

INTEREST OF AMICUS CURIAE

The Brennan Center for Justice at New York University School of Law respectfully submits this brief *amicus curiae* in support of Plaintiff-Appellant (“Plaintiff”). The parties do not object to the Brennan Center’s filing of this brief.¹

The Brennan Center is a nonprofit, nonpartisan institute that promotes full and equal participation in our democracy. The Center works to advance this goal by, among other efforts, advocating to end the racial distortions in the electorate created by felon and ex-felon disenfranchisement. Currently, the Center is lead counsel for the class of over 600,000 ex-felons challenging denial of the vote to ex-felons, *Johnson v. Bush*, No. 00-3542-CIV-King (S.D. Fla., filed Sept. 21, 2000), which is now on appeal to the United States Court of Appeals for the Eleventh Circuit.

¹ The Brennan Center has contacted both parties: the Plaintiff “consents” and the Defendant “has no objection,” to the filing of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Attempting to deliver on the promise of the Reconstruction Amendments, Congress passed the Voting Rights Act of 1965 to “rid the country of race discrimination in voting.” *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966). Still, exclusion of African Americans from the electorate persisted, and courts were prevented from striking down policies that unquestionably suppressed the political participation of blacks by an impossible requirement that they first find proof of state legislatures’ discriminatory purpose. In 1982, Congress amended Section 2 of the Voting Rights Act to clarify that it prohibits all voting practices that *result* in a denial of the vote on account of race. Congress mandated that a violation of Section 2 would be established when the “totality of circumstances” demonstrates that blacks have less opportunity than others to elect representatives of their choice. Despite this history, however, the District Court in this case dismissed with no factual inquiry Plaintiff’s challenge to a felon disenfranchisement scheme that leaves African Americans nine times more likely than whites to be stripped of their voting rights, *see* Christopher Uggen & Jeffrey Manza, *The Political Consequences of Felon Disfranchisement Laws in the United States*, Tables 1 and 2 (2001).²

²Paper presented at the 2000 annual meeting of the American Sociological Association, currently under review for publication in *American Sociological Review*; manuscript on file with the Brennan Center and Christopher Uggen, Dept. of Sociology, University of Minnesota, 267 19th Avenue South #909, Minneapolis, MN 55455 (uggen@atlas.socsci.umn.edu).

Like the other facially neutral voter qualifications at the heart of the Voting Rights Act's protection, felon disenfranchisement does not discriminate on its face by race. Yet, across the country, it operates with racially discriminatory results. Some 4.7 million Americans have lost their voting rights due to felony convictions, including 1.8 million African Americans. *Id.* Nationwide, African Americans are nearly 5 times more likely to be disenfranchised than other Americans. *Id.*

New York's felon disenfranchisement scheme is even more racially skewed. Of the 129,000 New Yorkers who cannot vote due to felony convictions, over 82,000 of them are African American. *Id.* Black New Yorkers have a disenfranchisement rate of 3.6%, compared with only about .4% for others, and though blacks make up only 17% of New York's voting age population, they are 64% of those disenfranchised by the challenged statute. *Id.* The immediate source of this disparate racial impact is clear: the disproportionate rate at which New York incarcerates African Americans. Because this case comes to the Court with no factual record, however, it is impossible to consider the complex social and historical conditions underlying that crucial racial disproportion.

Those considerations are indispensable for determining the validity of Plaintiff's complaint. The Supreme Court has mandated a contextual test of liability under Section 2 of the Voting Rights Act. If New York's felon disenfranchisement

policy “interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives,” *Thornburgh v. Gingles*, 478 U.S. 30, 47 (1986), it violates § 2. Nevertheless, with no factual record at all, the District Court dismissed Plaintiff’s claim, holding that the Voting Rights Act is “inapplicable” to the challenged felon disenfranchisement statute, and suggesting that any such application might “undermine the constitutional balance that exists between federal and state governments.” *Muntaqim v. Coombe*, No. 94-CV-1237, Order Granting Summ. J. at 12 (N.D.N.Y. Jan. 24, 2001).

In coming to that ostensibly purely legal conclusion, the district judge relied on implicit factual findings. Though Congress has clarified that no proof of intent is necessary to establish a § 2 violation, the District Court was apparently concerned that if a voting qualification had no historical connection to intentional discrimination, it would be an inappropriate target for Congress’s remedial powers under the Reconstruction Amendments.

