



July 2, 2002

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EDITORIAL MEMORANDUM

An “Unhealthy Democracy” *Florida Court Case Highlights Felon Disenfranchisement Crisis in U.S.; National Effort to Restore Voting Rights to Ex-Felons Grows*

“I don’t care about Democrat or Republican. I care about treating a man the way he’s supposed to be treated. I tell my men they’ve paid their debt to society. They say, ‘If I’m a full citizen, so how come I can’t vote.’ There’s a hypocrisy there.”

-Thomas Johnson, lead plaintiff in
Johnson v. Bush and Executive Director
of the House of Hope for ex-felons
(*National Law Journal*, October 30,
2000)

Last month in Florida, a Federal District Court heard summary judgment arguments in *Johnson v. Bush*, a class action lawsuit that seeks to restore the voting rights of more than 600,000 people. These citizens have been disenfranchised—for life—because they were once convicted of a felony. The Brennan Center for Justice at NYU School of Law is lead counsel in the Florida voting rights case. Nationally, the effort to restore the voting rights of ex-felons is gaining steam, with two major conferences devoted to the subject just this year.

The 20th Century realized numerous achievements in the ongoing effort to strengthen our nation's democracy. But the continued exclusion from voting of a rapidly growing segment of our population is incompatible with our nation's claim to be a beacon of democracy. The 2000 Presidential election reminded Americans of the preciousness of their voting rights. As the United States continues to improve its voting systems and structures to guarantee that every vote counts, the Brennan Center wants to alert the public to the fact that millions of American citizens are completely barred from voting.

“The feeling of disenfranchisement experienced by the Florida voters whose votes were not counted is magnified for the people who were not even allowed to go to the polls,” says Nancy Northup, lead counsel in *Johnson v. Bush* and director of the Democracy Program at the Brennan Center. “To disenfranchise, marginalize and under-represent such a large segment of the population is to create an unhealthy democracy.”



More than 4.7 million citizens are unable to vote in either federal or state elections because of a felony conviction. In 12 states*, felons can lose their right to vote for life, even after they are released and out of supervision. In those states, gaining clemency, an often difficult process, is the only route to voting rights restoration. In most other states, those on probation and/or parole are denied the vote, an exclusion that bars substantial numbers from voting. Finally, in many states, an ex-felon's inability to pay a fine or restitution bars him or her from recovering the right to vote.

While there are those who argue that, by committing a crime, a convicted felon has forfeited the privilege of full participation in society, this argument ignores many truths about our criminal justice system and our democracy. It is understood that criminals will be punished, but at some point, most are released.

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Once someone has paid his or her debt to society, he or she can return to the community as a productive, tax-paying citizen. According to the Brennan Center, to deny them the vote is inconsistent with the democratic principle that voting is a right of citizenship, not a privilege to be meted out at the state's whim.

Racial Discrimination Then and Now

Most unsettling is the disproportionate effect felon disenfranchisement laws have on already under-represented communities, according to the Brennan Center. Even though crime rates dropped in the 1990s, the prison population boomed. Most of this growth was due to the "War on Drugs," and it has had a disproportionate affect on minority communities, particularly African-Americans. African-Americans are convicted of drug crimes at a much higher rate than white Americans, despite the fact that white Americans report higher rates of drug usage (see "Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States," Justice Policy Institute). This disparity continues through all aspects of the system (arrest, conviction, incarceration), finally disenfranchising more African-Americans once offenders are released.

* Alabama, Florida, Iowa, Kentucky, Mississippi, Nevada, Virginia, Wyoming, Arizona (2nd felony), Maryland (2nd violent felony), Washington (conviction before 1984), and Tennessee (some old convictions)



These laws imprint the discretionary and variable decisions of our criminal justice system onto our democracy. More than two million African-Americans are disenfranchised nationally—or nearly 9 percent of a national voting age population of 23.7 million (see *The Political Consequences of Felon Disenfranchisement Laws in the United States*, @ Christopher Uggen & Jeff Manza). The rates for African-American men are far higher, and in some states top 30 percent of the voting age population. These numbers translate into diminished representation and voting power for the African-American community, and make re-enfranchisement an urgent issue for those who wish to seek accountability from their elected officials.

In many instances, the discriminatory effects of such laws were not mere happenstance but intentional. For instance, Florida's felon disenfranchisement provisions can be traced back to 1868, when the state created a series of laws designed both to undermine those political rights granted to African-American citizens during Reconstruction and replenish the free workforce lost with the abolition of slavery. More recently, in combination with this country's criminal justice policies, felon disenfranchisement laws are proving to be alarmingly resilient and effective methods of removing African-American citizens from the voting rolls.

