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Testimony of

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Good morning. My name is Erika Wood and I am the Deputy Director of the Democracy Program at the Brennan Center for Justice at NYU School of Law. I would like to thank the Senate Elections Committee for holding this hearing and inviting me to testify.

The Brennan Center for Justice is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. As part of our mission to advance voting rights for all Americans, we lead a national campaign to restore the vote to people with criminal convictions. Today my testimony will focus on restoring voting rights to people on parole and Senate Bill 1266, the Voting Rights Notification and Registration Act.

The National Landscape

The right to vote forms the core of American democracy. Our history is marked by successful struggles to expand the franchise, to include those previously barred from the electorate because of race, class, or gender. There remains, however, one significant blanket barrier to the franchise. 5.3 million American citizens are not allowed to vote across the country because of a felony conviction.¹ As many as 4 million of these people live, work and raise families in our communities, but because of a conviction in their past they are still denied the right to vote.² In New York, over 122,000 people are barred from voting, nearly 56,000 of whom are people on parole living in the community.³

¹ Erika Wood, *Restoring the Right to Vote 2* (2008); see also Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 76 (2006).

² *Id.*

³ Manza & Uggen at 249, tbl. A3.3.

Felony disenfranchisement laws vary by state. The current law in New York disenfranchises people in prison and on parole, while people on probation are allowed to vote.⁴ Fifteen states and the District of Columbia already allow people on parole to vote.⁵

History of Felony Disenfranchisement Laws

Felony disenfranchisement laws in the United States are deeply rooted in the troubled history of American race relations. In the late 1800s these laws spread as part of a larger backlash against the adoption of the Reconstruction Amendments.⁶ Criminal disenfranchisement laws were enacted right alongside poll taxes and literacy tests as part of an organized effort to prevent African Americans from voting.

The history of New York's felony disenfranchisement law is consistent with the national narrative. The Brennan Center will be releasing a report soon that traces the history of New York's law. In New York, criminal disenfranchisement provisions were created in tandem with other provisions such as literacy tests and property requirements that sought to exclude African Americans from participating in the political process. At the second Constitutional Convention in 1821, delegates met specifically to address Black suffrage.⁷ Based on their belief in Blacks' unfitness for democratic participation, the delegates designed new voting requirements aimed at stripping African-American citizens of their right to vote.⁸ The result was Article II of the New York State Constitution which contained new discriminatory suffrage restrictions, including unusually high property requirements specifically for African Americans, as well as the criminal disenfranchisement provision.⁹ The felony disenfranchisement provision of Article II remains in tact today.

⁴ N.Y. ELEC. L. § 5-106.

⁵ Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah all restore voting rights upon release from prison. See Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (2007), http://www.brennancenter.org/dynamic/subpages/download_file_48642.pdf. Maine and Vermont do not disenfranchise anyone with a felony conviction. *Id.*

⁶ Manza & Uggen, *supra* note 1, at 56-57; Angela Behrens, Christopher Uggen & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559, 560-61 (2003); Alec C. Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1087-88.

⁷ David N. Gellman & David Quigley, *Jim Crow New York: A Documentary History of Race and Citizenship 1777-1877* 90-91 (2003).

⁸ Gellman & Quigley, *supra* note 7, at 90-91; See also First Amended Complaint, *Hayden v. Pataki*, No. 00 Civ. 8586, 2004 U.S. Dist. LEXIS 10863 (S.D.N.Y. June 14, 2004), ¶¶ 46-47 [hereinafter *Hayden* Complaint] available at http://brennancenter.org/dynamic/subpages/download_file_8936.pdf

⁹ Gellman & Quigley, *supra* note 7, at 199-200.

Disproportionate Impact on Minority Communities

The disproportionate racial impact of disenfranchising laws also continues to this day. Nationwide, 13% of African-American men have lost the right to vote, a rate that is seven times the national average.¹⁰ Given current rates of incarceration, three in ten of the next generation of African-American men across the country can expect to lose the right to vote at some point in their lifetime.¹¹

The disproportionate rates of incarceration have caused New York's disenfranchised population to be overwhelmingly composed of people of color. 64% of those disenfranchised under New York's law are African-American,¹² and 33% are Latino.¹³ In contrast, probationers in New York, who never lose their right to vote, are 46% white.¹⁴

Administrative Confusion

Laws that continue to disenfranchise people after release from prison often lead to widespread confusion among both elections officials and the public. This is certainly the case in New York. Thousands of *eligible* New Yorkers with felony convictions have been illegally denied the right to register and vote because of confusion and noncompliance on the part of elections officials. A 2006 Brennan Center report revealed that one-third of all counties refused to register people on probation, even though they never lose the right to vote, and another third of New York counties illegally required individuals to show documentation or proof of their eligibility status.¹⁵

Because of this persistent misinformation, many New Yorkers with criminal histories 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

¹⁰ Wood, *supra* note 1, at 8; *see also* The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (April 2007), <http://sentencingproject.org/pdfs/1046.pdf>.

¹¹ *Id.*

¹² *See* JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELONY DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 249, 252 (2006).

¹³ Mexican American Legal Defense and Educational Fund, *Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States* 10 (2003), *available at*: <http://maldef.org/assets/pdf/FEB18-LatinoVotingRightsReport.pdf>.

¹⁴ New York State Division of Criminal Justice Services, *New York State Probation Population 2007 Profile* (June 30, 2008) *available at* <http://dpca.state.ny.us/pdfs/nysprobationreport2007profile.pdf>

¹⁵ Brennan Center for Justice at NYU School of Law & Demos: A Network of Ideas and Action, *Board of Elections Continues Illegally to Disenfranchise Voters with Felony Convictions* (Mar. 2006), http://www.brennancenter.org/page/-/d/download_file_34665.pdf.

30% believed they lost their right to vote if they had only been arrested, but not convicted.¹⁶ Nearly 30% of people with criminal convictions in New York thought they would never be

eligible to vote again.¹⁷ The widespread confusion among impacted individuals and state officials suggests there is a need for a simplified voting system with easier eligibility rules and proper notification procedures.

Legislative Reform

Senate Bill 1266, the Voting Rights Notification and Registration Act, will make significant strides towards eliminating this widespread and persistent confusion. Among other things, this bill would require the department of corrections and probation and parole offices to provide individuals with written information about their voting rights and voter registration forms, and to offer assistance with voter registration.

But the shameful roots of our current law and its continuing discriminatory impact on communities of color, as well as the widespread and persistent confusion it creates among elections and criminal justice officials and the public, will not be eliminated until the law is changed to restore voting rights to people who are on parole. This would create a simple bright-line rule: if you are out of prison, you can vote. And it would give a voice to the predominantly poor and minority communities that are severely impacted by the current disenfranchisement law.

Thank you and I welcome your questions.

¹⁶ 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 Ohio* 8 (2005), available at

http://www.sentencingproject.org/Admin/Documents/publications/fd_studiesvotingbehavior.pdf.

¹⁷ *Id.* at 9.