

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>JOSEPH HAYDEN; LUMUMBA AKINWOLE-BANDELE; WILSON ANDINO; GINA ARIAS; WANDA BEST-DEVEAUX; CARLOS BRISTOL; AUGUSTINE CARMONA; DAVID GALARZA; KIMALEE GARNER; MARK GRAHAM; KERAN HOLMES, III; CHAUJUANTHEYIA LOCHARD; STEVEN MANGUAL; JAMEL MASSEY; STEPHEN RAM[N; LILLIAN M. RIVERA; NILDA RIVERA; MARIO ROMERO; JESSICA SANCLEMENTE; PAUL SATTERFIELD; and BARBARA SCOTT, on behalf of themselves and all individuals similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GEORGE PATAKI, Governor of the State of New York and CAROL BERMAN, Chairperson, New York State Board of Elections,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 00 Civ. 8586 (LMM)</p> <p>FIRST AMENDED COMPLAINT</p>
--	---

PRELIMINARY STATEMENT

1. Plaintiffs bring this matter before the court to challenge New York State's unconstitutional and discriminatory practice of denying suffrage to persons who are incarcerated or on parole for a felony conviction and the resulting discriminatory impact that such denial of suffrage has on Blacks and Latinos in the State. Plaintiffs contend that this practice of disfranchisement and the resulting discriminatory impact violate the First, Fourteenth, and Fifteenth Amendments of the United States Constitution; Section 2 of the Voting Rights Act of 1965, codified at 42 U.S.C. §§ 1973, et seq.; the Civil Rights Acts of 1957 and 1960, codified at

42 U.S.C. §§ 1971(a)(1), 1971(a)(2)(A), and 1971(a)(2)(B); 42 U.S.C. § 1983, and customary international law.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343; 42 U.S.C. § 1973j(f) and § 1983; and under the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

3. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

Plaintiffs

5. JOSEPH HAYDEN is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently on parole for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

6. LUMUMBA AKINWOLE-BANDELE is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He currently resides in the Bedford-Stuyvesant neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

7. WILSON ANDINO is a Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence in Woodbourne Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

8. GINA ARIAS is a Latina of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Washington Heights neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

9. WANDA BEST-DEVEAUX is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Queens Village neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

10. CARLOS BRISTOL is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He currently resides in the East New York neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

11. AUGUSTINE CARMONA is an African American and Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently on parole for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

12. DAVID GALARZA is a Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He currently resides in the Sunset Park neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

13. KIMALEE GARNER is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She is currently on parole for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

14. MARK GRAHAM is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently on parole for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

15. KERAN HOLMES, III is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence in Woodbourne Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

16. CHAUJUANTHEYIA LOCHARD is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Bedford-Stuyvesant neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

17. STEVEN MANGUAL is a Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence in Otisville Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

18. JAMEL MASSEY is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence

in Otisville Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

19. STEPHEN RAMÓN is a Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He currently resides in the Harlem neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

20. LILLIAN M. RIVERA is a Latina of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Lower East Side neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

21. NILDA RIVERA is a Latina of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Lower East Side neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

22. MARIO ROMERO is a Latino of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence in Woodbourne Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

23. JESSICA SANCLEMENTE is a Latina of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Harlem neighborhood of New York City and is denied an equal opportunity to participate in the political

process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

24. PAUL SATTERFIELD is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. He is currently serving a sentence in Otisville Correctional Facility for a felony conviction and is therefore barred from registering to vote under New York State Election Law § 5-106(2).

25. BARBARA SCOTT is an African American of lawful voting age, a citizen of the United States, and a legal resident of the State of New York. She currently resides in the Cambria Heights neighborhood of New York City and is denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

Defendants

26. GEORGE PATAKI is the Governor of the State of New York. He is sued in his official capacity in connection with actions taken under color of state law. As Governor, he is charged with upholding the Constitution and laws of the State of New York, including those provisions disfranchising persons who are incarcerated or on parole for a felony conviction.