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Creating such a large number of disengaged, discouraged citizens impacts the nation as a whole. The cost of the “War on Drugs” is still being calculated as the nation continues to realize the effects of criminalizing and marginalizing more and more citizens, who come back to our neighborhoods but are not allowed to reenter the social contract. If the nation continues to incarcerate more citizens, we will continue to disenfranchise more citizens. In order for ex-offenders to reintegrate successfully, they need to feel welcome to rejoin society. In order for democracy to flourish, the citizenry must feel empowered and represented. Both of these aims are hampered by felon disenfranchisement, and our system suffers as a result.

“As a former federal prosecutor, I can assure you that this issue is not about crime; it is about democracy,” says Ms. Northup. “In our criminal justice system, who gets arrested, who gets prosecuted and who gets convicted of a felony are all decisions that involve a great deal of discretion. Too often, race and class play a role in these decisions. When felony convictions result in voting bans, the result is increasing disenfranchisement of populations that were already marginalized.”

Florida: 2000 Presidential Election Highlights Cost of Disenfranchisement

The 2000 presidential election highlighted the extent and impact of felon disenfranchisement laws. In Florida, 620,000 ex-felons – those who had fully served their sentences – were excluded from participating in that election which was ultimately decided



on the basis of just a few hundred votes.

Florida is one of the nation's worst violators of felon voting rights. Ex-felons now represent over 5% of Florida's voting age population. Florida's laws are a particularly egregious example of many southern states' post-Civil War efforts to subvert rights granted African-American citizens during Reconstruction. **Today, these laws have stripped over 23 percent of the African-American male population of the vote.**

In addition, because the state used unreliable lists to cull convicted felons from its rolls in 2000, many registered Florida voters were erroneously told they were ineligible to vote and were prevented from voting. The unreliable lists contained a high percentage of non-felon African-Americans, further extending the racial impact of Florida's felon disenfranchisement laws.

Florida's African-Americans appear to be aware of this impact, because they overwhelmingly support restoration. In a poll for the *St. Petersburg Times* from February, 2001, nine out of ten black voters agreed that "The law should be changed so that convicted felons in Florida automatically regain their right to vote at some specific time after they've repaid their debt to society."

"Florida is now denying the voting rights of more than 5% of its voting age population, 10% among African-Americans, who have paid their debt to society," says Ms. Northup. "Numbers like that should be unacceptable to people who believe in representative democracy."

Turning to the Courts

In September of 2000, the Brennan Center for Justice filed suit against the state of Florida to challenge its disenfranchisement laws. *Johnson v. Bush* (U.S. District Court for the Southern District of Florida), is a class action on behalf of ex-felons. The lawsuit argues that Florida's felon disenfranchisement laws constitute intentional race discrimination, are arbitrary and irrational, and impose a poll tax and wealth qualification in violation of the Voting Rights Act and the Constitution. Plaintiffs succeeded in defeating Defendants' motion to dismiss, and during the last year discovery was completed and both sides moved for summary judgment. Judge James Lawrence King heard arguments for summary judgment on May 24, 2002, and has taken the matter under advisement. If Judge King rejects the motions, the case will proceed to trial later this year. The Brennan Center is lead counsel; Lawyers Committee for Civil Rights Under Law, Morrison & Foerster, and Florida civil rights attorney James K. Green are co-counsel.

In the state of Washington, *Farrakhan v. Locke* (U.S. Court of Appeals for the Ninth Circuit), challenges that state's disenfranchisement laws on behalf of inmates and ex-felons. The case, which argues that the law is a violation of the Voting Rights Act, is awaiting



decision by the Ninth Circuit. Originally filed *pro se*, plaintiffs are now represented by Gonzaga Law School University Legal Assistance program in Spokane. The ACLU of Washington and the Brennan Center filed *amici* briefs in the Ninth Circuit and worked with counsel in preparation for the oral argument. The case may be sent back to the trial court or decided by the Ninth Circuit.

In addition to head on challenges to disenfranchisement, there is also litigation over implementation of existing law. In *Florida Conference of Black State Legislators v. Moore*, a class action filed by the ACLU Florida affiliate, plaintiffs seek the court to order the Florida Department of Corrections to comply with Florida law and assist felons with clemency applications. The state has already admitted that more than 14,000 people "fell through the cracks" and were not provided with assistance in completing the application for the restoration of their rights.

The Human Cost

The numbers only tell part of the story. This ban on the most basic right of citizenship has real personal costs for those denied.

