

Honorable MICHAEL SPEARMAN
Hearing Date: January 20, 2006
Hearing Time: 10:00 a.m.

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

DANIEL MADISON, et al.,
Plaintiffs,
v.
STATE OF WASHINGTON, et al.,
Defendants.

NO. 04-2-33414-4SEA
DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT

I. INTRODUCTION

The Washington State Constitution explicitly declares that convicted felons are disqualified from the right to vote. Wash. Const. art. VI, § 3. The constitution is equally explicit as to when the voting right of a convicted felon is to be restored. The framers of our fundamental document stated that convicted felons are disqualified "unless restored to their civil rights". *Id.* Plaintiffs now maintain that, this constitutional provision notwithstanding, some convicted felons—but not others—*must* be restored to the franchise even though they have not qualified to have their civil rights restored. Plaintiffs are mistaken.

II. ARGUMENT

A. **Rational Basis Review, And Not Strict Scrutiny, Applies In This Case Because Convicted Felons Do Not Possess A Fundamental Right To Vote**

In this final brief on summary judgment, it may be helpful to return once more to first principles. A few key legal concepts cannot be seriously contested:

1 First, neither the federal nor the state constitutions bestow a fundamental right to vote
2 upon convicted felons. U.S. Const. amend XIV, § 2 (recognizing that the right to vote may be
3 denied based upon criminal conviction); Wash. Const. art. VI, § 3; *Richardson v. Ramirez*,
4 418 U.S. 24, 54-55, 94 S. Ct. 2655, 41 L. Ed. 2d 551 (1974).

5 Second, courts do not apply strict scrutiny unless “a classification affects a
6 fundamental right or a suspect class”. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 414,
7 120 P.3d 56 (2005) (quoting *State v. Harner*, 153 Wn.2d 228, 235-36, 103 P.3d 738 (2004)).
8 Absent such a showing, courts apply rational basis analysis. *Id.*

9 Third, since convicted felons do not enjoy a fundamental right to vote, and since
10 Plaintiffs do not allege the presence of any suspect class, it logically follows that strict
11 scrutiny does not apply to this case.

12 Plaintiffs misstate this simple syllogism in support of a plea for strict scrutiny. The
13 absence of a fundamental right to vote on behalf of convicted felons necessarily shapes the
14 constitutional analysis. Plaintiffs err in characterizing Defendants’ arguments as if
15 Defendants contended that the inapplicability of strict scrutiny simply ends the analysis. Plfs.’
16 Reply at 2-3. Since Plaintiffs lack a fundamental right to vote, their challenge depends upon
17 establishing the absence of any rational basis for state law. This they cannot do.

18 *Richardson v. Ramirez* is more like the present case than Plaintiffs acknowledge. The
19 *Richardson* Court did not merely conclude, as the text of the Fourteenth Amendment states
20 directly, that states may disenfranchise convicted felons. The plaintiffs in *Richardson* were
21 convicted felons who had completed the service of their respective sentences and paroles.
22 *Richardson*, 418 U.S. at 26. California law, like Washington’s, provided for the restoration of
23 civil rights after the completion of a sentence. *Id.* at 29-30. The Court upheld California’s
24 law on the subject and concluded that strict scrutiny did not apply to the challenge. *Id.* at 54-
25 55.

1 The *Richardson* Court made clear its rejection of strict scrutiny in the course of
2 rejecting the application of the very cases upon which Plaintiffs' rely in support of their
3 argument. *Id.* at 54 (discussing *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 89 S. Ct.
4 1886, 23 L. Ed. 2d 583 (1969), and *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed.
5 2d 274 (1972)). Plaintiffs claim that somehow those cases support the application of strict
6 scrutiny, despite the Supreme Court's express rejection of that proposition in *Richardson*. It
7 is impossible to see how they could do so in this case when they could not in *Richardson*. It is
8 not necessary to conclude that *Richardson*, or the Fourteenth Amendment, shields state laws
9 on the subject of felons and voting from all examination in order to make clear the basic point:
10 felons enjoy no fundamental right to vote, and therefore state laws governing the restoration
11 of their voting rights cannot be subject to strict scrutiny.¹

12 Yet, Plaintiffs strenuously object that they do not challenge the concept of
13 disenfranchisement, but only the standards for reinstatement. The requirement that a
14 convicted felon is disqualified from voting until his or her civil rights are restored is, however,
15 stated in the constitution itself. Wash. Const. art. VI, § 3.

