals with prior out-of-state or federal felony convictions.

Four Key Reasons to Enact SB 22

1. Current Connecticut law unfairly conditions voting rights on wealth.

The right to vote is fundamental and should not depend on an individual's wealth. By requiring some voters to pay all outstanding fines before voting, current Connecticut law unfairly conditions those individuals' right to vote on their ability to pay.

Fines associated with felony convictions often amount to thousands or tens of thousands of dollars. For example, in New York each felony conviction can carry with it a fine of up to \$5,000, and many times that amount for certain drug-related felony convictions. N.Y. Penal Law § 80.00 (McKinney). It is thus not uncommon for individuals leaving prison to owe thousands of dollars in outstanding fines. These fines are often far beyond the means of formerly incarcerated people who are re-entering society.³ As a result, Connecticut residents with out-of-state or federal convictions may be unable to get their right to vote restored simply because they lack the means to pay these outstanding fines.

This outcome is deeply inconsistent with the constitutional principle that no one should be disenfranchised by poverty. As the Supreme Court explained in striking down Virginia's poll tax, "voter qualifications have no relation to wealth." *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966). Congress, state legislatures, and the American people embraced this principle by adding the 24th Amendment—an explicit ban on poll taxes—to the Constitution in 1964.

Senate Bill 22 would eliminate the requirement that anyone pay fines before having the right to vote restored. In doing so, it would bring Connecticut in line with the majority of states, which do not predicate voting on wealth by imposing a payment-of-fines restriction on voter eligibility.

2. The current law makes irrational distinctions based on jurisdiction of conviction and is likely unconstitutional.

Current Connecticut law requires only individuals with prior *out-of-state* or *federal* felony convictions to pay fines before getting their right to vote restored. There is no logical reason for Connecticut to draw a distinction between people based on where they were convicted. That is particularly true in this statutory scheme, where any revenue from the fines paid would go to other states or the federal government, not Connecticut. It is possible this was a drafting error or an oversight when the law was changed in 2001, because as far as we know, no state official has

³ Poverty is prevalent among formerly incarcerated people. In a 2018 study, only 55 percent of formerly incarcerated people reported having any earnings in the first calendar year after being released from prison, and among those who found jobs, the median annual earnings were only \$10,090. ADAM LOONEY & NICHOLAS TURNER, WORK AND OPPORTUNITY BEFORE AND AFTER INCARCERATION 1, BROOKINGS INST. (March 2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

articulated a rational policy basis for discriminating between people with Connecticut felony convictions and those with other felony convictions.

Because it lacks any rational basis, this legal distinction among formerly incarcerated individuals likely violates the Fourteenth Amendment's Equal Protection Clause. This distinction is all the more troubling because it curtails individuals' access to the fundamental right to vote. The legislature should end this arbitrary discrimination among people with convictions by passing SB 22.

3. *The current law so confusing as to chill voting by eligible individuals.*

Existing law is so confusing as to be misleading and almost certainly deters eligible individuals from voting. When the Rule of Law Clinic and Campaign Legal Center first began examining Connecticut's statutory scheme last year, it took two lawyers and three law students to discern what the law meant. In subsequent conversations with municipal registrars and citizens' groups that register voters, the Clinic learned that the confusion extends to people charged with implementing the law as well as those most affected.

When lawyers and voting officials are confused, it is all but certain that voters are too. This confusion may have deterred some eligible voters from casting their ballots. Connecticut's law is so facially ambiguous that it is difficult for people to know whether the fines requirement applies to them. There are hundreds of thousands of people in Connecticut who have been convicted of felonies in-state over the past decade.⁴

Over the course of our research, we learned that voter registrar offices across the state have different interpretations of how broadly the requirement to pay fines applies. At least some registrars of voters in major Connecticut cities have an overinclusive understanding of the payment-of-fines requirement. In October 2018, two registrars from major metropolitan areas told the Rule of Law Clinic, incorrectly, that the payment-of-fines condition applies to everyone with a felony conviction from any jurisdiction. Based on those conversations, we anticipate that many Connecticut residents have received mistaken information, leading them to conclude that they are ineligible to vote—even though they are in fact eligible to vote regardless of whether they have paid their fines.

Connecticut residents may also have received incorrect information from the Office of the Secretary of the State. A fact sheet currently available through the Secretary of the State's website states that “[a] person who has been convicted of a felony and committed to confinement in a state of CT correctional institution, or facility, or community residence shall be eligible to have their voting privileges restored upon the release from confinement, parole, and payments of any fines (if applicable).”⁵ This statement incorrectly indicates that individuals who were formerly

⁴ ROBERT CLIFFORD & RILEY SULLIVAN, THE CRIMINAL POPULATION IN NEW ENGLAND: RECORDS, CONVICTIONS, AND BARRIERS TO EMPLOYMENT, 9 n.4 (2017), <https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/neppcpr1701.pdf>.

⁵ *Voting Fact Sheet for Restoring Voting Rights*, CT SECRETARY OF THE STATE (accessed Feb. 21, 2019), https://portal.ct.gov/-/media/sots/ElectionServices/VoterFactSheets/2017/ct_restoring_voting_rights_voter_fact_sheet_2017.pdf?la=en.

incarcerated in Connecticut state prison for a Connecticut conviction may need to pay fines before voting.

These mistakes are not the result of any animus on state or local officials, but a consequence of the extremely confusing statutory scheme. The best way to alleviate this confusion and ensure everyone understands the voter eligibility rules is to pass SB 22.

4. *Burdens on formerly incarcerated people's voting rights are inconsistent with Connecticut's values as a second chance society.*

Connecticut has already committed to eliminating barriers to voting for formerly incarcerated people. Eighteen years ago, this Legislature passed HB 5042, which restored voting rights for people on probation and eliminated the payment-of-fines requirement for people with felony convictions from Connecticut. Extending that protection to all Connecticut residents—regardless of where they happened to serve their sentence—would reaffirm Connecticut's commitment to being a “second chance society.”⁶

Despite that legacy, Connecticut law retains the payment-of-fines requirement for people with out-of-state and federal felony convictions. Connecticut an outlier in the region—it is the only state in the Northeast that still ties voting rights to the payment of fines. It is one of only a handful of states that still explicitly hinge the right to vote on the payment of fines or fees.

Conclusion

The right to vote is fundamental and cannot be predicated on a voter's wealth or ability to pay. Connecticut remains one of only a handful of states that still explicitly condition the right to vote on the payment of fines or fees, and it is the only state that does so only for a particular class of individuals based on the jurisdiction where they were convicted. SB 22 is a common-sense fix to a perplexing and deeply statutory scheme.

We urge the Committee to pass SB 22 or to incorporate it into any voting rights bill considered by this Committee and by the General Assembly as a whole.

⁶ The Legislature has also passed other reforms in recent years, including passing House Bill 7104 in 2015 to make the criminal justice system less punitive and create an expedited pardons process, among other reforms. *Connecticut's Second Chance Society Reintegration Program for Nonviolent Offenders*, CONN. 2-1-1 (2018), <https://uwc.211ct.org/connecticuts-second-chance-society-reintegration-program-nonviolent-offenders>.