There is no need to engage in such an inquiry where the plain meaning of § 2 unambiguously encompasses felon disenfranchisement as a “voting qualification.” On that ground alone, this Court should vacate the District Court’s decision. Nor are the District Court’s constitutional concerns borne out by history. Existing caselaw

and other historical evidence indicate that felon disenfranchisement often has been a part of determined efforts to suppress black suffrage.

On remand, the District Court should adjudicate the merits of Plaintiff's claim. That inquiry might include, but does not require, historical links to intentional discrimination. Plaintiff should be given a chance to prove that in the "totality of circumstances" New York's felon disenfranchisement policy interacts with social and historical factors so that black New Yorkers "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," 42 U.S.C. 1973(b).

A concrete factual context will help to clarify the relationship of the state's felon disenfranchisement scheme to voting rights issues at the core of the Voting Rights Act's coverage. The Supreme Court has emphasized that inquiries under § 2 are extraordinarily fact sensitive and require an evaluation of the challenged voting qualification's interaction with complex social and historical circumstances. *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). Ultimately, the question whether the challenged felon disenfranchisement statute violates § 2 – and any questions about Congress's intent and constitutional power that might arise from such a violation – cannot be divorced from the social and historical record.

This Court should hesitate to make a sweeping ruling regarding the overall

applicability of § 2 to felon disenfranchisement, the intent of Congress in that regard, and the limits of Congressional remedial power, all ungrounded in any factual context.

Instead, the Court should vacate the dismissal and remand this case for factual development and a determination whether Plaintiff can show that the challenged law violates the Voting Rights Act.

ARGUMENT

POINT I

THE DISTRICT JUDGE IMPLICITLY RELIED ON A FACTUAL FINDING – THAT FELON DISENFRANCHISEMENT IS DISTINGUISHED FROM OTHER VOTING QUALIFICATIONS BY A LACK OF CONNECTION WITH INTENTIONAL DISCRIMINATION – WHICH IS CONTRADICTED BY EXISTING CASELAW AND OTHER HISTORICAL EVIDENCE.

Although ostensibly a purely legal ruling, the District Court’s opinion depends on an implicit factual premise, namely that felon disenfranchisement policies in general, and particularly in New York, have not been historically entwined with intentional race discrimination. There is no support for such a finding in the record. Indeed, there is no factual record here at all. Moreover, this implicit finding is demonstrably false, at least as a general matter. Caselaw and the expert historical evidence proffered by the plaintiff class in *Johnson v. Bush*, No. 00-CV-3542-King (S.D. Fla., filed Sept. 21, 2000), show that felon disenfranchisement has been historically tied to deliberate attempts to suppress African Americans’ voting rights. In the face of the documented facts, felon disenfranchisement cannot be distinguished

from other facially neutral but effectively discriminatory voting qualifications long acknowledged to be properly covered by the Voting Rights Act.

The District Court's ruling depends on the factual premise that unlike the literacy tests, residency requirements, and poll taxes that are clearly covered by the Voting Rights Act, felon disenfranchisement laws are not generally linked to discrimination. The judge dismissed Plaintiff's case for lack of an "unmistakably clear statement by Congress" that felon disenfranchisement is covered by § 2. *Muntaqim*, Order Granting Summ. J. at 12. The need for such a statement, the judge found, arose because limiting felon disenfranchisement under § 2 would "undermine the constitutional balance that exists between federal and state governments." *Id.* He acknowledged, however, that the Fourteenth and Fifteenth Constitutional amendments themselves intrude significantly on states' authority "in circumstances where discriminatory practices are apparent." *Id.* How then would applying § 2 to felon disenfranchisement create an additional intrusion that triggers the plain statement rule? The reason, according to the District Court, is that at the time of the Reconstruction Amendments, "felon disenfranchisement statutes were already firmly established and firmly recognized as an appropriate exercise of state authority."

Apparently, the judge believed that unlike many other facially neutral devices that impinge on voting, felon disenfranchisement laws are both venerable and

historically unconnected with deliberate racism. Without such a distinction, there would be nothing to set felon disenfranchisement apart from the kind of voting qualifications that are at the core of Voting Rights Act coverage.³ Thus the dismissal of Plaintiff’s complaint depends on an implicit factual finding – in the absence of any factual record – that felon disenfranchisement laws have no historical connection to intentional discrimination.

