



10-1-2020

Proposition 17: Voting Rights Restoration for Persons on Parole (2020)

Steven Weiss

Alex Cabaluna

Quentin Barbosa

Follow this and additional works at: <https://scholarlycommons.pacific.edu/california-initiative-review>



Part of the [Legislation Commons](#)

Recommended Citation

Weiss, Steven; Cabaluna, Alex; and Barbosa, Quentin (2020) "Proposition 17: Voting Rights Restoration for Persons on Parole (2020)," *California Initiative Review (CIR)*: Vol. 2020 , Article 5.

Available at: <https://scholarlycommons.pacific.edu/california-initiative-review/vol2020/iss1/5>

This Article is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in California Initiative Review (CIR) by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

**Proposition 17:
Voting Rights Restoration for Persons on Parole
(2020)**

Legislative Constitutional Amendment

By

Steven Weiss

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2022
B.F.A., Theatre & Politics Dual Degree, New York University, 2018*

&

Alex Cabaluna

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2021
B.A., Politics & Legal Studies Double Major, UC Santa Cruz, 2016*

&

Quentin Barbosa

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2022
B.A., Political Science, California Polytechnic State University, San Luis Obispo, 2019*

I. EXECUTIVE SUMMARY

Current California law prohibits those who are imprisoned or on parole for a felony conviction from registering to vote and voting. Election officials are required to cancel the voting registration of such individuals. The proposed measure would amend the California Constitution to allow individuals who are on parole to have their voting rights restored.

A **YES** vote on this measure means: Individuals on parole for a felony who are U.S. citizens, residents of California, and at least 18 years of age would be able to re-register to vote and participate in voting.

A **NO** vote on this measure means: Individuals on parole for a felony would continue to be prohibited from voting and registering to vote until completion of their parole term.

II. BACKGROUND

A. Prior Attempts at Changing the Law

The Voting Rights Restoration Amendment (1974)—offered on the ballot as California Proposition 10—was a legislative bill approved by voters on the November 5, 1974 ballot. Prior to enactment of the bill, California law prohibited the mentally insane and those convicted of high crimes and other enumerated crimes from exercising the privileges of an elector. The amendment changed the language of Article II, Section 3¹ of the California Constitution (renumbered in 1976 to Section 4) to allow for the restoration of voting rights after the completion of the imprisonment sentence and parole. Disqualification of the mentally insane or mentally incompetent still applied.

In 2018, Initiate Justice, a non-profit organization focused on issues of criminal justice reform, proposed the Voting Restoration and Democracy Act of 2018 as an initiative measure. The Act sought to amend the California Constitution by eliminating existing voting restrictions on individuals in prison or on parole for the conviction of a felony. The ballot measure did not obtain the necessary signatures and failed to qualify for the November 2018 ballot.

B. Existing Law

Article II, Section 4 requires that the California Legislature restrict the voting rights of parolees. Elections Code Section 2101 states that “[a] person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.”² Any person who is imprisoned or on parole for the conviction of a felony is prohibited from

¹ Cal. Const. art. II, § 4.

² Cal. Elec. Code § 2101 (West 2017).

voting and elections officials are required to cancel the voter registrations of such individuals.³ However, a person who is on probation for conviction of a felony is permitted to vote.⁴ Once an individual completes parole, then their right to vote is restored and they can re-register to vote.⁵

C. Proposed Law

This measure would alter the language of the California Constitution to allow for the restoration of voting rights to individuals on parole. The changes to the language of the California Constitution are as follows:

Article II Sec. 2

(a) A United States citizen 18 years of age and a resident in this State may vote.

(b) An elector disqualified from voting while serving a state or federal prison term, as described in Section 4, shall have their right to vote restored upon the completion of their prison term.

Article II Sec. 4

(a) The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or ~~imprisoned or on parole~~ serving a state or federal prison term for the conviction of a felony.

