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 of the American Civil Liberties Union  
 Foundation of New Jersey

<hr/>		) SUPERIOR COURT OF NEW JERSEY
NEW JERSEY STATE CONFERENCE - NAACP,	)	UNION COUNTY
THE LATINO LEADERSHIP ALLIANCE OF	)	CHANCERY DIVISION
NEW JERSEY, EARL PRATHER, TIMOTHY	)	
STRICKLAND, KAREEMAH TERRY,	)	
MICHAEL E. MACKASON, DANA THOMPSON,	)	
CHARLES THOMAS, ZENON QUILES,	)	
ROBERT PADILLA, ARMANDO ORTIZ,	)	
CHRISTOPHER ORTIZ, COUNCILWOMAN	)	
PATRICIA PERKINS-AUGUSTE,	)	
COUNCILMAN CARLOS J. ALMA, on	)	
behalf of themselves and all	)	
individuals similarly situated,	)	
	)	
Plaintiffs,	)	DOCKET NO.
	)	
v.	)	
	)	
PETER C. HARVEY, ATTORNEY	)	
GENERAL OF NEW JERSEY, in his	)	
official capacity,	)	<u>CIVIL ACTION</u>
	)	
Defendant.	)	
<hr/>		) COMPLAINT

PRELIMINARY STATEMENT

1. This case challenges New Jersey's practice of denying suffrage to convicted persons on parole and probation and the resulting discriminatory impact that such denial of suffrage has on the African-American and Hispanic electorate in the State. Plaintiffs contend that the practice of disfranchisement, as required by N.J.S.A. 19:4-1, and the grossly disparate impact it has on the ability of African-Americans and Hispanics to

participate in the political process and to elect candidates of their choice to public office violates the Equal Protection of the laws guaranteed by the Constitution of New Jersey.

Although the New Jersey Constitution, Art. II §7, authorizes the State Legislature to deny the vote to persons convicted of a crime, that provision may not sanction the denial of equal protection of the laws or the denial to minority communities of the right of equal political participation in the absence of a compelling governmental justification. Since public policy favors the rehabilitation of ex-offenders and the facilitation of their re-entry and re-integration into society, the State of New Jersey cannot demonstrate a sound, let alone, compelling interest in enacting N.J.S.A. 19:4-1 to disfranchise persons on parole and probation.

2. Disfranchisement of persons on parole and probation provides no public benefit, but instead undercuts a well-established purpose of the State's correctional system that frames probation and parole practices.

#### **PARTIES**

3. Plaintiff New Jersey State Conference, NAACP, (hereinafter State NAACP) is an unincorporated, nonprofit affiliate of the national NAACP. Keith Jones is New Jersey president. The NAACP is a voluntary association committed to the improvement of the status of minority groups, the elimination of discriminatory practices and the achievement of civil rights. The NAACP, founded in 1909, seeks to ensure political,

educational social, and economic equality of minority group citizens in th United States. As the oldest and largest civil rights organization in the United States, the NAACP has a long history of involvement in protecting the voting rights of African Americans and challenging racial discrimination. The disfranchisement of ex-felons on parole and probation impacts particularly harshly on the voting rights of black men, who constitute a significantly disproportionate percentage of prison inmates and released prisoners in new Jersey. The State NAACP brings this action on behalf of its members who are released felons who want to register to vote but are unable to do so under the current law, and on behalf of the entire African American community of New Jersey, whose ability to participate equally in the political process and to elect to public office candidates of their choice is hampered by the impact of the law.

4. Plaintiff Latino Leadership Alliance of New Jersey (hereinafter "LLA"), is a voluntary association whose purpose is to improve the status of Hispanic/Latino Americans, in part by working to end discriminatory practices. A part of its mission is the election of candidates, both Hispanic and non-Hispanic, with a demonstrated track record of support for issues that matter to Hispanics. The LLA has local affiliation in Union County and throughout New Jersey.

5. Plaintiff EARL PRATHER, who resides at 1111 Magnolia Avenue, Elizabeth, New Jersey, is an African-American of lawful voting age, a citizen of the United States and a legal resident

of New Jersey. He is currently on parole, and thus pursuant to N.J.S.A. 19:4-1(8), is not entitled to vote. Mr. Prather has been on parole since his release in 2003 from East Jersey State Prison, where he served two and a half years on a domestic violence conviction. He is scheduled to remain on parole until 2006. He is employed as a produce clerk in a supermarket in Elizabeth, New Jersey. He desires to vote so that he can help change things by electing public officials who will represent community interests.