27. CAROL BERMAN is the Chairperson of the New York State Board of Elections, and, as such, is vested with the authority for the execution and enforcement of the state laws related to the elective franchise and for the preservation of public confidence in the democratic process and engagement of voter participation in elections. She is sued in her official capacity in connection with actions taken under color of state law.

CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated against the Defendants pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

29. The Plaintiff class includes three subclasses: (a) Black and Latino prisoners who are of lawful voting age, citizens of the United States, currently incarcerated in New York State as a result of a felony conviction, and otherwise qualified to vote but for their incarceration resulting from a felony conviction; (b) Black and Latino parolees who are of lawful voting age, citizens of the United States, currently on parole in New York State as a result of a felony conviction, and otherwise qualified to vote but for their parole resulting from a felony conviction; and (c) Black and Latino persons who are of lawful voting age, citizens of the United States, qualified to vote, and denied an equal opportunity to participate in the political process in New York State because of the disproportionate disfranchisement under New York State Election Law § 5-106(2) of Black and Latino persons who are incarcerated or on parole for a felony conviction.

30. The named Plaintiffs representing subclass (a) are as follows: WILSON ANDINO; KERAN HOLMES, III; STEVEN MANGUAL; JAMEL MASSEY; MARIO ROMERO; and PAUL SATTERFIELD.

31. The named Plaintiffs representing subclass (b) are as follows: JOSEPH HAYDEN; AUGUSTINE CARMONA; KIMALEE GARNER; and MARK GRAHAM.

32. The named Plaintiffs representing subclass (c) are as follows: LUMUMBA AKINWOLE-BANDELE; GINA ARIAS; WANDA BEST-DEVEAUX; CARLOS BRISTOL; DAVID GALARZA; CHAUJUANTHEYIA LOCHARD; STEPHEN RAMÓN; LILLIAN M. RIVERA; NILDA RIVERA; JESSICA SANCLEMENTE; and BARBARA SCOTT.

33. The members of the Plaintiff class are so numerous as to make it impractical to bring them all before this Court.

34. There are questions of law and fact regarding the rights of citizens to register to vote and the dilution of minority voting strength that are common to the class as a whole.

35. The claims of the Plaintiffs are typical of the claims of the class as a whole.

36. The Plaintiffs can adequately and fairly represent the interests of the Plaintiff class. The Plaintiffs are not seeking monetary or other relief that would require consideration of individual circumstances.

37. The Plaintiffs are represented by counsel who are familiar with the applicable laws, including attorneys of the NAACP Legal Defense and Educational Fund, Inc., the Community Service Society of New York, and the Center for Law and Social Justice at Medgar Evers College. Counsel for Plaintiffs have the resources necessary to pursue this litigation and are experienced in class action litigation and litigation regarding civil rights, including voting rights.

38. Class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2) is warranted because Defendants have acted or failed to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

FACTS

History of Race Discrimination in New York State's Disfranchisement Laws

39. New York State and governmental jurisdictions within the state have historically used a wide variety of mechanisms to discriminate against minority voters in violation of the Constitution and laws of the United States, including, *inter alia*, literacy tests, English-only election procedures, and racially discriminatory rules for purging voters from registration lists.

40. New York's history of discrimination in contravention of minority voting rights has triggered coverage of three of its counties under Section 5 of the Voting Rights Act. 42

U.S.C. § 1973c. Congress passed Section 5 to require states or portions of states with a history of voting discrimination to submit any law that affects voting to the federal government for review. Since the passage of the Act, Congress has extended New York's Section 5 status *twice*: first in 1975 for a seven-year period, Voting Rights Act of 1965-Extension, Pub. L. No. 94-73, 89 Stat. 400 (1975), and then a second time in 1982, when Congress extended coverage until the year 2007. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (1982).