III. PUBLIC POLICY CONSIDERATIONS

A. Various Forms of Post-Release Supervision

In California, there are four distinct programs for correctional supervision: probation, parole, post-release-community-supervision (PRCS), and mandatory supervision (MS). Probation is the largest category of the four, with nearly 300,000 individuals on probation in the state during FY 2015-16.⁶ Judges may sentence convicted offenders to probation as an alternative to jail or prison, in which case the offender serves their sentence under the supervision of a county probation department and a probation officer.⁷ Under current law, those on probation are legally eligible to register to vote, whereas those on parole are not.⁸ Mandatory supervision is a form of split-sentencing where a prisoner serves part of their sentence in prison then serves the remainder under the supervision of county

³ *Id.*

⁴ *Voting Rights: Persons with a Criminal History*, California Secretary of State, available at <https://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians/> (last visited October 18, 2020).

⁵ *Id.*

⁶ Brandon Martin & Ryken Grattet, *Probation in California*, PUB. POLICY INST. OF CALIFORNIA (Dec. 2015), available at <https://www.ppic.org/publication/probation-in-california/> (detailing probation statistics statewide and effects of recent legislation on the probation population).

⁷ *Id.*

⁸ Cal. Const. art. II, § 4.

probation departments.⁹ PRCS, created by the Realignment Act of 2011, is a county-led form of supervision for those who have served sentences for lesser felonies.¹⁰ A person released from state prison is only eligible for PRCS after serving a sentence for a felony that is neither “serious” or “violent” within definitions prescribed by statute.¹¹ All prisoners serving sentences for felonies who do not qualify for PRCS are only eligible for release on parole.¹²

B. California’s Parole Population

According to the California Department of Corrections and Rehabilitation (CDCR), the total parole population currently sits at just over 56,000 people.¹³ During 2019, the Board of Parole Hearings conducted just over 6,000 parole suitability hearings.¹⁴ Based on data from the Department of Finance and CDCR, the Public Policy Institute of California reported that “the 10 counties with the lowest release rates received an average of 46 offenders per 100,000 while the 10 counties with the highest release rates received 220 offenders per 100,000” in 2016.¹⁵ Prior to the passage of the Realignment Act in 2011, the parole population was about 91,000. As a result of the diversion to county-led community supervision programs created under the Act for less serious offenders, the parole population dropped to about 61,000 in the first year after its passage.¹⁶

Racial disparities in the parole population continue to persist. At the close of 2016, African Americans made up approximately 26% of the parole population, but only 6% of California’s adult population.¹⁷ Caucasians also make up 26% of the parole population, but make up a much more substantial percentage of the general population, at about 41%.¹⁸

⁹ Chief Probation Officers of California, *Mandatory Supervision: The Benefits of Evidence Based Supervision under Public Safety Realignment*, CHIEF PROBATION OFFICERS OF CAL., available at <https://www.cpoc.org/sites/main/files/file-attachments/issuebrief2.pdf?1501700011> (last visited October 18, 2020)(describing positive impacts of the Realignment Act of 2011 on public safety statewide).

¹⁰ Criminal Justice Realignment Resource Center, *Court Related Impact of Criminal Justice Realignment*, CRIMINAL JUSTICE REALIGNMENT RESOURCE CTR., available at <https://www.courts.ca.gov/partners/894.htm> (last visited October 18, 2020) (detailing the distinctions between eligibility for probation, PRCS, and parole).

¹¹ Cal. Pen. Code § 3451(b)(1-5) (2020) (incorporating “serious” felonies as listed in Cal. Pen. Code § 1192.7(c)(1) and “violent” felonies as listed in Cal. Pen. Code § 667.5(c)).

¹² *Id.*

¹³ California Department of Corrections and Rehabilitation Office of Research Division of Correctional Policy Research and Internal Oversight, *Weekly Report of Population*, CAL. DEPT OF CORR. AND REHAB., available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/09/Tpop1d200916.pdf> (last visited October 18, 2020)(reporting the total parole population of 56,328 among other prison population statistics).