6. Plaintiff TIMOTHY STRICKLAND, who resides at 1713 Essex Street, Rahway, New Jersey, is an African-American of lawful voting age, a citizen of the United States and a legal resident of New Jersey. He is currently on parole and thus pursuant to N.J.S.A. 19:4-1(8), is not entitled to vote. Mr. STRICKLAND has been on parole since his release from Rahway State Prison in 2002, and will remain on parole until 2006. Despite his criminal history, Mr. Strickland states that he has been a law-abiding citizen since joining the Nation of Islam and taking its "Life Skills" training course while incarcerated. He is an active member of Nation of Islam Mosque No. 85 in New Brunswick, New Jersey, and performs voluntary field work for the Mosque. He has been employed since his release from prison, and he filed his first tax return for the year 2002.

7. Plaintiff KAREEMAH TERRY, who resides at 334 Osborne Terrace, Newark, New Jersey, is an African-American of lawful voting age, a citizen of the United States and a legal resident

of New Jersey. She is currently on parole and thus pursuant to N.J.S.A. 19:4-1(8), is not entitled to vote. Ms. Terry has been on parole since her release from Edna Mahan Correctional Facility in May 1999, and will remain on parole until 2004. She is a law-abiding citizen, employed as a front-end supervisor at a chain supermarket for the last three and a half years. Ms. Terry is a single mother, raising three children, the oldest of whom is twelve and attends public school. She states that she seeks the right to vote because almost everyone she knows is allowed to, and she also wants to voice her opinion on how things are run. Reenfranchisement would allow her, among other things, to participate and have a say in her child's education at the most local level - by voting for members of the Board of Education.

8. Plaintiff MICHAEL ERIC MACKASON, who resides at 351 Broad Street, Newark, New Jersey, is an African-American of lawful voting age, a citizen of the United States and a legal resident of New Jersey. He is currently on parole and thus pursuant to N.J.S.A. 19:4-1(8), is not entitled to vote. Mr. Mackason has been on parole since his release from South Woods Correctional Facility in 2000, and will remain on parole until 2008. He is a law-abiding citizen, employed as a computer literacy instructor by Essex Community College and has also worked as a caseworker with the American Friends Service Committee. Mr. Mackason is seeking the right to vote because he would like to more fully participate in the political system, and address current and proposed legislation on issues which he believes need more vocal

support than they presently receive. Reenfranchisement would permit Mr. Mackason to share his support and dissent on issues which he feels strongly about through the voting process.

9. Plaintiff DANA THOMPSON, who resides at 128 Royal Drive, Piscataway, New Jersey, is an African-American of lawful voting age, a citizen of the United States, and a legal resident of New Jersey. He is currently on probation and thus under New Jersey statute N.J.S.A. 19:4-1(8) is not entitled to vote. Mr. Thompson was sentenced in 2001 to three concurrent sentences of 364 days and placed on three years probation as a result of conviction for possession of a controlled dangerous substance and leaving the scene of an accident. He had previously served a total of six years in Annandale on two separate occasions. He is gainfully employed as the sole proprietor of his own construction company in Piscataway. He is also working to establish a halfway house to serve ex-offenders. He is active in organizations devoted to the rehabilitation of ex-offenders, and is most interested in participating in the electoral process to help reform the criminal justice system and to aid the rehabilitation of ex-offenders.

10. Plaintiff CHARLES THOMAS, who, prior to a legal name change was Charles Allen, resides at 4406 Camden Avenue, Pennsauken, NJ 08110. He is an African-American of lawful voting age, a citizen of the United States and a legal resident of the state of New Jersey. Mr. Thomas is currently serving parole and thus pursuant to N.J.S.A. 19:4-1(8), is not entitled to vote.