41. New York State's extensive history of racial discrimination in voting dates as far back as the State's provisions in its constitution regarding suffrage. Throughout the New York Constitutional Conventions addressing the right of suffrage, the framers made explicit statements of intent to discriminate against minority voters.

42. Delegates created certain voting requirements that expressly applied only to racial minorities and crafted other provisions with seemingly neutral language that they knew would have a discriminatory effect on racial minorities. The disfranchisement of felons was one aspect of this effort to deprive minorities of the right to vote.

43. In 1777 the framers of the first New York State Constitution excluded minorities from the polls by limiting suffrage to property holders and free men. See N.Y. Const. art. VII (repealed 1826). These voting requirements disproportionately disfranchised Blacks.

44. As more Blacks became property holders and free men, the New York Constitution further limited their access to the ballot.

45. In 1801 the legislature removed all property restrictions from the suffrage requirements for the election of delegates to New York's first Constitutional Convention; however, to ensure that this act would not extend the vote to Blacks, the legislature expressly excluded Blacks from participating in this election.

46. At the second New York Constitutional Convention in 1821, the delegates met to address the issue of suffrage generally and Black suffrage in particular. The question of Black

suffrage sparked heated discussions, during which many delegates expressed the view that racial minorities were essentially unequipped to participate in civil society. Some delegates made explicit statements regarding Blacks' natural inferiority and unfitness for suffrage.

47. Based on their belief in Blacks' unfitness for democratic participation, the delegates designed new voting requirements aimed at stripping Black citizens of their previously held right to vote.

48. Article II of the Constitution of 1821 incorporated the new discriminatory restrictions and contained new and unusually high property requirements that expressly applied only to men of color. N.Y. Const. art. II, § 1 (repealed 1870). Only 298 Blacks out of 29,701, or .0075 % of the Black population, met these new requirements. Article II also provided new citizenship requirements that applied only to men of color. Id.

49. Article II further restricted the suffrage of minorities by permitting the state legislature to disfranchise persons "who have been, or may be, convicted of infamous crimes." N.Y. Const. art. II, § 2. Through common law and legislative interpretation, "infamous crimes" came to mean traditional felonies.

50. In an 1826 amendment to the Constitution, New York State formally abolished all property qualifications for white male suffrage, but the unduly onerous property requirements for Black males were left intact.

51. At the third Constitutional Convention of New York in 1846, heated debates over suffrage again focused on Blacks. Advocating for the denial of equal suffrage, delegates continued to make explicit statements regarding Blacks' unfitness for suffrage, including a declaration that the proportion of "infamous crime" in the minority population was more than thirteen times that in the white population.

52. Felon disfranchisement was further solidified in the Convention of 1846. As amended, the relevant constitutional provision stated: "Laws may be passed excluding from the

right of suffrage all persons who have been or may be convicted of bribery, of larceny, or of *any infamous crime*; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election.” N.Y. Const. art. II, § 2 (amended 1894) (emphasis added).

53. When re-enacting the felon disfranchisement provision and specifically including “any infamous crime” in the category of convictions that would disqualify voters, the delegates were acutely aware that these restrictions would have a discriminatory impact on Blacks.

54. At the fourth Constitutional Convention of New York in 1866-67, after engaging in heated debates, the legislators ultimately rejected various proposals to expand suffrage and instead chose to maintain racially discriminatory property qualifications.

55. New York’s explicitly racially discriminatory suffrage requirements were in place until voided in 1870 by the adoption of the Fifteenth Amendment to the United States Constitution. U.S. Const. amend. XV.

56. However, two years after the passage of the Fifteenth Amendment, an unprecedented committee convened and amended the disfranchisement provision of the New York Constitution to require the state legislature, at its following session, to enact laws excluding persons convicted of infamous crimes from the right to vote. N.Y. Const. art. II, § 2 (amended 1894). Therefore, the enactment of such laws was permissive.