16 **B. This Case Does Not Present A Classification Based On Wealth**

17 The classification properly at issue in this case is the classification drawn by the
18 statute. State law provides that a convicted felon is to receive a certificate of discharge upon
19 completion of "all requirements of the sentence, including any and all legal financial
20 obligations". RCW 9.94A.637(1)(a). The law does not draw any distinction whatsoever
21 between legal financial obligations and any other sentence requirement. It applies, rather, in a
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24 ¹ Plaintiffs seem to suggest that somehow the district court decision in *Hobson v. Pow* justifies the
25 application of strict scrutiny in this case. The court resolved that case as an allegation of discrimination based on
26 gender, finding no rational basis for a gender-based distinction. *Hobson v. Pow*, 434 F. Supp. 362, 366 (N.D. Ala.
1977) ("[t]he State can show no . . . rational reason" to support the statutory difference in treatment).

1 uniform fashion to *all* sentence elements. It draws a classification between convicted felons
2 who have fully completed their sentences in all respects and those who have not. *Id.*

3 There is no constitutional reason to treat one sentence element differently from the
4 others. A convicted felon who has completed all requirements except legal financial
5 obligations has no more fully completed the terms of his or her sentence than has a felon who
6 has completed all elements except for community service, a period of community supervision,
7 or even the last few days of his or her custody in the penitentiary. As to each of those
8 sentence elements, the analysis is the same: a felon who has not completed all terms of his or
9 her sentence has not fully completed his or her sentence. A convicted felon who has not paid
10 his or her legal financial obligations is simply not similarly situated to a felon who has done
11 so—the former has not completed *all* terms of his or her felony sentence, while the latter has.

12 The classification Plaintiffs claim is a false one. The statute makes no distinction
13 among sentence elements, and neither can this Court's constitutional analysis.²

17 ² Plaintiffs have never clearly explained whether they regard this case as a facial challenge or an “as
18 applied” challenge to the state law. A plaintiff bringing a facial challenge to a statute must show that there is no
19 set of circumstances in which the statute, as currently written, can be constitutionally applied. *City of Redmond v.*
20 *Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). When Plaintiffs phrase their arguments in terms not only of the
21 effects of this case upon themselves, but upon other convicted felons as well, they seem to attempt a facial
22 challenge, in which the remedy would be to hold the statute totally inoperative. *Id.* Such a showing is a tall order,
23 because it would not suffice for Plaintiffs merely to show that the law is unconstitutional in their specific
24 circumstances. There may be other convicted felons to whom the law could be constitutionally applied, such as
25 those who have made no effort to repay their obligations despite the means to do so.

26 At other points, Plaintiffs lament their own individual circumstances, including the effect that judgment
interest has on their particular legal financial obligations. Such passages sound more like an “as applied”
challenge, which is characterized by the allegation that the law's application in his or her specific context is
unconstitutional. *Id.* at 668-69. A holding of unconstitutionality in such a case results in prohibiting the future
application of the statute in similar circumstances, but the statute is not totally invalidated. *Id.* at 669. Plaintiffs
may not bootstrap their way into an argument that the statute is totally invalid by asserting that it is over- or
under-inclusive because the requirement that a statute be narrowly tailored arises only in a strict scrutiny
analysis—in which the standard is “narrowly tailored to promote a compelling state interest”. *In re Interest of*
M.G., 103 Wn. App. 111, 118, 11 P.3d 335 (2000).

1 **C. The Felon Disenfranchisement Clause Of The State Constitution Does Not Grant**
2 **A Special "Privilege" To Felons Who Have Completed All Of Their Sentence**
3 **Requirements**

4 Plaintiffs treat their state constitutional privileges and immunities analysis as if the
5 state constitution merely restated the federal equal protection clause. State privileges and
6 immunity analysis, however, addresses a very different concern than federal equal protection
7 analysis. While equal protection addresses a concern that similarly situated individuals be
8 treated similarly, the state privileges and immunities clause reflects a concern with granting
9 special favoritism, or privileges, to a select group. *Grant County Fire Prot. Dist. No. 5 v. City*
10 *of Moses Lake*, 150 Wn.2d 791, 807-08, 83 P.3d 419 (2004).

11 Convicted felons who have completed all the terms of their felony sentences, including
12 legal financial obligations, have not been granted a special privilege. The state constitution
13 itself specifies that convicted felons are disqualified from voting unless their civil rights have
14 been restored. Wash. Const. art. VI, § 3. The state privileges and immunities clause,
15 accordingly, cannot require a different standard than the one that the constitution itself
16 provides.

17 **III. CONCLUSION**

18 For these reasons, the Court should deny the Plaintiffs' motion for summary judgment
19 and grant the State's cross-motion for summary judgment.

20 DATED this 12th day of January, 2006.

21 **ROB MCKENNA**
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23 

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