

Coalition of Civil Rights Organizations Challenge New York State's Laws Denying the Vote to Prisoners and Parolees

Federal lawsuit, Hayden, et al. v. Pataki, Asserts that All U.S. Citizens Have the Right to Vote

"We know that Americans of good will have learned that no nation can long continue to flourish or to find its way to a better society while it allows any one of its citizens...to be denied the right to participate in the most fundamental of all privileges of democracy - the right to vote."

--Dr. Martin Luther King, Jr.

**("Civil Rights No. 1: The Right to Vote,"
The New York Times, March 14, 1965)**



Staff attorneys for the Legal Defense Fund, the Community Service Society and the Center for Law and Social Justice gather with plaintiffs and supporters for a press conference to announce the filing of an amended complaint to Hayden v. Pataki in federal court. The press conference was held in front of the African Burial Ground "Triumph of the Human Spirit" memorial sculpture located across from the United States Court House.

New York, NY, January 15, 2003 - The NAACP Legal Defense and Educational Fund, Inc. (LDF), the Community Service Society of New York (CSS), and the Center for Law and Social Justice at Medgar Evers College (CLSJ), seek to vastly expand the claims of a class action lawsuit today, charging that New York State's laws that deny the vote to individuals who are incarcerated or on parole are unconstitutional and discriminatory. The coalition charges that New York State's laws were originally intended to deny full rights to African Americans and its continued application today disproportionately harms Black and Latino communities and violates the Constitution, the Voting Rights Act, the Civil Rights Act, and international law.

The amended complaint in Hayden, et al. v. Pataki, is being litigated in the United States District Court for the Southern District of New York on behalf of three groups of people: (1) Blacks and Latinos who are currently incarcerated for a felony conviction, (2) Blacks and Latinos who are currently on parole for a felony conviction, and (3) Black and Latino voters from Black and Latino communities who are denied an equal opportunity in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos who are incarcerated or on parole for a felony conviction.

The Disfranchised

African Americans and Latinos collectively make up 87% of the population currently denied the right to vote. In New York, Blacks and Latinos are prosecuted, convicted, and sentenced to incarceration at rates substantially disproportionate to whites. Blacks comprise 16% of the state's population, but make up over 54% of the state's current prison population and 50% of those on parole. Latinos comprise 15% of the state's population but are 27% of the prison population and 32% of those on parole. By contrast whites comprise 62% of the state's population but only 16% of the prison population in the state.



LDF Associate Director-Counsel Theodore M. Shaw (first row: far right) speaks to press as LDF staff attorneys Todd Cox (first row: third from left) and Janai Nelson (behind Shaw), Bishop Paul Moore (second row: second from left), and plaintiff Nilda Rivera (first row, far left) lend support.

Whites convicted of a felony in New York State are more likely to be sentenced to a conditional or unconditional discharge or to probation than Blacks and Latinos. Since only incarceration triggers the denial of voting rights, whites convicted of felonies are therefore, less likely to lose their right to vote. The disproportionate disfranchisement of Blacks and Latinos in New York State who are incarcerated or on parole for a felony conviction, not only deprives them of their basic citizenship right, it also dilutes the voting strength of New York's communities of color in violation of the Voting Rights Act of 1965.

"If the present trends in incarceration and disfranchisement continue unchecked, the African-American community's political power will be seriously eroded and the Latino community will never fulfill its political potential," stated Theodore Shaw of the NAACP Legal Defense Fund.



Assistant Counsel Janai Nelson responds to questions from the press with the support of Bishop Paul Moore (left) and LDF Assistant Counsel Todd Cox (next to Nelson).

Impact on Communities of Color

Approximately 80% of New York State's prison population consists of Blacks and Latinos from New York City's predominately Black and Latino communities, including Harlem, Washington Heights, the Lower East Side, the South and East Bronx, Central and East Brooklyn, and Southeast Queens. When released, the majority of the former prisoners return to these communities.

This disproportionate disenfranchisement is exacerbated by the fact that the U.S. Census counts prisoners as residents of the communities in which they are incarcerated, and not as residents of the predominately Black and Latino communities from which they often come. New York State uses these Census numbers to shape redistricting decisions that determine state and federal representation. Because most African-American and Latino prisoners are counted upstate in non-minority communities, the voting strength of communities of color is further weakened.

"Many major elections are decided by a very narrow margin. If most people who are barred from voting because of a felony conviction were allowed to vote, the African-American and Latino communities from which they come could hold the balance of power," said Juan Cartagena of the Community Service Society.



Juan

Cartagena, General Counsel of the Community Service Society, discusses the Hayden amended complaint with named plaintiff Joseph "Jazz" Hayden at his side.

Electoral Exclusion: Past as Prologue

New York has an extensive history of racial discrimination, dating back to the framers of the New York State Constitution. Delegates created voting requirements that intentionally deprived minorities of the right to vote (only property holders could vote). In 1821, New York State implemented a statute that disfranchised those convicted of "infamous crimes" from the right to vote. In 1894, the state adopted a felony disfranchisement law.

"It is hard to believe that almost 150 years after Emancipation and nearly 40 years after the passage of the Voting Rights Act, New York, home to most of the nation's immigrants, is still fighting vestiges of slavery and discrimination," said Esmeralda Simmons of Center for Law and Social Justice. New York State's disfranchisement statute is a modern version of historic voting rights barriers like black codes, Jim Crow laws, literacy tests, and poll taxes. While these barriers to voting and full citizenship have been struck down over time, felony disfranchisement continues to ravish the political power of New York's communities of color.

Background

In September 2001, Joseph Hayden filed a pro se lawsuit while still incarcerated on a felony charge. That lawsuit has since been expanded and amended by the organizations that have opted to represent Mr. Hayden and include those currently serving sentences, ex-felons on

parole, like Joseph Hayden, and communities of color denied their full participation in civic society due to these disfranchisement laws.

As one of the nation's oldest civil rights and public interest law firms, LDF has been involved in nearly all the precedent-setting minority voting rights litigation and advocacy for decades, including the Voting Rights Act of 1965 and its 1982 amendments, and the 1993 National Voter Registration Act. For more than 150 years, CSS has been confronting the causes and symptoms of poverty in New York City through an array of social service and litigation activities intended to protect the rights of all New Yorkers regardless of race, language status, or income. CLSJ has been engaged in litigation and public education efforts to defend the voting rights of minority communities for decades, including partnering with LDF and CSS to help educate ethnic and language minorities about the redistricting process in 2001.