Contrary to the District Court’s apparent belief that felon disenfranchisement was historically distinct from devices used to intentionally obstruct black voting, several courts have made plain that it was often very much a piece with that effort. In *Hunter v. Underwood*, 471 U.S. 222 (1985), the Supreme Court observed that the original enactment of Alabama’s criminal disenfranchisement provision “was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect.” *Id.* at 233. Courts have similarly recognized the racist origins of Mississippi’s criminal disenfranchisement policy. *See Cotton v.*

³ As a matter of plain meaning, the challenged felon disenfranchisement statute is a “voting qualification” covered by § 2. Neither the “plain statement rule” nor the doctrine of constitutional avoidance, on which the District Court relied, may be used to avoid the unambiguous intent of statutory language. *See Salinas v. United States*, 522 U.S. 52, 59-60 (1997); *Pennsylvania Dept. of Corrections v. Yesky*, 524 U.S. 206, 212 (1998). Accordingly, for the reasons stated in Plaintiff’s brief at 16-30, this Court should vacate the dismissal and remand for further proceedings below.

Fordice, 157 F.3d 388, 391 (5th Cir. 1998); *McLaughlin v. City of Canton*, 947 F. Supp. 954, 976-78 (S.D. Miss. 1995). Indeed, the Fifth Circuit has acknowledged that criminal disenfranchisement was used to obstruct black suffrage in the South in general. *Cotton*, 157 F.3d at 390 (“[S]tate defendants do not dispute that [the challenged disenfranchisement statute] was enacted in an era when southern states discriminated against blacks by disenfranchising convicts for crimes that, it was thought, were committed primarily by blacks.”); *see also Baker v. Pataki*, 85 F.3d 919, 938 (2d Cir. 1996) (in banc) (Feinberg, J., concurring); *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896) (tracing devices, including criminal disenfranchisement, added to the 1890 Mississippi Constitution to “obstruct the exercise of the franchise by the negro race”).

Expert evidence in *Johnson v. Bush*, No. 00-3542-CIV-King (S.D. Fla., filed Sept. 21, 2000), a class action challenge to Florida’s felon disenfranchisement policy, further strengthens the historical connection between felon disenfranchisement and race discrimination. In that case, currently on appeal to the Eleventh Circuit from a summary judgment for defendants in the Southern District of Florida, *Johnson v. Bush*, No. 00-3542-CIV-King, Order Granting Defendants’ Motion for Summ. J. (S.D. Fla. July 18, 2002) (appeal filed 11th Cir. Aug. 9, 2002), plaintiffs have proffered evidence from the preeminent historian of Florida Reconstruction, Professor Jerrell

Shofner, that Florida’s felon disenfranchisement provision was adopted as part of an attempt to dampen the voting power of newly freed slaves. *Johnson v. Bush*, No. 00-3542-CIV-King (S.D. Fla.), Plaintiffs’ Memorandum of Law on Summ. J. 3-6.

History also makes clear that the fact that felon disenfranchisement policies “were already firmly established,” *Muntaqim*, Order Granting Summ. J. at 12, before passage of the Fourteenth and Fifteenth Amendments does not insulate them from subsequent discriminatory deployment. Poll taxes, too, were in effect prior to Reconstruction and yet were indisputably used at a later date to obstruct black suffrage. *See Pacific Ins. Co. v. Soule*, 74 U.S. 433, 440 (1868) (defining capitation tax); *see also Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 684 (1966) (Harlan, J., dissenting) (“Property qualifications and poll taxes have been a traditional part of our political structure. . . . Most of the early Colonies had [property qualifications]; many of the States have had them during much of their histories.”). “The history of discriminatory voting practices is far too complex for any court to conclude that a statute was not enacted with discriminatory intent simply because blacks could not vote when the statute was adopted.” *United States v. Marengo County Comm’n*, 731 F.2d 1546, 1552 n.10. (11th Cir. 1984).

