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and poll taxes.

**T**he 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), have filed an amended complaint in *Hayden, et al. v. Pataki*, charging that New York State 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 Civil Rights Acts, and international law.

In September 2001, Joseph Hayden filed a lawsuit without an attorney while still incarcerated on a felony charge. That lawsuit was expanded and amended by the organizations that represent Mr. Hayden and 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 predominately minority communities whose voting strength is weakened because of the disproportionate impact of felon disfranchisement of Blacks and Latinos.

## THE DISFRANCHISED

African Americans and Latinos collectively make up over 87% of the population in New York State that is currently denied the right to vote for a felony conviction. 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. 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 for a felony triggers the denial of voting rights, whites convicted of felonies are less likely to lose their right to vote than Blacks and Latinos.

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. If the present trends in incarceration and disfranchisement continue unchecked, the African-American community's political power will be significantly eroded and the Latino community will never fulfill its political potential.



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## 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 disfranchisement 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, among other serious policy concerns. 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 to which they belong could often hold the balance of power.

## 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. 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 erode the political power of New York's communities of color.

## ABOUT THE COALITION

As one of the nation's oldest civil rights and public interest law firms, NAACP Legal Defense and Educational Fund, Inc. (LDF) has been involved in nearly all of the precedent-setting minority voting rights litigation and legislation 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, the Community Service Society of New York (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. The Center for Law and Social Justice at Medgar Evers College 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.

## HAYDEN PLAINTIFFS SPEAK OUT



Named plaintiffs Joseph "Jazz" Hayden and Lillian M. Rivera at press conference announcing the filing of the amended complaint.

### UNFINISHED BUSINESS: Joseph "Jazz" Hayden

My name is Joseph Hayden. I am one of an estimated four million Americans, or one in fifty adults, who have currently or permanently lost their voting rights as a result of a felony conviction. I am also one of the 1.4 million African-American men, or 13% of black men, who are disfranchised at a rate seven times the national average. In seven states that deny the vote to ex-offenders, one in four black men is permanently disfranchised. Research has shown that given current rates of incarceration, three in ten of the next generation of black men can expect to be disfranchised at some point in their lifetime; these will be our children and our grandchildren. This means that in states that disfranchise ex-offenders, as many as 40% of the black men may permanently lose their right to vote.

With the passage of this Voting Rights Act the black vote was liberated and African Americans were elected to public office in numbers not seen since the reconstruction period following the civil war. After having endured the terror of the Ku Klux Klan, the White Citizens Council and officially sanctioned apartheid, lynching, and voting mechanisms such as the Grandfather clause, the literacy test, and the poll tax, the civil rights of African Americans were finally recognized and legislation was finally put into place to enforce those rights. However, the victory was not complete, which brings me to the reason that we are all here today.

We are here today to take care of some unfinished business. Yes, the civil rights movement was a great success. However, when it came to the right to vote, the movement stopped at the prison walls. And, it is the failure to cross over the prison walls and challenge the devastating effects of the criminal justice system that has created widespread disfranchisement that threatens to reverse many of the achievements of the civil rights movement.

For two million citizen-prisoners in U.S. prisons, the civil rights struggle is far from over and, for the 126,000 felons in New York State prisons and on parole the civil rights struggle will continue until the statutes denying them the right to vote are nullified and swept into the dustbin of history where they belong. We will not rest until we have the same democratic rights as citizen-prisoners in Maine and Vermont, our neighbors (where prisoners vote from their prison cells), and as prisoners throughout Canada whose Supreme Court has ruled that voting is a fundamental right, not a privilege that can be taken away from anyone under any circumstance. American citizens should be able to do no less. Free the Vote.

### LATINOS NEED TO PAY MORE ATTENTION TO THESE ISSUES: Lillian M. Rivera

Saludos. My name is Lillian Milagros Rivera. I come from a nation where voting, and political participation in general, is highly respected. I come from a place where over 85% of voters come out to vote on Election Day. I come from an island where prisoners are allowed to vote.

I come from Puerto Rico. Now as I look back at over 45 years of community activism in the Lower East Side, I see that some of the complex, entrenched problems that we have had as a poor, marginalized community in a larger, thriving city are still preventing us from reaching a fair and just society. The media has rediscovered the homeless, but they have been with us for years. The ability of women who are single parents to get the supports necessary for them to continue in their jobs, no matter how little they pay, is still a major problem.

And equally important, the ability of the Lower East Side, and other communities like it in the State, to influence public policy is challenged by policies that have really locked up our voting power. Latinos in New York, like Blacks, are arrested, prosecuted, convicted and jailed in numbers that are far greater than their percentage of the population. For example, although Latinos are 15% of the New York State population, they make up almost 27% of the prison population and 32% of the those on parole. A lot of this is due to the Rockefeller Drug Laws, which have devastated families throughout Latino and Black neighbor-

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--Jazz Hayden

hoods. I believe that drug use in White communities in the State is far greater than in Latino communities, but that law enforcement has targeted Latinos and Blacks for arrests and imprisonment.

All Puerto Ricans and Latinos need to pay attention to these issues. We can no longer sit by and watch the effects of a discriminatory criminal justice system because it is robbing the Lower East Side, Washington Heights, East Harlem, South Bronx, Sunset Park, and all Latino communities in New York of our voice, our votes, and our political power.

Latinos and Latinas, like everyone else in the City want a voting system that is fair and rational. It makes no sense to further punish our jailed brothers and sisters by taking away their fundamental right to vote. As Latinos we have had to overcome literacy tests in New York in order to vote. We have had to overcome English-only forms and ballots.

We have had to overcome discrimination in the way district lines have divided our voting strength. I now stand along side Mr. Joseph Hayden and all others behind bars and on parole to say that Latinos and Latinas must now overcome this wall to make the promise of a fair a New York a reality.

Free the Vote and Unlock Democracy.

JOIN THE FREE THE VOTE CAMPAIGN

For more information, visit us at  
[www.naacpldf.org](http://www.naacpldf.org) or [www.cssny.org](http://www.cssny.org),  
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