¹⁴ California Department of Corrections and Rehabilitation, *Board of Parole Hearing Proceedings Suitability Hearing Results Summary*, CAL. DEPT OF CORR. AND REHAB., available at <https://www.cdcr.ca.gov/bph/2019/10/24/cy-2019-suitability-results/> (last visited October 18, 2020)(reporting the total number of parole suitability hearings conducted, grant rate, denial rate, and other factors).

¹⁵ Justin Goss & Joseph Hayes, *California’s Changing Parole Population*, PUB. POLICY INST. OF CALIFORNIA (Feb. 2018), available at <https://www.ppic.org/publication/californias-changing-parole-population/> (finding county specific release rates for parolees in 2016).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

These statistics track with the overrepresentation of African Americans with respect to statewide arrest numbers and the statewide prison population as a whole. In 2016, African Americans accounted for 16.3% of all arrests made statewide,¹⁹ and in 2017, “28.5% of the state’s male prisoners were African American.”²⁰

C. Recidivism in California

In a report by the CDCR, which followed 18,830 offenders released from state prison on parole between July 1, 2014, and June 30, 2015, the three-year conviction rate was 43.3%, lower than that for offenders directly discharged (52.7%), or released on post-release-community-supervision (49.3%).²¹ Parolees also had the lowest one-year and two-year recidivism rates at 17.9% and 33.6%, respectively.²²

Shifting focus to the total population of prisoners released during this period, of the 18,235 offenders reconvicted, 47.6% were convicted of felonies and 52.4% were convicted of misdemeanors.²³ Contrary to one of the main arguments against Proposition 17, out of the total population of those released, the three-year reconviction rate for those in prison for a violent offense was substantially lower than that of offenders convicted for non-violent offenses. These “violent felons” had a three-year reconviction rate of just 29.1%.²⁴ The majority of those reconvicted within three years of their release were sent to prison for property (54%) and drug crimes (51.1%).²⁵

According to a report released by the State auditor, many factors are at play when it comes to an inmate’s propensity to recidivate, such as age, gender, and past criminal history. For example, “inmates over age 55 are significantly less likely to recidivate than inmates who are 25 or younger.”²⁶ CDCR’s data supports these findings; CDCR reported

¹⁹ Justin Goss, Joseph Hayes, Magnus Lofstrom, Brandon Martin & Steven Raphael, *New Insights into California Arrests: Trends, Disparities, and County Differences*, PUB. POLICY INST. OF CALIFORNIA (Dec. 2018), available at <https://www.ppic.org/publication/new-insights-into-california-arrests-trends-disparities-and-county-difference/> (making findings regarding the demographic breakdown of statewide arrests compared to percentage of population).

²⁰ Justin Goss, Alexandria Gumbs, Heather Harris & Joseph Hayes, *California’s Prison Population*, PUB. POLICY INST. OF CALIFORNIA (Jul. 2019), available at <https://www.ppic.org/publication/californias-prison-population/> (setting forth statistics concerning the present population of California inmates).

²¹ Kevin Grassel, Kendra Jensen & Sam Mooc, *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15*, CAL. DEPT OF CORRS. AND REHAB. (Jan. 2020), 8 available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2014-15.pdf> (last visited October 18, 2020)(listing three-year recidivism rate broken down by demographics and offense of conviction).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Elaine M. Howle, *California Department of Corrections and Rehabilitation: Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation*

that, “offenders ages 18 and 19 had the highest three-year conviction rate at 70%, followed by offenders ages 20 to 24 with a three-year conviction rate of 59%.”²⁷ Categorized by gender, the three-year reconviction rate for females was 13% lower than the rate for male offenders, and marked a 12.4% decrease from the 2011-2012 cohort of parolees.²⁸ Finally, it is significant to note that property and drug offenders “are consistently associated with higher rates of recidivism,” according to the same CDCR report.²⁹

