

Pennsylvania NAACP Wins Vote for Ex-Offenders

by Marianna Wertz

In one of his most important statements just before leaving the Presidency, Bill Clinton wrote, in a commentary in the Jan. 14 *New York Times*, that “it is long past time to give back the right to vote to ex-offenders who have paid their debts to society.” Clinton’s message, titled “Erasing America’s Color Lines,” dealt generally with the measures he thinks are necessary to eliminate the stubborn vestiges of racism in America, in order to “build one America,” as he put it. Specifically on the administration of criminal justice, Clinton said, “There is no area today in which perceptions of fairness differ so greatly, depending on one’s race.”

A recent victory in the Commonwealth Court of Pennsylvania by the National Association for the Advancement of Colored People (NAACP), is the first step nationally in accomplishing what Clinton calls for, and can serve as an important precedent for other states struggling with this issue. In the suit, *Lorenzo L. Mixon, et al. v. Commonwealth of Pennsylvania, et al.*, the petitioners, who are currently or formerly incarcerated in Pennsylvania, were joined in a friend of the court brief by the Philadelphia branch of the NAACP, and won the right to vote for all former felons in the state, immediately upon release. The decision, filed on Sept. 18 by Presiding Judge Joseph T. Doyle, overturned the state’s Voter Registration Act, which denies the right to vote to felons for five years after their release.

No Small Issue

The issue of the right to vote for felons who have already served their time in a correctional institution, is no small issue. If the nearly 500,000 former felons in Florida—4.6% of Florida’s voting-age population, with 31% of the black voting-aged population of the state among them—had been able to vote in the 2000 Presidential election, the outcome would never have been in question, as 90% of black Americans cast their votes against George Bush. In Florida, an ex-felon must wait ten years after completion of sentence before being eligible to seek the gubernatorial pardon needed to restore their right to vote.

Though this issue wasn’t raised specifically in the civil rights suit filed by the Florida NAACP on Jan. 10, what the NAACP did charge was that thousands of minority voters were erroneously removed from voter rolls, by a company linked to George W. Bush, which was hired to purge the names of felons from the voter rolls. Thousands of law-abid-

ing Floridians, predominantly black, went to the polls on Election Day and were erroneously told that they couldn’t vote, because they were listed as former felons.

Nationwide, an estimated 3.9 million Americans, or one in fifty adults, have currently or permanently lost the ability to vote because of a felony conviction, according to “Losing the Vote,” a 1998 publication by The Sentencing Project and Human Rights Watch. Thirteen percent of black men nationwide have been temporarily or permanently disenfranchised because of criminal convictions.

In states of the former Confederacy, the impact of disenfranchisement is immense, and meant to be so. Laws disenfranchising felons from voting expanded after the Civil War and passage of the Fifteenth Amendment, which gave blacks the right to vote. According to “Losing the Vote,” “between 1890 and 1920, many Southern states tailored their criminal disenfranchisement laws, along with other voting qualifications, to increase the effect of these laws on black citizens.” Like Florida, 31% of the black male population in Alabama is disenfranchised. In Texas, 20% of black males are disenfranchised, and 24-28% of all black men in Iowa, Mississippi, New Mexico, Virginia, Wyoming, and Washington state are permanently disenfranchised.

All but four states deprive incarcerated offenders of the right to vote; 35 states disenfranchise non-incarcerated offenders, including those on probation and parole; and 14 states disenfranchise ex-offenders for life.

An Act of Courage

Earl Trent, attorney for the Philadelphia NAACP, who argued the “friend of the court” brief in the Commonwealth Court, called the decision an act of courage (see interview). The majority decision went against both numerous precedents and perceived public opinion, Trent said, to “rectify a problem for people who have been disenfranchised under Pennsylvania law for many years, people who are not generally perceived to be politically very important or powerful.”

Judge Doyle’s opinion overturned that portion of existing state law which forced those felons who were not registered to vote before going to prison, to wait five years before they could register. “Although a state may not only disenfranchise all convicted felons, it may also distinguish among them, but the distinction must be such that it is rationally related to a legitimate state interest,” he wrote. Existing law, which distinguishes between felons who were or were not registered to vote before going to prison, Judge Doyle wrote, “does not present a rational relationship to a legitimate state interest.”

Moreover, Judge Doyle wrote, such a distinction assumes “that there was no possibility of rehabilitation during that period of incarceration and for five years thereafter. There is nothing of which we are aware to support this logic. . . . We therefore conclude that the prohibition against registration for five years after release from confinement is constitutionally infirm.”