Mr. Thomas has been on parole from a life sentence since his release from both the Trenton and Rahway Prison in 2000. Mr. Thomas was 18 years old at the time of the crime, and is on life-time parole. Thus, he was never eligible to vote,, and, pursuant to his statue, he never will be. He is a law-abiding citizen, employed as a treatment coordinator for Volunteers of America, an organization based in Camden, N.J. Mr. Thomas seeks the right to vote because, as a home owner, as a taxpayer, and as a member of the community, he believes in no taxation without representation. Reenfranchisement would allow Mr. Thomas to share his opinion on issues about which he believes he should be concerned about as both a community member and father, such as how the local school is being managed.

11. Plaintiff ZENON QUILES, who resides at 50 Greenwood Avenue, Montclair, New Jersey, is an Hispanic of Puerto Rican heritage, is of lawful voting age, a citizen of the United States, and a legal resident of New Jersey. He is currently on parole and thus under New Jersey Statute N.J.S.A. 19:4-1(8) is not entitled to vote. Mr. Quiles was convicted in 2001 for violation of statutes governing sale and possession of a controlled dangerous substance. He was sentenced to four years in jail, and served approximately one year at South Woods State Prison. He is on parole until March 30, 2004. He is self-employed as the proprietor of a house cleaning and organizing business. Mr. Quiles has two children of his own and two step-children who live with him in Montclair. He is active in his

children's schools and is a member of Montclair Million Men, which provides food and other assistance to seniors and the homebound. He volunteers one day a month at the Seth-Boyden Center in Newark, operated by the State Division of Parole, assisting the rehabilitation and reentry of parolees. Prior to conviction, Mr. Quiles was a registered voter in New Jersey and voted in both Asbury Park and Newark. He is active in various civic activities in Montclair, and is particularly concerned about efforts to have Montclair secede from Essex County and to convert the former Walnut Street firehouse into a youth center. He is frustrated by his inability to participate in the election of local officials who have power over such decisions. He believes that "voting helps people feel better about themselves."

12. Plaintiff ROBERT PADILLA, who resides at 156 Broadway, Newark, New Jersey, is an Hispanic of Puerto Rican heritage, is of lawful voting age, a citizen of the United States, and a legal resident of New Jersey. He is currently on probation as a result of a 2001 conviction for receiving stolen property for which he was sentenced to five years probation. He sought to register to vote last year and was told he was not eligible pursuant to N.J.S.A. 19:4-1. Mr. Padilla actively volunteers in local election campaigns in Newark, working for candidates for City Council and County Freeholder. He was formerly registered to vote in Elizabeth, New Jersey, and voted in the 1992 presidential election. Mr. Padilla is employed as a counselor for the Hogar Crea rehabilitation center.



13. Plaintiff ARMANDO ORTIZ, who resides at 11 James Street, New Brunswick, New Jersey, is an Hispanic of Puerto Rican heritage, is of lawful voting age, a citizen of the United States and a legal resident of New Jersey. He was released from the Middlesex County Correctional Center in February 2003 after serving one year of a sentence for burglary and is on probation for five additional years, and is thus ineligible to vote pursuant to N.J.S.A. 19:4-1. He has a 6-year-old son. Mr. Ortiz is employed by a contracting company in New Brunswick. He has recently started to learn about public affairs and is especially concerned about the war in Iraq. He would like to be able to participate in the political process through which such decisions are made.

14. Plaintiff CHRISTOPHER ORTIZ, who resides at 156 Broadway, Newark, New Jersey, is an Hispanic of Puerto Rican descent, of lawful voting age, a citizen of the United States, and a legal resident of New Jersey. He is currently on probation and thus under New Jersey statute N.J.S.A. 19:4-1(8) is not entitled to vote. Mr. Ortiz was convicted for three burglaries and a drug charge for which was sentenced to serve five years. He is currently on parole following drug and burglary charges, and will finish the parole period in 2006. Mr. Ortiz is attempting to find gainful employment, and is receiving assistance from the Hogar Crea rehabilitation center in Newark. Mr. Ortiz had just turned eighteen when he was convicted, thus he never had the opportunity to register to vote. Mr. Ortiz

explains that he is trying to turn his life around, and being disfranchised denies him the right to be a full-fledged member of the community. This leaves him feeling left out.

