

LATE TESTIMONY

TO: COMMITTEE ON PUBLIC SAFETY AND MILITARY
Sen. Will Espero, Chair
Sen. Robert Bunda, Vice Chair
Thursday, February 12, 2009
1:15 PM
Room 229, Hawaii State Capitol

RE: AALA Support for Voting Rights for Incarcerated SB 619

FROM: Atty Daphne Barbee-Wooten
1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813

Dear Chair Espero, Vice Chair Bunda and Members of the Committee on Public Safety and Military Affairs Committee:

My name is attorney Daphne Barbee-Wooten and I am testifying on behalf of the African-American Lawyers Association. The African American Lawyers Association of Hawaii supports this bill which ensures that the right to vote for persons who are incarcerated is guaranteed. The 15th Amendment and 19th Amendment of the United States Constitution guarantee United States citizens the right to vote. This right to vote cannot be denied on the basis of race and sex. It likewise should not be denied for reasons of incarceration. Currently, Vermont and Maine guarantee the right to vote to incarcerated persons.

The African-American Lawyers Association strongly supports this bill which ensures voting rights for incarcerated persons. Persons who are convicted do not lose their citizenship, residency, their 1st Amendment rights to religion and speech, and should likewise not lose their right to vote. Voting is an important social process to ensure our government represents all people, not just some. An unfortunate fact is that the prison population has a disproportion of minorities. As recognized by other countries such as Australia, which recently struck down a ban on prisoner voting, voting is a victory for "representative democracy, accountable government, the rule of law and fundamental human rights." We urge passage of this bill.

Dated: Honolulu, Hawaii

2-12-09

Daphne Barbee-Wooten

Daphne Barbee-Wooten
Attorney at Law

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Court reverses prisoner vote ban

Karen Kissane
August 31, 2007

IN A landmark decision supporting Australians' right to vote, the High Court has struck down a Federal Government ban on all prisoners voting at elections.

A majority on the bench accepted a claim by a Victorian Aboriginal prisoner, Vickie Lee Roach, that the ban was unconstitutional. The ban on all prisoners was imposed by the Howard Government in changes to the Commonwealth Electoral Act in 2006. Previously, only prisoners serving sentences of more than three years were prevented from voting.

"The decision of the High Court is a victory for representative democracy, accountable government, the rule of law and fundamental human rights," said Roach's solicitor, Philip Lynch, of the Human Rights Law Resource Centre.

"With Aboriginal Australians incarcerated at a rate of almost 13 times that of their fellow Australians, it is also a vindication of Aboriginal rights."

Attorney-General Phillip Ruddock said the Government accepted the High Court's decision but was disappointed. "It will be necessary to consider the court's reasons when they are available," he said. He declined further comment.

The court did not explain its reasoning. That is expected to come with a full judgement in the next few months. In recognition that an election is looming, it issued orders saying the ban was unconstitutional because it was contrary to requirements that Parliament be directly chosen by the people.

Political scientist Professor Brian Costar, of Swinburne University, said: "This issue turned on, who are 'the people'? The High Court decided that by disenfranchising all prisoners you have disenfranchised a whole class of people, and that this is not constitutional."

The orders return the law to the situation pre-2006; only prisoners with sentences of more than three years are banned. This means that Roach, who is serving six years, will still be unable to vote. She is being held in the Dame Phyllis Frost women's prison for convictions including burglary and recklessly causing serious injury.

Her senior counsel, Ron Merkel, QC, said Roach may prove to be "the Eddie Mabo of parliamentary democracy". "Like Eddie, who lost his land claim but established the principle of native title in Australia, she lost her case in terms of her own right to vote but won the case for her own people and other prisoners who just happen to be in jail on election day not to be

subject to this exclusion."

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LATE TESTIMONY

BY EMAIL: PSMTestimony@Capitol.hawaii.gov

Committee: Committee on Public Safety and Military Affairs

Hearing Date/Time: Thursday, February 12, 2009, 1:15 p.m.

Place: Room 229

Re: Testimony of Gail P. Gnazzo, MS in Strong Support of S.B. 619, Relating to Voting

Dear Chair Espero and Members of the Committee on Public Safety and Military Affairs:

I write in strong support of S.B. 619, which seeks to allow incarcerated persons who were Hawaii residents at the time of their arrest to vote via absentee ballot in Hawaii's elections.

I applaud this Committee for hearing this bill and recognizing the importance of allowing all citizens to vote.

Giving all citizens the ability to vote will build a stronger democracy

Voting is a fundamental right and essential to American democracy. Without a vote, citizens have no voice. Restoring the ability to vote strengthens our democracy by increasing voter participation and helping people to reintegrate into society to assume the duties of citizenship. Felony disfranchisement is a policy with deeply racist roots and a racially disproportionate impact that bars citizens from the ballot box upon conviction of a felony. In the United States, over 5.3 million Americans cannot vote due to a felony conviction. Felony disfranchisement laws vary from state to state, but 48 states bar incarcerated individuals from casting a ballot, with only Maine and Vermont allowing inmates to vote. However, over the last decade the national trend has moved towards lowering barriers for the disfranchised. Since 1997, 19 states have made progressive changes to their felony disfranchisement laws, enfranchising over 700,000 formerly incarcerated individuals. By passing this bill, Hawaii will join Maine and Vermont and take the lead in this important progressive movement recognizing the value of voting to a true democracy.

Allowing incarcerated individuals to vote will improve public safety, aid law enforcement and empower families and communities

Far from making streets safer, disfranchisement is detrimental to public safety. Voting demonstrates an individual's commitment to the institutions of American democracy. The irony of disfranchisement is that the very behavior that society strives to encourage – the commitment to the larger social and political collective – is undermined by a policy that requires people who desire to engage in that behavior to relinquish the right to vote.

Restricting incarcerated individuals from voting does not prevent crime, nor does it provide compensation to victims. In fact, disfranchising incarcerated individuals is antithetical to the reentry process and harmful to long-term prospects for sustainable reintegration of formerly incarcerated individuals into society. There is simply no legitimate purpose in denying incarcerated individuals the ability to vote. Research finds a link between voting participation and re-offense; people who voted after release from supervision were half as likely to re-arrested as those who did not vote. Similar effects were found among people with a prior arrest; 27% of non-voters were re-arrested, compared to 12% of people who had voted. Voting is particularly important for the reintegration of approximately 2000 individuals incarcerated on the mainland, far from their families and communities. As Wesley Andrenyak, Chief Advocate for the Maine Department of Corrections testified, his department's mission