

**BRENNAN  
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FOR JUSTICE**

Brennan Center for Justice  
*at New York University School of Law*

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**Testimony of**

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**Before the**

**Committee on Governmental Operations and Committee on Civil Rights  
Council of the City of New York**

**Oversight Hearing: The Voter Assistance Commission and Its Efforts to  
Increase Voter Registration Across New York City's Diverse Communities**

**December 18, 2007**

On behalf of the Brennan Center for Justice at NYU School of Law, I thank the Committee on Governmental Operations and Committee on Civil Rights for holding this hearing and for providing me the opportunity to discuss our work on voter registration.

The Brennan Center for Justice is a nonpartisan think tank and advocacy organization that focuses on issues of democracy and justice. We are deeply involved in the effort to ensure fair and accurate voting and voter registration systems and to promote policies that maximize participation in elections. We have done extensive work on the subjects of voter registration and the maintenance of voter registration lists, including conducting studies and publishing reports, providing assistance to federal and state administrative and legislative bodies with responsibility over elections, and when necessary, litigating to compel states to comply with their obligations under federal law and the Constitution.

My testimony today will focus on voter registration of people with felony convictions. There is widespread misunderstanding and misapplication of relevant

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<sup>1</sup> I am not an attorney, nor am I admitted to the bar. My testimony has been approved by attorneys at the Brennan Center.

state law governing the voting rights of former prisoners and probationers. New York Election Law automatically restores the right to vote to convicted individuals once they have served their maximum sentence or been discharged from parole. Individuals who are sentenced to probation never lose their right to vote. The law imposes no additional burdens, conditions or qualifications on who may vote, aside from the usual age, citizenship, and residency requirements. Like all other registrants, people with felony convictions need only complete a registration form and sign an affidavit – they are entitled to the same presumption of eligibility as all other individuals seeking to register.

In 2003 and 2005, the Brennan Center conducted surveys of New York's 63 local election boards to determine how voter registration laws were being applied in practice. In 2003, more than half of New York's counties, including all five boroughs in New York City, wrongly refused to register people with felony convictions who failed to provide documentation of their eligibility.<sup>2</sup> In 2005, more than a third of New York's local boards were still getting the law wrong, reporting either that people on probation are not eligible to register to vote or that they did not know whether people on probation could vote.<sup>3</sup> The 2005 survey also found that local boards were still refusing to register people with felony convictions if they could not provide certain documentation of their eligibility, contrary to state policy.

Imposing haphazard and inconsistent registration requirements on individuals with felony convictions unnecessarily burdens the fundamental right to vote and therefore violates the Equal Protection and Due Process guarantees of the Fourteenth Amendment. Refusing to accept voter registration forms submitted by eligible voters with felony convictions also violates the National Voter Registration Act (NVRA) which requires every state to ensure that all eligible applicants are registered to vote.

Misapplication of voter registration laws has a disparate impact in New York City, as the majority of people with felony convictions are residents of the five boroughs. In 2004, nearly one-third of all New Yorkers sentenced to probation lived in New York City. Fifty percent of people sentenced to prison and 61 percent of people on parole reside in the five boroughs.<sup>4</sup>

Because of this persistent misinformation, many New Yorkers with felony convictions do not know whether they are eligible to vote. In 2005, researchers found that about half of New Yorkers surveyed incorrectly thought they were ineligible to vote while on probation and about 30 percent believed they lost their right to vote if they had only been arrested, but not convicted, for a crime.<sup>5</sup> Nearly 30 percent of

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<sup>2</sup> Brennan Center for Justice at NYU School of Law an Demos: A Network for Ideas & Action, *Boards of Elections Continue Illegally To Disenfranchise Voters with Felony Convictions* 3 (Mar. 2006), available at [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_34665.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_34665.pdf).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> Ernest Drucker and Ricardo Barreras, The Sentencing Project, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and*

people with felony convictions in New York thought they would never be eligible to vote again.<sup>6</sup>

The Voter Assistance Commission website states: “To register to vote in the City of New York, you must: ... [n]ot be serving a jail sentence or be on parole for a felony conviction.”<sup>7</sup> This language should be changed to accurately reflect New York’s voter eligibility law. The current language is inaccurate because the use of the term “jail sentence” is over-inclusive. Although anyone incarcerated in a state prison has been convicted of a felony and does not have the right to vote, the vast majority of people serving time in city jails have *not* been convicted of a felony and remain eligible to vote. Most people detained in jails are being held while awaiting trial or sentencing, or they have been convicted of a misdemeanor and therefore retain the right to vote even while in jail. Rather than tell eligible voters that they may not vote if they are serving a jail sentence, the Voter Assistance Commission should inform citizens that they are ineligible to vote if they have been *convicted of a felony and are currently incarcerated or on parole*.

The Voter Assistance Commission should take affirmative steps to ensure that eligible people with felony convictions are registered to vote. Members of the public and local boards of elections are misinformed about the voting rights of people with felony convictions. To remedy this misinformation, the Voter Assistance Commission should:

- Provide training for city agencies, and community, church, and voter registration groups;
- Produce public service announcements in print media, television and radio outlets;
- Correct and post eligibility language and voter registration information on its website.

The Brennan Center is eager to work with the Voter Assistance Commission to enhance voter registration efforts across the city. In particular we are more than happy to help create training and public education materials on the voting rights of people with felony convictions, examples of which may be found on our website,<sup>8</sup> to ensure that all eligible New Yorkers have the opportunity to vote.

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*Ohio* 8 (2005), available at

[http://www.sentencingproject.org/Admin/Documents/publications/fd\\_studiesvotingbehavior.pdf](http://www.sentencingproject.org/Admin/Documents/publications/fd_studiesvotingbehavior.pdf).

<sup>6</sup> *Id.* at 9.

<sup>7</sup> See [http://www.nyc.gov/html/vac/html/register/register\\_to\\_vote.shtml](http://www.nyc.gov/html/vac/html/register/register_to_vote.shtml).

<sup>8</sup> See Brennan Center for Justice at NYU School of Law, *The Voting Rights of People With Criminal Convictions in New York* (Apr. 2006), available at

[http://www.brennancenter.org/dynamic/subpages/download\\_file\\_9371.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_9371.pdf); Brennan Center for Justice at NYU School of Law, *Recommended Language for Automated Telephone Messages and Websites on the Voting Rights of People with Felony Convictions in New York* (May 2006), available at

[http://www.brennancenter.org/dynamic/subpages/download\\_file\\_36194.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_36194.pdf); Brennan Center for Justice at NYU School of Law, *Have You Ever Been Convicted of a Felony?* (Apr. 2006), available at [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_36193.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_36193.pdf).