15. Plaintiff PATRICIA PERKINS-AUGUSTE is an African-American citizen of voting age actively involved in electoral and civic affairs in Union County, New Jersey. She is a member of the Elizabeth City Council and has a strong interest in increasing voter registration and participation among African-Americans in Elizabeth, Union County, and New Jersey in order to advance and protect the ability of members of the African-American community to enjoy life, liberty, safety and happiness as promised by the Constitution of the State of New Jersey.

16 Plaintiff CARLOS J. ALMA is an Hispanic citizen of voting age actively involved in electoral and civic affairs in Union County, New Jersey. He is currently in his fifth year as a member of the Elizabeth City Council, and has a strong interest in increasing voter registration and participation among Hispanics in Union County and New Jersey in order to advance and protect the ability of members of the Latino community to enjoy life, liberty, safety and happiness as promised by the Constitution of the State of New Jersey.

17. The defendant, PETER HARVEY, is the Attorney General of New Jersey, and is responsible for enforcement of N.J.S.A. 19:4-1(8). He is sued in his official capacity.

### **CLASS ACTION ALLEGATIONS**

18. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated. Plaintiffs ask the Court to designate this case as a "test case" as provided by *Kronisch v. Howard Savings Bank*, 143 N.J. Super. 423 (App. Div. 1976), or, in the alternative to certify the case as a class action pursuant to R. 4:32-1.

19. The Plaintiff class includes two subclasses: (1) African-American and Hispanic persons of lawful voting age currently on parole or probation in the State of New Jersey as a result of a conviction for an indictable offense and otherwise qualified to vote but for the provisions of N.J.S.A. 19:4-1; (2) all African-American and Hispanic persons who or of lawful voting age, citizens of the United States and qualified to vote in New Jersey, but are denied an equal opportunity to influence the political process in New Jersey because of the disproportionate disfranchisement of African-American and Hispanic persons on parole and probation.

20. The case is appropriate for class action certification in that (1) the Plaintiff classes are so numerous as to make it impractical to bring them all before the Court; (2) there are questions of law and fact regarding the rights of citizens to register and vote and the dilution of minority voting strength which are common to the classes as whole; (3) the claims of the Plaintiffs are typical of the claims of the classes as whole; (4) The Plaintiffs can adequately and fairly represent the interests

of the Plaintiff classes; (5) Plaintiffs are not seeking monetary damages which would require consideration of individual circumstances; (6) Defendant has acted on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole.

## **THE FACTS**

### **Racial Disparities in Disfranchisement Rates of African-Americans and Hispanics**

21. In New Jersey, African-Americans and Hispanics are prosecuted, convicted, and sentenced to incarceration at rates substantially greater than non-Hispanic white persons.

22. On information and belief, there were 69,559 individuals in the State of New Jersey on probation for conviction of an indictable offense as of June 30, 2001.

23. On information and belief, there were 12,835 individuals in the State of New Jersey on parole for conviction of an indictable offense as of February 19, 2003.

24. On information and belief, although African-Americans make up approximately 13.6 per cent of New Jersey's overall population (as reported in the 2000 Census), they make up more than 63 per cent of the current prison population, more than 60 per cent of the current parolee population, and approximately 37 per cent of those on probation.

25. On information and belief, although Hispanics make up approximately 13.3 per cent of New Jersey's overall population (as reported in the 2000 Census), they make up approximately 18 per cent of the current prison population, approximately 20 per

cent of the current parolee population, and more than 15 per cent of those currently on probation.

26. On information and belief, collectively African-Americans and Hispanics make up 81 percent of the total current prison population, more than 75 per cent of the total current parolee population, and more than 52 per cent of those currently on probation.

27. On information and belief, by contrast non-Hispanic whites make up approximately 72.6 per cent of New Jersey's overall population (as reported in the 2000 Census) and only approximately 19 per cent of New Jersey's current prisoners, approximately 19 per cent of parolees, and approximately 41 per cent of probationers.

28. The disproportionate rate of disfranchisement of African-Americans and Hispanic citizens of New Jersey is, in part, an artifact of the fact that members of those minority groups are arrested, prosecuted, convicted and sentenced to prison in numbers disproportionate to their propensity to commit crimes. Thus, the discriminatory effect of the felon disfranchisement law is actually an extension of the discrimination which is endemic to the criminal justice system.

