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# **TESTIMONY OF HILARY O. SHELTON**

**DIRECTOR, NAACP WASHINGTON BUREAU &**

**SENIOR VICE PRESIDENT**

**FOR ADVOCACY AND POLICY**

*before the*

**HOUSE JUDICIARY COMMITTEE**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL**

**RIGHTS AND CIVIL LIBERTIES**

*on*

**H.R. 3335, THE *DEMOCRACY RESTORATION ACT***

*March 16, 2010*



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Good morning Chairman Nadler, Ranking Member Sensenbrenner and esteemed members of the Subcommittee. Thank you so much for calling this important hearing and for asking me here today to share with you the NAACP's position on this crucial piece of legislation.

The NAACP strongly supports H.R. 3335, the *Democracy Restoration Act*, and we urge its immediate enactment.

At the heart of this debate, Mr. Chairman, is a question of rehabilitation, democracy and fairness. Currently, an estimated 5.3 million Americans across our nation are denied the right to vote because of laws that prohibit or restrict voting by people with felony convictions. Three fourths of these Americans are no longer in jail.

The *Democracy Restoration Act* would permit men and women to register and vote in federal elections once they have done their time, paid their debt to society, and have been released from prison.

The question as to whether or not these people should be allowed to vote is not a partisan question: since 1997, 19 states, under both Democratic and Republican governors, states that are considered both "blue" and "red", have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and confusion while restoring voter eligibility.

I am honored to be asked here today because felony disenfranchisement laws have had a racial and ethnically disparate effect on minority Americans in general and on

African Americans specifically. As a result of the racial disparities that continue to plague our criminal justice system, racial concentrations and differing state laws a vastly disparate number of the people who are disenfranchised are racial or ethnic minorities. Specifically, nation-wide, an estimated 13%, or one out of every 8 African American men cannot vote because of the law in the state where he resides and a prior felony conviction. This is seven times the national average.

And while the majority of those Americans who are disenfranchised because of prior felony convictions are Caucasian, African Americans, who make up about 13% of the US population are disproportionately kept out of the voting booth: about 1/3, or 33% of those disenfranchised are black. Furthermore, if prevailing trends continue, it is only going to get worse. Given current rates of incarceration, three in ten of the next generation of African American men can expect to lose their right to vote at some point in their lifetime. In states that disenfranchise ex-offenders, as many as 40% of black men may effectively and permanently lose their right to vote.

In the last 30 years, due to the dramatic expansion of the criminal justice system and the continuing racial disparities among those incarcerated, former offender disenfranchisement laws have significantly affected the political voice of the African American community. The so-called "war on drugs" has had a disproportionate impact on African Americans; between 1985 and 1995, there was an unacceptably high incarceration increase of 306% for White Americans. Over the same time period, however, there was an unbelievable and completely unacceptable increase by 707% in the number of African Americans in state prison for a drug offense.

African Americans are disproportionately losing their right to vote. More than 60% of the people in prison today are racial and ethnic minorities. For Black males in their twenties, 1 in every 8, or 12.5% is in prison or jail on any given day. African Americans are incarcerated at nearly six (5.6) times the rate of white Americans, and Hispanics are incarcerated at nearly double (1.8) the rate of whites Americans.

One question that is frequently asked is how many of these men and women would vote if they were allowed to? It is, frankly, difficult to say. In 2006, however, voters approved an amendment to the Rhode Island Constitution which changed the law so that once a felon is released from prison, he or she is able to register to vote. Under the old law, felons could not vote until the completion of their entire sentences, including jail time and probation or parole. Since probation or parole terms can run a decade or more in some cases, an estimated 15,000 people in the state were prevented from voting. After passage of the amendment, about 6,000 of these people registered to vote in the 2008 elections.

Felony disenfranchisement also has an impact at a community level. Voting is one way that people take responsibility for their lives and show a sense of ownership or become a stakeholder in their communities. By prohibiting an individual from participating in the electoral process, we are decreasing the stake he or she may have in his or her community. It is akin to telling a person that no matter how long ago he or she erred,

and regardless of how long that person paid their penance, they will never be whole; they will never be a full and complete stake-holder in his or her community, or of our society.

Furthermore, election laws, even those governing federal elections, are determined by individual states, and so disenfranchisement laws vary significantly across the country. On the one hand, some states allow individuals to vote while they are incarcerated. At the other extreme, 11 states currently do not allow people to vote once they are convicted of a felony offense – even after they have fully completed their sentences and all associated probation or parole. In some cases, only a pardon from the governor can reinstate their voting rights. This leads to confusion and disparities.

A perfect example of the vast disparity is right here in our back yard. In Virginia, a felony conviction automatically results in permanent disenfranchisement. Yet just over the state line, in West Virginia, a person is allowed to register to vote once he or she leaves prison. As a result, less than 1% (0.8%) of the total population of West Virginia is disenfranchised; and all but 3.4% of the African American population of voting age can register. In Virginia, almost 7% of the entire voting-age population is disenfranchised due to a past felony conviction; and almost 20% of the state's African American population is locked out of the voting booth.

Felony voting restrictions are the last vestige of voting prohibitions; when the U.S. was founded only wealthy white men were allowed to vote. Women, minorities, illiterates and the poor were excluded. Most of these restrictions have all been eliminated over time, often with much debate, rancor and challenges. People who have served their time and been released from prison are the last Americans to be denied their highly cherished, basic right to vote.

Furthermore, the fact that a majority of the states with the most restrictive laws in terms of when an ex-felon can vote are primarily in the southern United States, arguably some of the most racially and ethnically diverse regions of our nation, makes these laws, their intent and the end effect, all the more suspect.

In fact, in some states with more restrictive ex-felony disenfranchisement laws, we have had African Americans report that their personal history, and therefore their voting eligibility, is questioned simply because of the color of their skin.

Because the right to vote is such an important element of the democratic process, it is simply wrong to predicate it upon a system rife with racial disparities. And with voting such an integral part of becoming a productive member of American society, the way forward for our Nation should be a new paradigm in which we encourage ex-felons to vote, not prohibiting them.

Chairman Nadler, members of the subcommittee, I urge you in the strongest terms possible to support the *Democracy Restoration Act* and expeditiously usher it through the congressional process and to the President's desk for his signature.

