

# BRENNAN CENTER FOR JUSTICE

## Key Issues in

### Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006)

#### Q. What is *Hayden v. Pataki* about?

In 2003, plaintiffs filed a class action challenge to New York's felony disenfranchisement law arguing that New York's law, which denies the right to vote to people in prison and parole,<sup>1</sup> violated Section 2 of the Voting Rights Act (VRA) and the Fourteenth and Fifteenth Amendments because it disenfranchised African Americans and Latinos at a higher rate than whites. In June 2005, the case was argued before the Second Circuit Court of Appeals, sitting en banc. On May 4, 2006, the court ruled 8 to 5 that plaintiffs could not challenge New York's law under the VRA or the Constitution.<sup>2</sup>

#### Q. What does Section 2 of the Voting Rights Act provide?

Section 2 of the Voting Rights Act provides that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”<sup>3</sup>

#### Q. How did the Second Circuit rule on plaintiffs' VRA claim?

**Majority:** Eight judges determined that plaintiffs could not challenge New York's felony disenfranchisement law under the VRA. The majority concluded that Section 2 is ambiguous, and it is unclear on its face whether it applies to felony disenfranchisement laws.<sup>4</sup> As a result, the majority turned to secondary sources, including statements in the House and Senate Judiciary Committee Reports and by individual Senators on the Senate floor, to determine Congress' intent when it

---

<sup>1</sup> New York Election Law § 5-106(2) provides: “[n]o person who has been convicted of a felony pursuant to the laws of the state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole.”

<sup>2</sup> For a complete description of the case and to access all briefs and other court filings, see [http://www.brennancenter.org/content/resource/muntaqim\\_hayden\\_consolidated\\_in\\_2nd\\_circuit/](http://www.brennancenter.org/content/resource/muntaqim_hayden_consolidated_in_2nd_circuit/).

<sup>3</sup> 42 U.S.C. § 1973(a) (2006).

<sup>4</sup> *Hayden v. Pataki*, 449 F.3d 305, 314-15 (2d Cir. 2006). *Hayden* was consolidated with *Muntaqim v. Coombe*, another challenge to New York's felony disenfranchisement law.

drafted Section 2. The majority then concluded that Congress did not intend for the VRA to apply to felony disenfranchisement laws.<sup>5</sup>

**Dissent:** Five judges dissented, concluding that Section 2 of the VRA does apply to New York’s felony disenfranchisement law. The dissent argued New York’s felony disenfranchisement law was clearly a “voting qualification” under the plain language of Section 2. The dissent then concluded that because the statutory language is clear, there was no reason for the majority to turn to the legislative history. The dissent also argued that the legislative history relied on by the majority, namely committee reports from another section of the VRA and individual floor statements, was inapplicable and unpersuasive.<sup>6</sup>

Judge Sonia Sotomayor joined the dissent and wrote a brief separate opinion emphasizing that the VRA applies to *all* “voting qualifications” and a felony conviction is clearly a voting qualification under New York’s election law.<sup>7</sup> Judge Sotomayor concluded, “[t]he duty of a judge is to follow the law, not to question its plain terms.”<sup>8</sup>

### **Q: How did the court rule on plaintiffs’ Constitutional claims?**

**Majority:** Because the Supreme Court ruled in *Richardson v. Ramirez* that Section 2 of the Fourteenth Amendment exempted felony disenfranchisement laws from Section 1’s protections,<sup>9</sup> the majority concluded that felony disenfranchisement laws are presumptively constitutional.<sup>10</sup>

**Dissent:** Relying on the Supreme Court’s conclusion that Section 2 of the Fourteenth Amendment “was not designed to permit that purposeful racial discrimination attending the enactment and operation” of felony disenfranchisement laws, the dissent argued that plaintiffs should have been allowed to present evidence that New York’s law intentionally discriminated on the basis of race.<sup>11</sup> The dissent also criticized the majority for ignoring plaintiffs’ claim under the Fifteenth Amendment which prohibits racial discrimination in voting.<sup>12</sup>

### **Q: Have other courts ruled on this issue??**

Both the Ninth Circuit and the Eleventh Circuit have ruled on similar challenges. In *Farrakhan v. Gregoire*, the Ninth Circuit has found that plaintiffs can challenge felony disenfranchisement laws under the VRA.<sup>13</sup> In *Johnson v. Bush*, the Eleventh Circuit rejected the claim.<sup>14</sup>

---

<sup>5</sup> *Hayden*, 449 F.3d at 318.

<sup>6</sup> *Id.* at 352-353 (Parker, J. dissenting)

<sup>7</sup> *Id.* at 368 (Sotomayor, J. dissenting).

<sup>8</sup> *Id.*

<sup>9</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1974). Section 2 of the Fourteenth Amendment provides that “when the right to vote at any [federal] election . . . is denied to any of the male inhabitants of [the] State . . . or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced.” U.S. Const. amend. XIV, § 2.

<sup>10</sup> *Hayden*, 449 F.3d at 316, 334.

<sup>11</sup> *Id.* at 349-50 (quoting *Hunter v. Underwood*, 471 U.S. 222, 233 (1985)).

<sup>12</sup> *Id.* at 350-352; *see also* U.S. Const. amend. XV, § 1.

<sup>13</sup> *Farrakhan v. Washington*, 338 F.3d 1009 (9th Cir. 2003). For a complete description of the case and links to all briefs and other court filings, see [http://www.brennancenter.org/content/resource/farrakhan\\_v\\_gregoire/](http://www.brennancenter.org/content/resource/farrakhan_v_gregoire/)

<sup>14</sup> *Johnson v. Bush*, 405 F.3d 1214 (11th Cir. 2005). For a complete description of the case and links to all briefs and other court filings, see [http://www.brennancenter.org/content/resource/johnson\\_v\\_bush/](http://www.brennancenter.org/content/resource/johnson_v_bush/)