Given felon disenfranchisement’s unambiguous status as a “voting qualification,” 42 U.S.C. 1973(a), there was no need to question its coverage under

§ 2. No factual findings would be needed, then, to simply apply the plain meaning of § 2 to the challenged statute. Once an “applicability” inquiry is launched, however, it is hazardous to proceed in the abstract. The documented historical connections between felon disenfranchisement and intentional discrimination discussed above undermine the rationale of the District Court’s decision. Moreover, there was no need for her to create a sweeping *per se* legal rule that felon disenfranchisement may never implicate § 2. Particularly where significant civil rights issues are at stake, this Court generally has avoided such a peremptory approach.

Compare for instance, the case-by-case approach this Court took in determining prisoners’ rights to avoid solitary confinement after the Supreme Court ruled in *Sandin v. Conner*, 515 U.S. 472 (1995). In *Sandin*, the Court held that prisoners had no liberty interest in avoiding conditions that did not work an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life,” and that 30 days of disciplinary confinement did not constitute such a hardship. *Id.* at 483-84. Shortly after that decision, two district judges dismissed, without factual inquiry, New York prisoners’ complaints that they had been denied due process in being subjected to disciplinary confinement. The district courts held that after *Sandin*, New York prisoners no longer had a liberty interest in avoiding disciplinary confinement, and thus that it was unnecessary to examine the facts of the complaints to determine

whether a due process violation had occurred. *Brooks v. DiFasi*, No. 93-CV-0197E(H), 1995 U.S. Dist. LEXIS 19616 at *9-10 (W.D.N.Y. Jan 2, 1996); *Miller v. Selsky*, No. 94-CV-139, 1995 U.S. Dist LEXIS 21787 at *6-7 (N.D.N.Y. Nov. 22, 1995). In each case, this court vacated and remanded, holding that the determination of the ‘threshold’ legal question of the existence of a prisoner’s liberty *interest* required an inquiry into the specific facts of the alleged *violation* of that interest. See *Brooks v. DiFasi*, 112 F.3d 46, 47 (2d Cir. 1997); *Miller v. Selsky*, 111F.3d 7, 7 (2d Cir. 1997).

In effect, this Court recognized that to properly analyze whether the Due Process Clause was applicable to the challenged disciplinary sanctions, it was necessary to better understand the factual context of those sanctions. The Court explained that nothing in the *Sandin* decision created “a *per se* blanket rule that disciplinary confinement may never implicate a liberty interest.” *Miller*, 111 F. 3d at 9. Likewise, there is nothing in the statute, legislative history, or caselaw pertaining to § 2 to suggest that a felon disenfranchisement law could *never* work a denial of the right to vote on account of race. As in the *Sandin* cases, then, the Court should hesitate to dismiss Plaintiff’s claim by rejecting the applicability of § 2 to felon discrimination in the abstract. Like the prisoners who brought the *Sandin* cases, it is impossible to say that Plaintiff has no right (or interest) under

§ 2 without close consideration of the factual context of the claimed violation of that right. *Cf. International Soc. for Krishna Consciousness, Inc. v. Air Canada*, 727 F.2d 253, 257 (2d Cir. 1984) (declining to decide whether private airlines that lease airport space from a state agency are state actors for lack of “a more solid factual footing . . . in this critical area,” where the district court took “an abstract position” without undertaking the “searching” and “fact-intensive” inquiry the issue required).

POINT II

THE ISSUE FOR THE DISTRICT COURT ON REMAND IS WHETHER, IN THE TOTALITY OF CIRCUMSTANCES, THE NEW YORK FELON DISENFRANCHISEMENT STATUTE INTERACTS WITH SOCIAL AND HISTORICAL CONDITIONS TO CAUSE THE UNDISPUTED RACIALLY DISPARATE IMPACT.

A. The Standard for Liability Under § 2 is Contextual and Extraordinarily Fact-Sensitive.

Congress has made clear that to prove a violation of § 2, Plaintiff need not prove that the challenged law was adopted or maintained with the intent to discriminate. *Thornburg v. Gingles*, 478 U.S. 30, 43-44 (1986) (citing S. Rep. No. 417, 97th Cong. 2d Sess. (1982)). To be sure, § 2 is only violated by practices that deny or abridge the right to vote “on account of race.” 42 U.S.C. § 1973. But the “on account of race” requirement can be established by showing that the challenged practice interacts with other circumstances in the jurisdiction to deny minorities equal opportunity to participate in the political process. *Gingles*, 478 U.S. at 47. Moreover,

whether a particular practice is sufficiently connected with racial bias to result in a violation of § 2 always depends on the “totality of the circumstances” in which the practice operates. 42 U.S.C. §1973(b).