57. In 1894, at the Constitutional Convention following this amendment, the delegates permanently abandoned the permissive language and adopted a constitutional requirement that the legislature enact disfranchisement laws. As amended, the provision stated that “[t]he legislature *shall* enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.” N.Y. Const. art. II, § 2 (emphasis added). This is the provision in the Constitution pursuant to which § 5-106 of the New York State Election Law was

enacted and under which persons incarcerated and on parole for felony convictions are presently disfranchised in New York State.

Disparate Application of New York State Election Law § 5-106

58. The New York State Constitution mandates that the Legislature “enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.” N.Y. Const. art. II, § 3.¹

59. Pursuant to Article II, Section 3 of the New York State Constitution, New York State Election Law prohibits persons convicted of a felony under the laws of New York State from voting, unless said persons have been pardoned, received a suspended or commuted sentence, been sentenced to probation or conditional or unconditional discharge, or served their maximum sentence of imprisonment, including parole.

60. As a result of the disparate application of New York State Election Law § 5-106(2), persons who are convicted of “bribery or of any infamous crime” and are sentenced to incarceration and/or parole are not permitted to vote, whereas their counterparts who have been pardoned, received a suspended or commuted sentence, or been sentenced to probation or conditional or unconditional discharge are permitted to vote.

Racial Disparities in Disfranchisement Rates of Blacks and Latinos

61. In New York State, Blacks and Latinos are prosecuted, convicted, and sentenced to incarceration at rates substantially disproportionate to whites.

62. Although Blacks make up approximately 15.9% of New York State’s overall population (as reported in the 2000 Census), they make up 54.3% of the current prison population and 50% of the current parolee population in New York State.

¹ In New York’s Seventh Constitutional Convention in 1938, Article II, Section 2 of the New York Constitution of 1894 became Article II, Section 3. See N.Y. Const. art. II, §3.

63. Although Latinos make up approximately 15.1 % of New York State's overall population (as reported in the 2000 Census), they make up 26.7% of the current prison population and 32% of the current parolee population in New York State.

64. Collectively, Blacks and Latinos make up 86% of the total current prison population and 82% of the total current parolee population in New York State, while they approximate only 31% of New York State's overall population.

65. By contrast, whites make up approximately 62% of New York State's overall population (as reported in the 2000 Census) and only 16% of New York State's current prisoners and parolees, respectively.

66. Blacks and Latinos are sentenced to incarceration at substantially higher rates than whites, and whites are sentenced to probation at substantially higher rates than Blacks and Latinos. For example, in 2001 whites made up approximately 32% of total felony convictions, yet comprised 44% of those who received probation and only 21.4% of those incarcerated for felony convictions. By contrast, Blacks made up 44% of those convicted of a felony, yet approximately only 35% of those sentenced to probation and over 51% of those sentenced to incarceration. Latinos comprised 23% of those convicted of a felony, yet only 19% of those sentenced to probation and over 26.5% of those sentenced to incarceration.

67. In addition, Blacks make up 30% and Latinos make up 14% of the total current population of persons sentenced to probation in New York State, while whites make up 51% of such persons.

68. Nearly 52% of those currently denied the right to vote pursuant to New York State Election Law § 5-106(2), are Black and nearly 35% are Latino. Collectively, Blacks and Latinos comprise nearly 87% of those currently denied the right to vote pursuant to New York State Election Law § 5-106(2).

Minority Vote Dilution

69. The disproportionate rates of prosecution, conviction, and incarceration of Blacks and Latinos and the resulting disproportionate rates of disfranchisement among these groups has a disparate impact on the ability of Blacks and Latinos in New York State to participate in the political process.

70. Approximately 80% of New York State's prison population consists of Blacks and Latinos from New York City communities in the following areas: Harlem; Washington Heights; the Lower East Side; the South and East Bronx; Central and East Brooklyn; and Southeast Queens.

71. As a result of the disproportionate disfranchisement of Blacks and Latinos, the voting strength of Blacks and Latinos in certain citywide, statewide, and other jurisdiction-wide elections, as separate groups and collectively, is diluted in violation of Section 2 of the Voting Rights Act of 1965, et seq.