D. Felony Re-Enfranchisement, Recidivism, and Voter Turnout

In Virginia, the state constitution permanently disenfranchises citizens with felony convictions; however, the Governor has the power to unilaterally restore voting rights.³⁰ During 2016, then-Governor Terry McAuliffe restored voting rights to over 150,000 citizens.³¹ According to a report by the Center for American Progress, “in Virginia, 25,941 of the 173,166 formerly incarcerated people who had their voting rights restored by [Governor] McAuliffe voted in 2016, amounting to a 14.98 [%] turnout rate for the group.”³² As of February 2020, Virginia boasted the lowest recidivism rate in the country at 23.1%.³³

In Maine and Vermont, felons never lose their right to vote—even while incarcerated.³⁴ According to a report released by the Virginia Department of Corrections comparing Virginia’s recidivism rate to those of the other 50 states, Maine and Vermont’s recidivism rates were 30.5% and 45%, respectively as of October 2018.³⁵

Programs, CAL. STATE AUDITOR (Jan. 2019), 14 available at <https://www.auditor.ca.gov/pdfs/reports/2018-113.pdf> (finding that inmates over 55 are significantly less likely to recidivate than younger offenders).

²⁷ Kevin Grassel, Kendra Jensen & Sam Mooc, *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15*, CAL. DEPT OF CORR. AND REHAB. (Jan. 2020), 8 available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2014-15.pdf> (finding that younger and property or drug offenders are significantly more likely to recidivate than older and violent offenders).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Va. Const. art. II § 1.

³¹ See Stuart Baum, *Voting Rights Restoration Efforts in Virginia*, BRENNAN CTR. FOR JUSTICE (April 2018), available at <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-virginia> (summarizing current felony disenfranchisement policies and legislative advocacy in Virginia).

³² Danielle Root, *Increasing Voter Participation in America*, CTR. FOR AM. PROGRESS (Jul. 2018), available at <https://www.americanprogress.org/issues/democracy/reports/2018/07/11/453319/increasing-voter-participation-america/> (finding that offenders re-enfranchised by action of Virginia Governor McAuliffe had a voter registration rate of 14.98%).

³³ *Virginia’s Recidivism Rate Remains Lowest in the Country*, CBS 19 NEWS, Feb. 3, 2020, <https://www.cbs19news.com/story/41644910/virginias-recidivism-rate-remains-lowest-in-the-country>

³⁴ Jane C. Timm, *Most States Disenfranchise Felons. Maine and Vermont Allow Inmates to Vote from Prison*, NBC NEWS, Feb. 26, 2018, <https://www.nbcnews.com/politics/politics-news/states-rethink-prisoner-voting-rights-incarceration-rates-rise-n850406>

³⁵ *State Recidivism Comparison*, VA. DEPT OF CORRECTIONS (Dec. 2018), available at <https://vadoc.virginia.gov/media/1363/vadoc-state-recidivism-comparison-report-2018-12.pdf> (finding that Virginia has the lowest recidivism rate of any state, while Maine and Vermont have 30.5% and 45% recidivism rates, respectively).

In April 2018, Governor Andrew Cuomo of New York issued an executive order removing the restrictions on parolees' right to vote.³⁶ Data is not yet available to make a comparison with respect to any impact Governor Cuomo's executive order might have had with respect to recidivism in the state.

As of May 2019, Colorado's Legislature has passed HB 1266 giving voting rights to individuals on parole.³⁷ However, similar to New York Governor Cuomo's executive order, data is not yet available to make a meaningful study whether the law reduced recidivism in the state.