Section 2 focuses on results, not intent. In 1982, Congress amended § 2 specifically to clarify that “practices and procedures that *result* in the denial or abridgment of the right to vote are forbidden” even without proof of discriminatory intent. *Chisom v. Roemer*, 501 U.S. 380, 383 (1991). When presented with a § 2 claim, a court must assess the impact of the challenged practice on minority participation in elections on the basis of “objective factors.”

Nine factors “which typically may be relevant to a § 2 claim” were identified by the Senate Judiciary Committee during the 1982 Voting Rights Act amendment process. *Gingles*, 478 U.S. at 44. A violation may be predicated on any combination of the various factors and any other relevant social circumstances. The enumerated factors are “neither comprehensive nor exhaustive,” and “other factors may also be relevant and may be considered.” *Id.* at 45. Moreover, there is no requirement that any particular factor be proved or that most of the factors point in the direction of a violation. *Id.*

The Senate Report factors are (1) the history of official discrimination touching on the right to vote; (2) racially polarized voting; (3) voting practices that may

enhance the opportunity for discrimination; (4) exclusion of members of the minority group from the candidate slating process; (5) the extent to which members of the minority group bear the effects of past discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process; (6) racial appeals in campaigns; (7) the extent to which members of the minority have been elected to public office; (8) whether elected officials are unresponsive to the particularized needs of the minority group; and (9) the tenuousness of the policy underlying the contested practice. 478 U.S. at 44-45.

More than most statutes, then, § 2 of the Voting Rights Act resists reduction to abstract legal rules and is “peculiarly dependent upon the facts of each case.” *Id.* at 79. As this Court has recognized, “the ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited canvassing of relevant facts.” *Goosby v. Town of Hempstead*, 180 F.3d 476, 492 (2d Cir. 1999) (quoting *Johnson v. DeGrandy*, 512 U.S. 997, 1011 (1994)). Guided by the factors outlined in the Senate Report, the trial court must “consider the totality of circumstances and . . . determine, based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters.” *Gingles*, 478 U.S. at 79 (internal quotes and citations omitted).

Under this contextual standard, a challenged voting practice is never evaluated by itself. The court “draws together a picture of the challenged electoral scheme and the political process in which it operates by accumulating pieces of circumstantial evidence. Like a Seurat painting, a portrait of the challenged scheme emerges against the background of the voting community.” *Nipper v. Smith*, 39 F.3d 1494, 1527 (11th Cir. 1994) (*en banc*). The key question is whether the challenged practice “interacts with social and historical conditions” to cause inequality. *Gingles*, 478 U.S. at 47.

Under the “flexible, fact intensive” standard of liability in § 2 cases, there are many types of evidence that Plaintiff might offer to establish that under the totality of the circumstances, New York’s felon disenfranchisement statute violates the Voting Rights Act. On this appeal, Plaintiff has cited a number of reports and studies that suggest that racial bias may be affecting the sentencing process in New York. *See* Plaintiff’s Opening Brief at 5-8.

Plaintiff may also be able to show that “the effects of past discrimination in areas such as education, employment and health” interact with New York’s felon disenfranchisement scheme to disproportionately disenfranchise blacks. In New York, the socioeconomic differences between whites and African Americans are stark. While only 10% of whites have incomes below the poverty level, that figure is 25% for blacks. United States Census Bureau, *U.S. Census 2000*, Tables P159A, P159B.

www.census.gov. Blacks continue to lag behind whites in education: In 1990, among New Yorkers aged 25 and older, only 65% of blacks had a highschool diploma, compared with 79% of whites, *Digest of Education Statistics 1996*, Table 12. National Center for Education, Office of Educational Research & Improvement, U.S. Dept. of Education. Only 9% of New Yorkers with college degrees were black. *2001 New York State Statistical Yearbook, 26th Ed.*, Rockefeller Inst. of Government, State Univ. of NY, Table J-14. These socioeconomic factors contribute to the fact that African Americans are more likely to be arrested and convicted than whites, because they are more apt to live in neighborhoods subject to a greater law enforcement presence.

