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Monday, November 22, 2004
The case for letting Felons Vote—and the case against
 N/A

By Cary Ichter

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CARY ICHTER

Expecting the recent presidential election to be tighter than my pre-matrimonial trousers, Democrats and their surrogates recently commenced a full-scale assault upon laws that disenfranchise felons. Approximately 4.1 million to 4.5 million citizens are disenfranchised as a result of felony convictions.

The laws governing the voting rights of felons are creatures of state law, and during the last 30 years, the states have been all over the board. Indeed, since 1975, 13 states have liberalized their policies regarding extending the franchise to felons who have served their time, while 11 states have placed greater limits on the exercise of voting rights by felons. Three states have passed both types of laws; these are states in which John Kerry would have no doubt felt right at home.

In 39 states, felons are not permanently disenfranchised, and in more than 30 states, restoration of voter rights occurs immediately upon completion of one's sentence, probation or parole. Where disenfranchisement is permanent, a felon may, nonetheless, petition the state for the restoration of voting rights or seek an executive pardon.

That is the state of things, and groups such as the American Civil Liberties Union, the NAACP and The New York Times don't like it. In a recent Times editorial, "How Denying the Vote to Ex-Offenders Undermines Democracy," Brent Staples complained that some 2.3 percent of the national electorate is barred from voting as a consequence of the disenfranchisement of felons. Mr. Staples further decried the fact that hundreds of thousands of other prospective voters are kept from the polls by pretrial detention as they await processing or trial for "minor offenses."

Apparently, on Election Day, Mr. Staples would arm police officers with absentee ballots and require them to inform suspects of their rights, including the right to vote. In this way, we could ensure that those who commit crimes on Election Day, but are not convicted prior to the election, have their right to vote protected.

The Right to Disapprove

While one could quibble with certain details of Mr. Staples editorial—for example, the title that misleadingly refers to "offenders" rather than felons, or the fact that long-term pretrial detention is rather unusual for those charged with "minor offenses,"—I would prefer to take on the basic premise that democracy demands that felons ought to share an equal voice in electing the people who make laws.

Felons have demonstrated either an incapacity to operate within the rules society has set down or a wanton disregard for those rules. Democratic government can be sustained only if the political community is made up of citizens who respect the rule of law. Giving greater voice to the lawless is hardly a prescription for advancing the rule of law.

Most importantly, the public has a right to dictate the rules of civil society and the consequences of violating those rules. The existence of laws disenfranchising felons reflects society's interest in maintaining social order and its disdain for serious legal transgressions, particularly acts of violence. The rights of those who have engaged in serious criminal misconduct are secondary to society's right to express its disapproval of such conduct.

The notion that people who cannot comply with society's most basic rules have a fundamental right to participate in establishing those rules is both reckless and wrongheaded. In a closely divided electorate, the restoration of the franchise rights of felons could be the decisive event in our future elections. I, for one, am not eager to allow felons to be the tiebreakers.

Make Them Earn It

That being said, legislatures should consider whether political banishment is a reasonable sanction for all felons. A system that allows nonviolent, non-repeat felons to petition to have their franchise rights restored—after they have served their time and any parole or ancillary sentence (including completion of restitution to victims of their crimes) and after they have demonstrated an ability to reintegrate themselves into society—has some merit.

Such an approach would limit restoration of rights to those who were actively interested in fully participating in society. Moreover, such a system would create non-penal incentives for ex-convicts to live life inside the lines and to make a compelling case for restoration of their rights.

Of course, those who are pushing this particular "reform" will object to anything other than universal reinstatement of rights; such is the nature of the entitlement logos—rights without responsibility.

The objection to earned restoration of rights illustrates that most of the proponents of change are more motivated by political outcomes than civil rights for felons. The tacit assumption of the proponents of change is that there are more than 4 million votes to be harvested among this group, and since the group is predominantly African-American, most of those votes will be left-leaning.

The idea of felons having to earn back their rights is anathema to the "reformers" because they assume, quite rightly,

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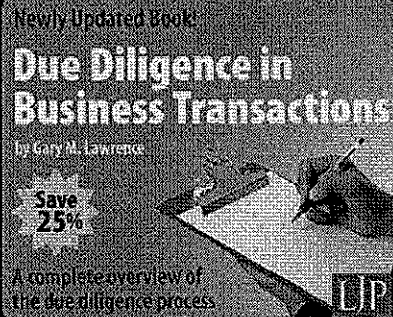
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that the vast majority of felons care little about restoration of their voting rights. If these 4 million felons have to exert effort in order to regain the right to vote, it is highly unlikely that they will represent the huge harvest of prospective votes that the "reformers" are looking for.

So, who is more interested in restoring felons' right to vote, the felons or the "reformers"? There is only one way to know: Make nonviolent, non-repeat felons eligible to petition for restoration, and let's see what they do. I suspect that the "reformers" and I are spending a great deal more time worrying about this than they are. r

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