E. Main Arguments in Support of Proposition 17

Proponents assert the purpose of parole is the supervised reintegration of felony offenders back into civil society.³⁸ The right to vote has long been recognized as an invaluable right of United States citizens, historically denied to significant segments of society—even today.³⁹ Proponents claim that—by re-enfranchising individuals on parole—parolees are given an incentive to adhere to the terms of their release, conform to societal standards of conduct, and are less likely to recidivate for fear of losing their newly regained franchise and out of respect for the community they feel a part of.⁴⁰ Felony disenfranchisement has historically been used as a means of retaining a cheap labor supply in the aftermath of abolition.⁴¹ While some progress has been made, racial disparities in criminal justice linger, and parole is no exception.⁴² As proponents argue, parolees contribute to their communities, work hard, pay taxes, and yet are barred from voting, resulting in the system functionally operating as “taxation without representation,”⁴³ which the United States has rejected since its founding. Over 150 organizations were

³⁶ N.Y., Restoring the Right to Vote for New Yorkers on Parole, No. 181, (April 2018) *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf

³⁷ Stephanie Daniel, *Parolees Vote for the First Time, Thanks to New Colorado Law*, KUNC, (Oct. 2019), <https://www.kunc.org/news/2019-10-28/parolees-vote-for-the-first-time-thanks-to-new-colorado-law>

³⁸ *People v. Nuckles*, 56 Cal.4th 601, 608 (Cal. 2013) (finding the purpose of parole to be reintegration rather than punishment).

³⁹ Taina Vargas-Edmond, Gregory Fidell, Lisa Schottenfeld & Sasha Feldstein, *Democracy Needs Everyone*, INITIATE JUSTICE, *available at* <https://www.initiatejustice.org/project/democracy-needs-everyone/> (last visited October 18, 2020).

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 11.

⁴² Justin Goss & Joseph Hayes, *California's Changing Parole Population*, PUB. POLICY INST. OF CALIFORNIA (Feb. 2018), *available at* <https://www.ppic.org/publication/californias-changing-parole-population/> (finding county specific release rates for parolees in 2016).

⁴³ Initiate Justice, *Voting Rights for People on Parole: Proposition 17*, INITIATE JUSTICE, *available at* <https://www.initiatejustice.org/project/prop17/> (claiming that prohibitions on parolee voting operates as “taxation without representation”).

registered as supporting ACA 6 upon its third reading in the State Senate, while only one organization registered in opposition—Election Integrity Project California, Inc.⁴⁴

According to the Brennan Center for Justice at New York University School of Law, making voting rights dependent on the type of correctional supervision a former offender is on post-release leads to “de facto disenfranchisement.”⁴⁵ The Brennan Center argues that passage of Proposition 17 would create “a clear bright-line rule” and remove the confusion around voter eligibility.⁴⁶ For example, in California, those on probation are eligible to vote, but those on parole are not. Proponents at the Brennan Center argue that when distinctions are drawn between forms of supervision with respect to voting rights, otherwise eligible voters either think they cannot vote, or refrain from voting out of apprehension that they may be breaking the law or violating a provision of their release.⁴⁷ The confusion is not limited to the formerly incarcerated. The Brennan Center found: “people with misdemeanor convictions in Kentucky do not lose the right to vote. However, 53% of county clerks interviewed in 2005 responded incorrectly to the question of whether individuals with misdemeanor convictions are eligible to vote.”⁴⁸ Even the famous rapper Snoop Dogg has stated he was “brainwashed into thinking that you couldn’t vote because you had a criminal record” and thus he refrained from voting due to the misconception that his former felony gun and drug charges rendered him ineligible to vote, even though his record had been expunged.⁴⁹

F. Main Arguments in Opposition to Proposition 17

Opponents argue that paroled inmates have not earned the right to participate in the voting process because they have not fully paid their debt to society.⁵⁰ Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, and Wyoming require further steps after completion of parole before an offender is re-

⁴⁴ SENATE FLOOR, COMMITTEE ANALYSIS ON ACA 6, at 6-10 (June 23, 2020) *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200ACA6.

⁴⁵ ASSEMBLY FLOOR, COMMITTEE ANALYSIS ON ACA 6, at 6-10 (June 12, 2019) *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200ACA6.

⁴⁶ ASSEMBLY FLOOR, COMMITTEE ANALYSIS ON ACA 6, at 6-10 (June 12, 2019) *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200ACA6.

