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Boards of Elections Continue Illegally To Disfranchise Voters with Felony Convictions

**A study by the
Brennan Center for Justice at NYU School of Law
and
Demos: A Network for Ideas & Action**

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EXECUTIVE SUMMARY

Today the Brennan Center for Justice, Demos and the Legal Action Center call upon the New York State Board of Elections to end the systematic practice of illegally disenfranchising thousands of eligible voters. A survey of 63 local election boards conducted late last year by the Brennan Center and Demos found that more than one-third of local boards, including four in New York City, are disenfranchising former prisoners and probationers who are eligible to register and vote under state law. These survey results repeat the widespread errors exposed in a 2003 Brennan Center and Legal Action Center survey. The most recent survey shows:

- Twenty four of New York's 63 local boards, or 38%, incorrectly responded that individuals on probation are not eligible to vote, or did not know whether they are eligible to vote. As of January 1, 2004, there were 126,138 New Yorkers on probation.
- Twenty local boards, or 32%, continue to illegally request documentation before allowing individuals with criminal convictions to register to vote. Frequently, the documentation demanded by local boards does not exist, making it impossible for persons with criminal convictions to register, even if they tried to cooperate with the illegal requests.
- Officials from four counties stated they were familiar with a State Board 2003 memorandum, which informs county boards that people with convictions do not need to provide any documents before registering, but require documentation from such people anyway.
- Three New York City offices -- New York County, Queens County, and the New York City Board -- incorrectly stated that people on probation are ineligible to vote. Furthermore, three New York City offices -- Kings County, New York County and Queens County -- illegally continue to require individuals to provide documentation to register. Illegal practices by the New York City boards are particularly harmful because

nearly one-third of New Yorkers sentenced to probation, 50% sentenced to prison, and 61% on parole, live in New York City.

The State Board has an obligation to enforce compliance with the State's Election Laws, including laws that protect the right of people with felony convictions to vote. Local boards may not choose to follow voter eligibility laws selectively. The State and local boards must take affirmative steps to stop these illegal practices and to inform individuals who have been improperly turned away that they are entitled to vote.

On February 23, 2006, the Brennan Center, Demos and the Legal Action Center provided the State Board with materials to address these problems, including materials that could be used to educate local boards and the public on the proper eligibility requirements and voter registration procedures for people with felony convictions. Among other things, we also recommended that the State Board promulgate enforceable agency regulations to ensure that local boards do not continue to flout the law and inform persons who may have been improperly turned away of their right to vote. The State Board has not agreed to implement these recommendations.

I. Introduction

A recent survey of county election officials conducted by the Brennan Center for Justice at NYU School of Law and Demos: A Network for Ideas & Action found that more than one-third of New York's 63 local election boards, including those in three New York City boroughs, continue to unlawfully disfranchise eligible voters with felony convictions. Despite previous advocacy efforts, election officials persist in misapplying the law, resulting in the illegal disfranchisement of potentially thousands of eligible voters.

II. The Law

New York Election Law automatically restores the right to vote to convicted individuals once they have served their maximum sentence or been discharged from parole. Individuals who are sentenced to probation never lose their right to vote. The law imposes no additional burdens, conditions or qualifications on who may vote, aside from the usual age, citizenship, and residency requirements. Like all other registrants, people with felony convictions need only complete a registration form and sign an affidavit – they are entitled to the same presumption of eligibility as all other individuals seeking to register.

Imposing haphazard and inconsistent registration requirements on individuals with felony convictions unnecessarily burdens the fundamental right to vote and therefore violates the Equal Protection and Due Process guarantees of the Fourteenth Amendment. Refusing to accept voter registration forms submitted by eligible voters with felony convictions also violates the National Voter Registration Act (NVRA). The NVRA requires every state to ensure that all eligible applicants are registered to vote, and that any state activity intended to ensure the maintenance of an accurate and current voter registration roll is uniform and non-discriminatory.

III. 2003 Survey: Findings and Results

The results of a 2003 survey of local election officials found that more than half the counties in New York, including all five boroughs in New York City, refused to register individuals with felony convictions until they provided various documents that were not required by law. In many cases, the required documents did not even exist. Others were not available to some individuals with felony convictions or were only issued after a lengthy waiting period.

The Brennan Center, Legal Action Center and Community Service Society approached the State Board of Elections with the survey results, urging the Board to educate local election officials about the laws governing voting by people with felony convictions. Finally, the State Board issued a policy prohibiting all local election boards from requiring documentation and detailing the proper procedures for registering people with felony convictions.

In its policy dated October 29, 2003, the State Board reminded its local affiliates that they were “in the business of enfranchising people.” The policy clearly stated that requiring individuals to provide documentation is not authorized under State law and that such a requirement imposes a significant burden on the individual since the required documentation was

either non-existent or difficult to obtain. The policy clarified that people with felony convictions are entitled to the same presumption of eligibility as all other individuals who presented themselves to register, completed the registration form, and signed the affidavit included in the form.