Customary International Law and Felony Disfranchisement

72. Customary international law is binding on all States, including the United States.

73. Political participation, which includes the right to vote and to participate in the conduct of public affairs, is a fundamental human right recognized under international law.

74. Article 5, Section (c) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the United States is a signatory member, guarantees all citizens equality before the law in the exercise of political rights, including the right to vote, regardless of race, color, descent, or national or ethnic origin.

75. Article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is also a signatory member, guarantees every citizen the right and the opportunity to vote without unreasonable restrictions.

76. Article 5, Section (c) of CERD and Article 25 of the ICCPR reflect principles of customary international law.

77. The disfranchisement of persons who are incarcerated or on parole for a felony conviction under New York State Election Law § 5-106(2) has a disproportionate impact on Blacks and Latinos and serves to deny the Plaintiff class of persons who are incarcerated and on parole for a felony conviction the right to vote generally and on account of their race, color, descent, or national or ethnic origin in violation of customary international law.

CLAIMS FOR RELIEF

First Claim for Relief

(Fourteenth Amendment Equal Protection Clause)

78. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

79. Defendants have maintained and administered non-uniform practices of disfranchising persons convicted of a felony under the laws of the State of New York, whereby persons convicted of a felony who receive a suspended or commuted sentence or are sentenced to probation or conditional or unconditional discharge are permitted to vote while persons convicted of a felony who are sentenced to incarceration are not.

80. These practices violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 in contravention of the rights of persons incarcerated and on parole for a felony conviction (Plaintiff subclasses (a) and (b)).

Second Claim for Relief

(Fourteenth Amendment Due Process Clause)

81. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

82. Defendants have maintained and administered non-uniform practices of disfranchising persons convicted of a felony under the laws of the State of New York, whereby persons convicted of a felony who receive a suspended or commuted sentence or are sentenced to probation or conditional or unconditional discharge are permitted to vote while persons convicted of a felony who are sentenced to incarceration are not without affording such persons due process under the law.

83. These practices violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 in contravention of the rights of vote of persons incarcerated and on parole for a felony conviction (Plaintiff subclasses (a) and (b)).

Third Claim for Relief

(Equal Protection Clause of the Fourteenth Amendment; Fifteenth Amendment;

Section 2 of the Voting Rights Act of 1965; the Civil Rights Acts of 1957 and 1960)

84. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

85. Section 5-106(2) of New York Election Law was enacted pursuant to Article I, Section 2 of the New York State Constitution with the intent to disfranchise Blacks.

86. Section 5-106(2) of New York Election Law and Article I, Section 2 of the New York State Constitution abridge the right to vote of persons incarcerated and on parole for a felony conviction (Plaintiff subclasses (a) and (b)) on account of their race in violation of the Equal Protection Clause of the Fourteenth Amendment; Fifteenth Amendment; Section 2 of the Voting Rights Act of 1965; the Civil Rights Acts of 1957 and 1960, and 42 U.S.C. § 1983.

Fourth Claim for Relief

(Section 2 of the Voting Rights Act of 1965)

87. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

88. The disfranchisement of persons under New York State Election Law § 5-106(2) has a disproportionate impact on Black and Latino persons incarcerated or on parole for a felony conviction.

89. As a result, such persons are denied an equal opportunity to participate in the political process in New York State.

90. The discriminatory impact of New York's disfranchisement laws serves to deny the Plaintiff class of persons incarcerated or on parole for a felony conviction (Plaintiff subclasses (a) and (b)) the right to vote in violation of section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Fifth Claim for Relief

(Section 2 of the Voting Rights Act of 1965)

91. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through paragraph 76 above.

92. The disfranchisement of persons incarcerated or on parole for a felony conviction under New York State's Election Law has a disproportionate impact on Blacks and Latinos.

