by Emily Jane Goodman
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New Yorkers in prison do not have the right to vote. That is the ruling by the United States Court of Appeals for the 2nd Circuit in a class action lawsuit brought by inmates and former inmates. Only the United States Supreme Court can reverse the decision by this federal court, and it is considered unlikely to do so.

The plaintiffs in the lawsuit, Hayden v. Pataki, claimed that the Voting Rights Act of 1964 and its amendments applied to them and those they represented, who sought access to the ballot. In recognition of the fundamental importance of suffrage in a democracy, the Voting Rights Act forbids "denial or abridgement of the right of any citizen of the United States to vote on account of race or color... ." The plaintiffs in this case argued that the high rate of imprisonment for African-Americans and Latinos led to an inference of racial discrimination.

Felony Disenfranchisement

The issue of what is called felony disenfranchisement is a long and contentious one. (See Felons and the Right to Vote .) It was a phrase heard around the world during the election debacle of 2000, when a state law in Florida that terminated suffrage for convicted citizens was erroneously applied to some Floridians who did not in fact have a criminal record.

In a far from unanimous decision in the New York case, the judges of the Circuit Court, which is one level below the Supreme Court, were divided, with eight in the majority and powerful dissents filed by five others. Judge Jose A. Cabranes writing for the majority concluded that the federal Voting Rights Act, generally considered one of the most outstanding accomplishments of the American civil rights movement, was not intended to eliminate felon disenfranchisement, and that it could not be used to infringe upon the states' discretion to deprive felons of the right to vote. The court concluded that New York Election Law, which specifies that "no person convicted of a felony 'shall have the right to register for or vote at any election' unless he has been pardoned, his maximum sentence of imprisonment has expired, or he has been discharged from parole" does not violate the Voting Rights Act and that the denial is not based on race. The court rejected the claim of disenfranchisement on account of race or color despite the disproportionate number of African-Americans and Latinos in custody or on parole.

The concept of felon disenfranchisement is sometimes called civil death, in which anyone convicted of a serious crime loses the right to participate not only in elections, but in society in general. Thus they are removed from society by incarceration, and rights afforded others are terminated, including voting, holding public office, and obtaining certain licenses.

Dissent

Judge Barrington D. Parker's dissent focused on the vastly different rates of incarceration for African-Americans and Latinos contrasted with the white population, which he said resulted from discrimination in New York's criminal justice system, which in turn leads to discriminatory disenfranchisement. He noted that according to the complaint, African-Americans and Latinos make up 86 percent of the total current New York prison population and 82 percent of parolees, even though they comprise only 31 percent of the state's overall population. While Judge Parker conceded that the 14th amendment did allow for felon disenfranchisement but he suggested it could still be unconstitutional and a violation of the Voting Rights Act.

Upstate Incarceration

The court did return one issue to the lower federal court for resolution. That is the issue of urban (usually New York City) prisoners being incarcerated upstate or being counted for census, apportionment, representation, and revenue purposes, as residents of that area, thereby bringing funds and increased representation to northern counties, while diluting their impact in their home regions. In fact, about two thirds of New York State inmates come from New York City, and of that at least 90 percent are incarcerated upstate. The question for the District Court is whether the effect of these New Yorkers' disenfranchisement dilutes the voting impact and representation for non-felons in their communities. . (See Imprisoned in New York .)

One way or another, both issues will surely reach the Supreme Court of the United States.

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