IV. 2005 Survey: Illegal Practices Continue

In September and November 2005, the Brennan Center and Demos conducted a second survey of New York's 63 local election boards.¹ Surveyors asked local boards a series of questions regarding: (1) eligibility of individuals on probation to vote; (2) whether individuals with felony convictions are required to provide documentation before being allowed to register; and (3) whether the local board was familiar with the State Board's 2003 policy. Despite the State Board's previous explicit instructions regarding the registration of people with felony convictions, the 2005 survey found that more than a third of local election boards continue to illegally disfranchise many New Yorkers. For the full listing of counties and a summary of how they responded to the survey questions, see Appendix A.

A. Eligibility of Individuals on Probation

Officials in 15 local offices stated that people on probation are not eligible to register to vote: Albany, Chemung, Columbia, Nassau, New York County, the New York City Board of Elections, Niagara, Oneida, Onondaga, Ontario, Orleans, Schoharie, Schuyler, Westchester, and Yates. An additional nine counties did not know whether people on probation could vote: Genessee, Lewis, Putnam, Queens, Steuben, Tioga, Tompkins, Ulster, and Wayne. These results show that in 24 of New York's 63 local boards (38%), a person on probation risks being denied the opportunity to register to vote in violation of state law.

B. Documentation Required

Officials from 16 local offices stated that they require any individual with a felony conviction to provide documentation before being allowed to register: Albany, Cattaraugus, Dutchess, Hamilton², Kings, Lewis, Madison, New York, Niagara, Oneida, Putnam, Queens, Schuyler, Seneca, Steuben, and Tompkins. Officials from four counties stated that documentation was preferred but not absolutely mandatory: Cayuga, Cortland, Franklin, and Genessee. Overall, 20 of New York's 63 local boards (32%) request documentation before allowing an individual with a felony conviction to register, contrary to state law.

As in 2003, the type of documentation requested continues to vary widely county by county. In four counties – Madison, Oneida, Putnam, and Steuben – respondents stated that individuals seeking to register must provide a "Certificate of Relief from Disabilities." This requirement poses a substantial burden. Once an individual applies for a Certificate, it can take

¹ The election official in Chautauqua County refused to answer the survey questions.

² The respondent in Hamilton County said that the court has to send a release to the Board of Elections specifying that the person's sentence has been served. However, courts do not provide such notification as a matter of course, and the respondent did not know what would happen if the local board failed to receive this information from the court.

months, and sometimes more than a year, for the Certificate to be issued, effectively disfranchising applicants during this lengthy waiting period and probably discouraging some from registering at all. Moreover, the decision to grant a Certificate of Relief is purely discretionary, so some individuals may be denied a Certificate for reasons which have no bearing on their right to vote. Finally, Certificates of Relief are unavailable as a matter of law to anyone with more than one felony conviction. Thus, the requirement effectively disfranchises anyone with two or more felony convictions – in clear violation of state law.

Four counties – Genessee, Lewis, Niagara, and Schuyler – require documentation from probation officers, notwithstanding that individuals on probation do not lose the right to vote.

Respondents in 14 counties – Albany, Cattaraugus, Cayuga, Cortland, Franklin, Genessee, Hamilton, Lewis, New York, Niagara, Oneida³, Queens, Schuyler, and Seneca – stated that they require individuals with felony convictions to submit an array of other documents, including a letter from a judge or parole officer, a “certificate of release,” a “document of relief from a judge,” and a “release form showing that a person has paid his dues.” None of the documents requested by these counties actually exists. Individuals who have been instructed to obtain these non-existent documents are simply prevented from voting.

Tompkins County requests that any individual seeking to register get a statement from the District Attorney’s office, affirming that the former felon in question is eligible to vote. This practice is particularly curious because the District Attorney rarely has any knowledge of when an individual is released from prison or discharged from parole. Steuben County stated that individuals seeking to register must present “a pardon from the court” – although under New York law a pardon (which is unnecessary for voter registration in any event) is available only from the governor and not from any court. In Kings and Dutchess Counties, the respondents asserted that documentation was required but were not able to identify or describe the required document.

Illegal disfranchisement is the certain result of this confusion among election officials about whether and what type of documentation is required to register people with criminal convictions. The local boards continue to turn eligible voters away for failing to provide non-existent or difficult-to-obtain documents that the law does not demand.

C. Knowledge of State Board’s Policy

Forty-three counties (68%) stated that they were not familiar with the State Board’s 2003 policy memorandum explaining that people with convictions do not need to produce documents before registering. Of these, 16 local boards – Albany, Cattaraugus, Cayuga, Dutchess, Franklin, Genessee, Hamilton, Lewis, Madison, New York, Niagara, Oneida, Queens, Schuyler, Seneca, and Tompkins – stated that they require documentation before registering individuals with felony convictions.

³ One respondent in Oneida stated that individuals needed to provide a Certificate of Relief and another respondent stated they needed a form from a parole officer.

Four counties stated they were familiar with the October 2003 memo from the State Board but still require documentation from people with convictions. Officials from Cortland, Kings, Putnam, and Steuben Counties all stated that individuals seeking to register must provide some sort of documentation even though they claimed to be familiar with the State's policy instructing them not to request such documentation.