⁴⁷ Rachel Bloom & Erika Wood, *De Facto Disenfranchisement*, ACLU & BRENNAN CTR. FOR JUSTICE (Sept. 2008) *available at*

<https://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf> (finding that eligible voters under correctional supervision and even some election officials are confused as to whether those on probation are eligible to vote).

⁴⁸ *Id.*

⁴⁹ Annie Lord, *Snoop Dogg says he will vote for first time in 2020: 'I can't stand to see this punk in office one more year'*, THE INDEPENDENT (June 9, 2020) *available at* <https://www.independent.co.uk/arts-entertainment/music/news/snoop-dogg-vote-2020-election-trump-joe-biden-a9555736.html>

⁵⁰ Christopher Weber, *2 California ballot measures would expand voting rights*, ASSOCIATED PRESS (Oct. 5, 2020), *available at* <https://apnews.com/article/election-2020-constitutions-voting-rights-general-elections-elections-72d27ee63fe4d755e19f8fcae2415431>

enfranchised.⁵¹ Opponents also argue that parole is intended to be a period of adjustment, and thus voting rights should be withheld up until the point where parolees have demonstrated they are no longer a “threat to innocent civilians.”⁵² Additionally, opponents argue privileges such as voting, which is “the most fundamental and valuable of American privileges,” should be earned and deserved.⁵³ Finally, opponents point out that offenders on parole are supervised by a trained state agent, their movements are restricted, there are limitations on what property they can own, and “any misstep results in immediate re-incarceration.”⁵⁴

G. Analysis of Competing Arguments

While both sides make forceful arguments for their respective positions, certain points of contention remain unclear. For instance, whether re-enfranchisement directly results in lower rates of recidivism is less clear than proponents suggest. In the coming years this body of data will certainly develop, given the recent passage of legislation and executive actions in states that have restored voting rights to former felony offenders.⁵⁵ With respect to the proponent’s argument on the positive effects of re-enfranchisement on recidivism, the reality of recidivism in states such as Vermont muddy the waters. As previously stated, Vermont allows those on parole and even those still incarcerated to vote, but its recidivism rate is virtually identical to California’s, sitting at about 45%.⁵⁶

Although violent felonies feature prominently in the arguments and campaign materials of the opponents to the measure, the data shows that in California, violent offenders are far less likely to recidivate than property and drug offenders.⁵⁷ Furthermore,

⁵¹ *Felon Voting Rights*, NAT’L CONF. OF STATE LEGS. (Sept. 2020), available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx#recent> (finding that in certain listed states, felons lose their voting rights until completion of sentence plus an additional waiting period or those states require additional action before rights are restored).

⁵² CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 3, 2020, at 32, available at <https://vig.cdn.sos.ca.gov/2020/general/pdf/complete-vig.pdf> (last visited Oct. 6, 2020) [“November 2020 Voter Guide”].

⁵³ *Id.*

⁵⁴ BALLOTPEDIA, *California Proposition 17, Voting Rights Restoration for Persons on Parole Amendment (2020)*, (2020), available at [https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_\(2020\)](https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_(2020))

⁵⁵ N.Y., Restoring the Right to Vote for New Yorkers on Parole, No. 181, (April 2018) available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf ; Stephanie Daniel, *Parolees Vote for the First Time, Thanks to New Colorado Law*, KUNC, Oct. 2019, <https://www.kunc.org/news/2019-10-28/parolees-vote-for-the-first-time-thanks-to-new-colorado-law>

⁵⁶ *State Recidivism Comparison*, VA. DEPT OF CORRS. (Dec. 2018), available at <https://vadoc.virginia.gov/media/1363/vadoc-state-recidivism-comparison-report-2018-12.pdf> (finding that Virginia has the lowest recidivism rate of any state, while Maine and Vermont have 30.5% and 45% recidivism rates, respectively).