Pastor Thomas Johnson, a 52-year old African-American husband and father, is a former drug addict who was convicted on drugs and weapon possession charges. He served an 8-month prison term in New York a decade ago. Upon release, Mr. Johnson turned his life around. Devoutly religious, he worked as a counselor at the Bowery Mission in New York City, until he was recruited to move to Gainesville, Florida and direct a faith-based non-profit organization which helps ex-convicts make the transition into working life. Now, as Executive Director of the House of Hope, Mr. Johnson is an active and upstanding member of the community. He is well known and admired. His program has been commended by Governor Jeb Bush, even as Governor Bush has actively tightened the restriction on the Pastor's voting rights through his reading of the statute and his direction of election supervisors and the Clemency Board.

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Mr. Johnson collaborates frequently with local politicians as part of his efforts on behalf of the men in his program, and through this he began to recognize the effect of politics on his work and clients, and the power of voting. However, when he tried to register to vote in 1999, he was told he was unable to register due to his past felony conviction. "It knocked me for a loop," he said. And the controversy surrounding the recent presidential election brought his frustration to a head. "It really got me angry that I couldn't vote in this election. It came down to one issue in the end – that every individual's vote counts."



"I own a home. I pay taxes. I haven't been in any trouble for years. Why is this hanging over me?"

Debra Curry, a 41-year-old African-American mother of 3 daughters spent 10 successful years in the military before she "fell in with the wrong crowd" and developed a drug habit. This habit landed her in jail in 1991, but when she completed her sentence she also got clean. She then went to work for Operation PAR, the substance-abuse program that helped her kick her habit. She worked there full-time for 7 years, and still devotes her weekends to the program. During the week, she is now an assistant with the American Heart Association. She took the new position because it pays better, but she is grateful to still be doing work that helps people.

Ms. Curry is proud of what she has achieved since she left the life of drugs, but it still bothers her that she is not allowed to vote. She applied to have her rights restored. When she didn't hear from the board and was allowed to register to vote in 1995, she assumed her rights had been restored. Then, late last year, she received a letter telling her that she was not eligible to vote. She was devastated. "I own a home. I pay taxes. I haven't been in any trouble for years. Why is this hanging over me?" Ms. Curry wants to vote again, like any other member of her community.

"Mr. Johnson and Ms. Curry are tremendous examples of individuals who have more than earned the right to reintegrate into society and participate in their system of government," says Ms. Northup. "They are models of the kind of progress that we dream people can make after being in trouble. They are people that any American should be proud to follow into a voting booth. They are people that call into question a democracy that would deny their participation."

Continuing the Fight to Strengthen Our Democracy

Most of these ex-felons were young men when they were convicted. People who now hold jobs, raise families, and become productive members of their communities should not be relegated to second-class citizenship, according to the Brennan Center.

Over the past several years, some states – New Mexico, Connecticut, Maryland, and Nevada – have taken steps to liberalize their felon disenfranchisement laws and one court ruled its state disenfranchisement law irrational. In 2001, Nevada repealed the state's five year waiting period after completion of sentence for the restoration of voting rights; New Mexico repealed the state's lifetime ban on ex-offenders' voting rights; Connecticut enacted a law permitting ex-offenders on probation to register and vote; and in 2000 a Pennsylvania appellate court invalidated the state's five year waiting period for ex-felons to register. In Maryland this May, legislation was signed which lifts the universal lifetime voting ban for ex-offenders with two or more felony convictions. The law, which goes into effect in January 2003, still imposes lifetime disenfranchisement on ex-offenders convicted of two or



more violent felonies.

The next several years provide an important opportunity to make progress on restoring the right to vote to all adult citizens. National awareness of voting rights was heightened by the controversy surrounding the Presidential election of 2000. Two major conferences this year are working to advance the issue. One in June, convened by Demos and sponsored by a who's who of civil rights organizations, brought together hundreds of advocates in Atlanta to focus on efforts in the South. The Sentencing Project is hosting a "National Symposium on Felony Disenfranchisement" in September in Washington D.C. to develop strategies for overturning these laws throughout the nation.

The history of American democracy is a story about the expansion of the franchise. When the nation was founded, only white, male, landowners could vote. After much struggle, African-American men and all women got the vote. "Now there are 12 states in this nation who refuse to eliminate the last hurdle left to a true American democracy with voting rights for all," says Ms. Northup. "Let us not forget the lessons of the 2000 elections: that every vote counts. We must go further, and acknowledge that every American counts."

For More Information

- Σ Learn more about *Johnson v. Bush* and the issue of felon disenfranchisement at www.brennancenter.org. Or, to go directly to info on *Johnson v. Bush*, type http://www.brennancenter.org/programs/programs_lit_johnson.html into your browser.
- Σ More information about felon disenfranchisement at www.sentencingproject.org.
- Σ Call Amanda Cooper at 212.998.6736 to speak to lawyers, plaintiffs, and experts on voting rights.