V. New York City: Disparate Impact

Illegal practices by the New York City boards are particularly troublesome because the majority of people with felony convictions live in New York City. Nearly one-third of all New Yorkers sentenced to probation in 2004 for a felony conviction live in New York City.⁴ Fifty percent of people sentenced to prison⁵ and 61% of people on parole⁶ reside in the five boroughs.

Yet three New York City offices – New York County, Queens, and the New York City Board of Elections – incorrectly stated that people on probation are ineligible to vote. Three New York City offices also continue to require individuals to provide documentation in order to register: Kings, New York County, and Queens.

The disparate impact of these illegal practices on New York City voters creates a special responsibility for the New York City Board of Elections to train its boards and to assure their full compliance with the law and proper procedures for registering people with criminal records.

VI. Recommendations

1) *The State Legislature should amend the Election Law to permit individuals to vote upon release from incarceration.*

The complicated eligibility standards established by the current Election Law have resulted in the illegal disfranchisement of thousands of New Yorkers. The Legislature should simplify the system by amending the law to restore voting rights automatically to all New York citizens as soon as they are released from prison. At the very least, the Legislature should pass statutory amendments to increase and improve notice to voters, public education and information sharing between state agencies around the issue of the voting rights for people with criminal convictions.

2) *The State Board of Elections should promulgate enforceable agency regulations.*

To ensure that its October 2003 policy is legally enforceable, the State Board should issue regulations containing all of the policy's findings and requirements, and which bind the local boards of elections.

⁴ "Dispositions of Adult Felony Arrests (2004)," from New York State Division of Criminal Justice Services, available at: <http://criminaljustice.state.ny.us/crimnet/ojsa/dispos/>.

⁵ *Id.*

⁶ "Parolee Facts (March 2004)," from New York State Division of Parole, available at: <http://parole.state.ny.us/PROGRAMstatistics.html>.

3) *The State Board should contact all individuals with criminal records who were registered to vote prior to their convictions.*

Since there is no way to track which registration forms were illegally rejected by the local boards, the State Board should advise in writing all individuals with criminal records who were registered to vote prior to their convictions about the proper eligibility requirements and registration procedures, and provide each such individual with a voter registration form.

4) *The State Board should provide in-person training and materials to each individual local board.*

To assure that local boards are complying with New York law, the State Board should provide in-person training and materials to each local board on the proper eligibility requirements and voter registration procedures for people with criminal convictions.

5) *The State Board should initiate a public communications campaign to educate New Yorkers about voter registration for people with felony convictions.*

In addition to the notification of individuals who have been directly affected, the State Board should initiate a state-wide public communications campaign to clarify this issue for the New York population as a whole. Through public service announcements in print media, television, and radio outlets, as well as posting information on its website and those maintained by local boards, the State Board must make clear that people who have erroneously been denied in the past should re-register.

6) *State and local boards should make readily available in their offices information on voter registration for people with felony convictions.*

The State Board should require local boards to post and distribute easy-to-understand information on the voting rights of individuals with felony convictions.

7) *The State Board should establish a telephone complaint helpline.*

In order to ensure that all local boards are in full compliance with the law, a helpline should be established dedicated to investigating and resolving complaints by people who experience problems registering to vote as the result of criminal convictions.

VII. Conclusion

For too long local election boards throughout New York State have been illegally denying the right to vote to New Yorkers. This report makes it clear that past efforts by the State Board to correct the problem have failed. In order to effectuate real change, and ensure that all eligible voters are permitted to exercise their fundamental right to vote, the specific recommendations outlined above should be implemented.

Appendix A

County Name	At least one respondent stated people on probation could not register to vote or did not know	At least one respondent stated individuals must provide documentation	At least one respondent was not familiar with October 2003 memo from State Board
Albany	X	X	X
Allegany			X
Bronx			X
Broome			X
Cattaraugus		X	X
Cayuga		X	
Chautauqua	Refused to Answer	Refused to Answer	Refused to Answer
Chemung	X		X
Chenango			X
Clinton			X
Columbia	X		
Cortland		X	
Delaware			
Dutchess		X	X
Erie			X
Essex			X
Franklin		X	X
Fulton			
Genessee	X	X	X
Greene			
Hamilton		X	X
Herkimer			X
Jefferson			X
Kings		X	
Lewis	X	X	X
Livingston			X
Madison		X	X
Monroe			X
Montgomery			X
Nassau	X		X
New York City	X		
New York	X	X	X
Niagara	X	X	X
Oneida	X	X	X
Onondaga	X		
Ontario	X		X
Orange			X

Orleans	X		
Oswego			X
Otsego			
Putnam	X	X	
Queens	X	X	X
Rensselaer			X
Richmond			X
Rockland			X
Saratoga			X
Schenectady			
Schoharie	X		X
Schuyler	X	X	X
Seneca		X	X
St. Lawrence			
Steuben	X	X	X
Suffolk			
Sullivan			
Tioga	X		X
Tompkins	X	X	X
Ulster	X		X
Warren			
Washington			X
Wayne	X		X
Westchester	X		
Wyoming			
Yates	X		X
TOTAL	24	20	43