93. Consequently, § 5-106(2) of New York Election Law serves to dilute the voting strength of Blacks and Latinos and certain minority communities in New York State (Plaintiff subclass (c)) in violation of section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Sixth Claim for Relief

(First Amendment)

94. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

95. New York State Election Law § 5-106(2) imposes severe restrictions on the right to vote of persons who are incarcerated or on parole for a felony conviction (Plaintiff subclasses (a) and (b)) in violation of the First Amendment to the United States Constitution.

Seventh Claim for Relief

(Customary International Law)

96. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 76 above.

97. New York State Election Law § 5-106(2) and Article I, Section 2 of the New York State Constitution violate customary international law because they were enacted with the intent to disfranchise Blacks.

98. New York State Election Law § 5-106(2) further violates customary international law because it denies persons who are incarcerated or on parole for a felony conviction the right to vote and has a disparate effect on Blacks and Latinos on account of their race, color, descent, or national or ethnic origin.

99. As a result of New York State Election Law § 5-106(2), Plaintiffs (Plaintiff subclasses (a), (b), and (c)) are denied the enjoyment of guaranteed political rights, such as the right to vote and participate in the political process, in violation of customary international law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court:

- (1) To certify the Plaintiff class, consisting of the following subclasses of:
 - (a) Black and Latino persons who are of lawful voting age, citizens of the United States, currently incarcerated in New York State as a result of a felony conviction, and otherwise qualified to vote but for their incarceration resulting from a felony conviction;
 - (b) Black and Latino persons who are of lawful voting age, citizens of the United States, currently on parole in New York State as a result of a felony conviction, and otherwise qualified to vote but for their parole resulting from a felony conviction; and
 - (c) Black and Latino persons who are of lawful voting age, citizens of the United States, qualified to vote, and denied an equal opportunity to participate in the political process in

New York State because of the disproportionate disfranchisement of Blacks and Latinos under New York State Election Law § 5-106(2).

(2) To enter a judgment declaring and determining that § 5-106(2) of New York's Election Law and Article I, Section II of the New York State Constitution violate the First, Fourteenth, and Fifteenth Amendments of the United States Constitution; Section 2 of the Voting Rights Act of 1965, codified at 42 U.S.C. §§ 1973, et seq.; the Civil Rights Acts of 1957 and 1960, codified at 42 U.S.C. §§ 1971(a)(1), 1971(a)(2)(A) and 1971(a)(2)(B); 42 U.S.C. § 1983; and customary international law;

(3) To grant injunctive relief enjoining Defendants from implementing and enforcing § 5-106(2) of New York Election Law;

(4) To award Plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. §§ 1973(e) and 1988; and

(5) To award such other equitable and further relief as the Court deems just and proper.

DATED: January 15, 2003

Respectfully submitted,

Janai S. Nelson (JN1825)

Elaine R. Jones
Director-Counsel
Theodore M. Shaw
Norman J. Chachkin
Debo P. Adegbile
NAACP Legal Defense
and Educational Fund, Inc.

99 Hudson Street, Suite 1600
New York, NY 10013-2897
(Tel.) 212-965-2200
(Fax) 212-226-7592
jnelson@naacpldf.org

Todd A. Cox
NAACP Legal Defense
and Educational Fund, Inc.
1444 Eye Street, 10th Floor
Washington, D.C. 20005
(Tel.) 202-682-1300
(Fax) 202-682-1312
tcx@naacpldf.org

Juan Cartagena (JC5087)

Risa Kaufman
Community Service Society
of New York
105 E. 22nd Street
New York, NY 10010
(Tel.) 212-614-5462
(Fax) 212-260-6218
jcartagena@cssny.org

Joan P. Gibbs (JG4191)

Esmeralda Simmons
Center for Law and Social Justice
at Medgar Evers College
1150 Carroll Street
Brooklyn, NY 11225
(Tel.) 718- 270-6296
(Fax) 718-270-6190
jgibbs3926@aol.com