

Statement of Ty Gee Before the House Judiciary Committee

A central question before the Committee is whether under *Danielson v. Dennis*—a case in which I was the attorney for the plaintiff—SB179 would be unconstitutional, in violation of Article VII, Section 10, of the Colorado Constitution.

I am here to present the Committee with my legal analysis of *Danielson*. It is well to remember the question that was presented in that case: Whether a Colorado statute (§ 1-2-103(4)) barring parolees from voting was in *conflict* with Section 10, i.e., whether the statute ought to be struck down as unconstitutional.

Our argument to the Colorado Supreme Court was simple: Section 10 provides, "No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom...by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship...."

The parties agreed that if a person has served out her "full term of imprisonment," she could not be prevented from voting. The question was whether a parolee had served out her "full term of imprisonment" within the context of Section 10. The dispositive legal and constitutional question for the Court to decide was, What did the People of the State of Colorado intend "full term of imprisonment" to mean when they adopted the Colorado Constitution 1876?

As the Supreme Court in *Danielson* acknowledged, we proved that at the time the People adopted Section 10, parole did not exist in the State of Colorado and did not exist for another 23 years. Accordingly, the People could not have believed when they voted to adopt the state constitution that "imprisonment" or "full term of imprisonment" could have meant anything other than physical incarceration in a prison. It could not have meant something that did not exist, i.e., parole.

In ruling against us, the Supreme Court held in effect that the legislature was free to determine what was "imprisonment" for purposes of Section 10 and suffrage. That is, if the legislature, having subsequently invented parole, wanted to permit felons whom the legislature had permitted to be released from prison under a liberty-restricted status, the legislature also had the authority to bar those persons so released from voting.

The Supreme Court thus resolved the legal question whether there was a conflict between the state felon-disfranchisement statute and Section 10. It was not called upon to decide, and it did not decide, whether Section 10 *barred* the

legislature from permitting a parolee to vote if the legislature wanted to permit it. If the *Danielson* case means anything, it is that the legislature has plenary authority over suffrage, particularly in the context of a person on parole, a legislative invention.

In short, if, as the Supreme Court acknowledged in *Danielson*, parole did not exist when Section 10 was adopted, it could not possibly be construed as a matter of constitutional law to bar a non-imprisoned parolee from voting. Parole is a legislated, hybridized form of "imprisonment" that is not constitutionally recognized—cannot be constitutionally recognized—in the context of our state constitution. Under these circumstances, the legislature's discretion simply is not restricted by Section 10. It has the power to bar parolees from voting; it has the power to permit parolees to vote.