We do not venture to speculate about what evidence would be developed on remand in this case. We offer below, by way of example, aspects of the evidence offered by plaintiffs in *Johnson v. Bush*, to illustrate the type of proof relevant to and probative of a § 2 challenge to a state's felon disenfranchisement policy. No. 00-3542-CIV-King (S.D. Fla., filed Sept. 21, 2000).

B. An Example of the Fact-Sensitive Inquiry into a Felon Disenfranchisement Law Challenged under § 2.

In the *Johnson v. Bush* case, plaintiffs have challenged Florida's felon disenfranchisement law, which denies voting rights to 16% of the state's African

American voting age population, compared with only 6% of others. Christopher Uggen & Jeffrey Manza, *The Political Consequences of Felon Disfranchisement Laws in the United States*, Tables 1 and 2 (2001). Plaintiffs have introduced a host of evidence to show that the disparate racial impact of Florida's felon disenfranchisement scheme results from its interaction with social and historical factors linked with race bias. For example, plaintiffs have developed expert evidence that more discretionary police activities result in over-representation of blacks in police arrests. *Johnson v. Bush*, No. 00-3542-CIV-King, Plaintiffs' Memorandum in Support of Motion for Reconsideration at 5. Policing patterns and practices in Florida, and elsewhere, disproportionately affect blacks through police deployment strategies that focus, in some cases almost exclusively, on predominantly black communities and neighborhoods. *Johnson v. Bush*, No. 00-3542-CIV-King, Plaintiffs' Memorandum in Opp. to Defendants' Motion to Exclude Witnesses Out of Time at 3. The deployment of anti-crime patrols, drug interdiction taskforces and gang abatement programs in Florida over the past three years have targeted blacks and other minorities and have resulted in black arrest rates that are significantly higher than blacks' proportion in the Florida population. *Id.* The funding and policing policies in those contexts contrast sharply with Florida's policies on, and practices in connection with, policing white collar crime, where the population of suspects detained and arrested are

known to be over-represented by whites. *Id.* The evidence also shows that the disproportionate impact of Florida's law enforcement system on the state's black residents was exacerbated by deliberate funding of police activities known to result in over-arrest and over-charging of blacks. *Johnson v. Bush*, Plaintiffs' Memorandum in Support of Motion for Reconsideration at 5. Plaintiffs in *Johnson v. Bush* have also offered a study by a well-known criminologist, Professor Theodore Chiricos, that shows that even if arrest is used as a starting point black Floridians are disenfranchised as a result of felony convictions at much higher rates than others. *Johnson v. Bush*, No. 00-3542-CIV-King, Plaintiffs' Memorandum in Support of Cross-Motion for Summ. J. & in Opposition to Motion for Summ. J. at 8. Professor Chiricos also found that racial disproportionality in conviction rates is particularly pronounced where prosecutorial discretion is greatest, for example with respect to crimes such as drugs and weapons offenses and for defendants without prior records. *Id.* Similarly, plaintiffs offered evidence that whites were more likely than African Americans to get the discretionary disposition of "adjudication withheld," which does not result in a felony conviction and disenfranchisement. *Id.*

Under the "totality of circumstances" standard, plaintiffs in *Johnson v. Bush* have also offered evidence of socioeconomic differences between races, the history of discrimination in the state's criminal justice system and in its electoral processes,

including racially polarized voting, racial appeals in campaigns, and other structures and practices that enhance racial discrimination in voting. *Id.* at 9-11.

We do not mean to suggest that the same type of evidence offered in *Johnson v. Bush* would necessarily be offered in Plaintiff's case. Indeed, the individualized and highly-fact sensitive nature of a § 2 inquiry mandates that the proof will vary substantially according to local factors. Our purpose in sketching some of the proof in the Florida case has been to give the Court a sense of the complex and highly specific nature of the sort of factual record that can be developed to support a § 2 challenge to a felon disenfranchisement law.

CONCLUSION

For the foregoing reasons, the District Court's decision granting summary judgment to Defendants should be vacated and the case remanded to the District Court.

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By,

Nancy Northup
Jessie Allen
Kim Barry
BRENNAN CENTER FOR JUSTICE
at N.Y.U. School of Law
161 Avenue of the Americas, 12th Floor
New York, NY 10013
(212) 998-6730

Attorneys for Amicus Curiae