⁵⁷ Kevin Grassel, Kendra Jensen & Sam Mooc, *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15*, CAL. DEPT OF CORRS. AND REHAB. (Jan. 2020), 8 available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/Recidivism->

opponents argue that parole is a part of a convicted offender’s criminal sentence; however, the Supreme Court of California disagrees. In *People v. Nuckles*, the court articulated the difference between parole and the prison sentence, “under the present law the prison ‘term’ is the actual time served in prison before release on parole, and the day of release on parole marks the end of the prison term. . . . [T]he period of parole is not part of a defendant’s prison term.”⁵⁸ Furthermore, the objective of parole is not to punish but to “assist in the parolee’s transition from imprisonment to discharge and *reintegration into society*” (emphasis added).⁵⁹

IV. CAMPAIGN FINANCE

Free the Vote, Yes on 17 is the main registered PAC in support of Proposition 17. Additionally, Proposition 17 is supported by California Secretary of State, Alex Padilla, and the Ballot Measure Committee for Democracy and Justice.⁶⁰ Proponents have raised \$847,007 as of September 27, 2020.⁶¹ There are no PACs registered to oppose Proposition 17 and no reported campaign contributions have been raised as of September 27, 2020.⁶²

V. FISCAL CONSIDERATIONS

This initiative would have both annual and one-time fiscal effects on the state.⁶³ In particular, the initiative would increase annual costs to counties for more voter registration and ballot materials, which the Legislative Analyst estimates to be in the hundreds of thousands of dollars throughout the state.⁶⁴ This cost comes from the likely increase in the number of registered voters after parolees become eligible to register to vote under the initiative.⁶⁵ Because of this increase in the number of people who can register to vote and vote in elections, county elections offices would have an increased workload, processing the voter registrations of people on parole who register to vote and sending ballot materials to people on parole who register to vote.⁶⁶ The actual cost is uncertain and

Report-for-Offenders-Released-in-Fiscal-Year-2014-15.pdf (listing three-year recidivism rate broken down by demographics and offense of conviction).

⁵⁸ *People v. Nuckles*, 56 Cal.4th 601, 608 (Cal. 2013) (finding that parole is distinct from the prison term).

⁵⁹ *Id.* at 609.

⁶⁰ California Secretary of State, *Proposition 17 - ACA 6 (Resolution Chapter 24), McCarty. Elections: disqualification of electors.*, available at <https://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2020-ballot-measure-contribution-totals/proposition-17-aca-6-resolution-chapter-24-mccarty-elections-disqualification-electors> (last visited October 18, 2020).

⁶¹ *Id.*

⁶² *Id.*

⁶³ LEGISLATIVE ANALYST’S OFFICE, *Proposition 17, Restores Right to Vote After Completion of Prison Term. Legislative Constitutional Amendment.*, (2020) available at <https://lao.ca.gov/ballot/2020/Prop17-110320.pdf>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

depends on how many people on parole actually register to vote in each election cycle as well as the specific costs of providing ballot materials during a given election.⁶⁷

It is difficult to project the number of people that will be on parole because of previous ballot initiatives that require a year of parole for misdemeanor re-sentencing or provide offenders with good behavior opportunities for parole.⁶⁸ However, the number of people released on parole is slight overall; trends in the last five years indicate that the parole population changes at a rate between -3.6% all the way to +7.3%.⁶⁹ Prior to COVID-19, the five-year projection was a net +2.1% increase in the parole population.⁷⁰ After the pandemic began, the projection shifted to +4.1%, representing a five-year increase of 2,135 parolees relative to the number of parolees projected in 2019.⁷¹ However, this projection preceded the announcement that up to 8,000 prisoners are slated for early release this year to combat COVID-19 infections in prisons; as a result, the actual increase for 2020 may be substantially larger as more inmates are released on parole.⁷² The number of parolees for a given year necessarily impacts the costs incurred at the county level for registering parolees to vote.

As of July 3, 2020, the California Secretary of State reports that roughly 83.49% of eligible voters in California are registered to vote.⁷³ However, there is no data on how many of those voters are formerly incarcerated individuals, which limits the ability to project how many parolees will likely register to vote. However, studies conducted in other states have indicated that there is a drop in political participation after incarceration—both in terms of voting and registering to vote.⁷⁴ If California parolees behave similarly to parolees

⁶⁷ *Id.*

⁶⁸ Justin Goss & Joseph Hayes, *California's Changing Parole Population*, PUB. POLICY INST. OF CALIFORNIA (Feb. 2018), <https://www.ppic.org/publication/californias-changing-parole-population/>.

⁶⁹ See Huihui Xu et al, *Fall 2019 Population Projections*, CAL. DEPT OF CORR. AND REHAB. (Jan. 2020), 16 available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/Fall-2019-Population-Projections.pdf> (listing annual percent change in the parole population from 2015–2019: 2.2%, -3.6%, 3.3%, 4.7%, and 7.3% respectively. This totaled to a five-year net increase of 13.9% or 5,349 parolees).

⁷⁰ *Id.* at 15.

⁷¹ Juan Angel Villon et al, *Spring 2020 Population Projections*, CAL. DEPT OF CORR. AND REHAB. (May 2020), 15–16 available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/05/Spring-2020-Population-Projections.pdf>.

⁷² Matthew Green, *California Could Release 8,000 State Prisoners by End of August to Slow Coronavirus Outbreaks*, KQED (July 10, 2020), <https://www.kqed.org/news/11828460/california-could-release-8000-people-in-state-prisons-by-august>.

⁷³ CAL. SEC'Y OF STATE, *123 Day Report of Registration for the November 3, 2020, General Election*, (July 3, 2020), available at <https://elections.cdn.sos.ca.gov/ror/123day-gen-2020/historical-reg-stats.pdf>.

⁷⁴ See Alan S. Gerber et al., *Does Incarceration Reduce Voting? Evidence about the Political Consequences of Spending Time in Prison?*, UNIV. OF PA. (2017), available at <https://www.sas.upenn.edu/~marcmere/workingpapers/EffectOfIncarceration.pdf> (documenting that a sample of formerly incarcerated individuals in Pennsylvania registered at a rate of 43.9% but voted at a rate of 14% in the 2012 election); see also Ernest Drucker and Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio*, SENTENCING PROJECT (Sept. 2005) (reporting that samples of formerly incarcerated individuals in Connecticut

in other states, this measure would have a limited annual fiscal impact because although more people would become *eligible* to vote, less people would actually register to vote—which is the source of the ongoing county costs. Still, counties would experience some costs each year associated with distributing voter registration and ballot materials to parolees who in the end register to vote.

In addition to the ongoing cost at the county level, there would also be a one-time state cost to update voter registration cards and systems as well. This updating process is also estimated by the Legislative Analyst to cost somewhere in the hundreds of thousands of dollars.⁷⁵ This one-time cost represents less than 1% (roughly .00035%–.00065%) of the state’s current General Fund budget (\$153 billion); thus, these costs are marginal.⁷⁶ These costs are also associated with the likely increase in the number of registered voters.⁷⁷ The state would need to update all voter registration cards and systems to reflect that people on parole can register to vote.⁷⁸ For example, the Secretary of State provides voter registration cards and manages an electronic voter registration system, both of which would need to be updated to reflect that parolees can vote.⁷⁹ Other state agencies also have voting-related workloads that could be affected by this change.⁸⁰

VI. CONCLUSION

Proposition 17 would amend the California Constitution to allow for individuals convicted of a felony to register to vote and vote while on parole. If passed, Proposition 17 would align the state’s parole population with populations under other forms of criminal supervision, such as probation. Being a Legislative Constitutional Amendment, Proposition 17 has been drafted by the Legislature to specifically avoid legal challenge and constitutional issues.

and New York respectively had a 50% and 33% decrease in voter registration post-incarceration compared to pre-incarceration).

⁷⁵ LEGISLATIVE ANALYST’S OFFICE, *Proposition 17, Restores Right to Vote After Completion of Prison Term. Legislative Constitutional Amendment.*, (2020) available at <https://lao.ca.gov/ballot/2020/Prop17-110320.pdf>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*