#### **MINORITY VOTE DILUTION**

29. On information and belief, some 46 per cent of those currently denied the right to vote pursuant to N.J.S.A. 19:4-1(8) are African-America, and more than 16 per cent are Hispanic. Collectively, on information and belief, African-Americans and

Hispanics comprise more than 62 per cent of those currently denied the right to vote pursuant to N.J.S.A. 19:4-1(8).

30. As determined by a 3-Judge Federal District Court in *Page v. Bartels*, "the African-American and Hispanic communities [in New Jersey] often vote as a bloc, a fact which may be considered in assessing the ability of either community to elect candidates of its choice." 144 F. Supp. 2d 346, 358 (D. Ct, N.J., 2001) (3-judge court).

31. The disproportionate rates of prosecution, conviction, and incarceration of African-Americans and Hispanics and the resulting disproportionate rates of disfranchisement among these groups has a disparate impact on the ability of Blacks and Hispanics in New Jersey to participate in the political process.

32. As a result of the disproportionate disfranchisement of African-Americans and Hispanics, the voting strength of African-Americans and Hispanics and their ability to elect candidates of their choice in certain state and county elections has been diluted in violation of their equal protection rights embodied in the New Jersey Constitution.

**The Disproportionate Impact of the Felony Disfranchisement Law Results, in Significant Part, From the Discriminatory Operation of the Criminal Justice System in New Jersey**

33. The disproportionate disfranchisement of African-Americans and Hispanics results in part from the disproportionate rate at which African-Americans and Hispanics are investigated, arrested, prosecuted, convicted,

and incarcerated within the New Jersey criminal justice system.

34. The disproportionate rate at which African-Americans and Hispanics are arrested, prosecuted, convicted, and incarcerated reflects racial discrimination endemic to the New Jersey criminal justice system. The wide latitude given to individual police officers, prosecutors, judges, and juries to exercise discretion allows discriminatory animus and racial stereotypes to influence the administration of the criminal laws of New Jersey to the detriment of African-Americans and Hispanics.

35. In particular, African-Americans are substantially more likely to be stopped by the police while driving on New Jersey roads and highways than are whites - a disproportionate likelihood that has no other explanation than the conscious or unconscious decisions of police officers to especially target African-American motorists. For example, statistics compiled by the New Jersey State Police between 1994 and 1998 show that four out of every ten stops made by State Police attached to the Moorestown and Cranbury stations involved a minority motorist. Most significantly, the rate of traffic stops targeting minority motorists escalated substantially as police officers were allowed discretion as to whom to stop. For example, the Radar Unit (which stops vehicles according to radar monitoring) issued 18 per cent of its tickets to African-

Americans, while the Patrol Unit (which exercises discretion in traffic stops) issued over 34 per cent of its tickets to African-Americans. South of Exit 3, the Radar unit issued 19.1 per cent of its tickets to African-Americans, while the Patrol Unit issued 43.8 per cent of its tickets to African-Americans. With the increase in discretion granted to police officers, the rate of traffic stops of African-Americans increased dramatically in comparison to stops based on neutral data such as radar readings. This demonstrates the prevalence of conscious or unconscious profiling in decisions by police about which persons to be subject to stops and investigations.

36. African-Americans and Hispanics are substantially more likely to be subject to a consent search than whites. According to statistics compiled by the State Police between 1994 and 1998, nearly eight out of every ten consent searches conducted by State Police attached to the Moorestown and Cranbury stations involved minority motorists.

37. Similar disparities exist throughout the administration of the criminal justice system, as officially acknowledged by the state's courts, state police and Attorney General's office:

(A) In *State v. Soto*, the Court found that "defendants have proven at least a *de facto* policy on the part of the State Police out of the Moorestown Station of targeting



blacks for investigation and arrest ... The statistical disparities and standard deviations revealed are stark indeed.... The utter failure of the State Police hierarchy to monitor and control a crackdown program like DITU or investigate the many claims of institutional discrimination manifests its indifference if not acceptance." 324 N.J. Super. 66, 84-85 (Law Div., Gloucester County, 1996).

(B) The findings of the Court in *Soto* were acknowledged and expanded upon in the "Interim Report of the State Police Review team Regarding Allegations of Racial Profiling" issued by Attorney General Peter Veniero on April 20, 1999. That Report found:

(1) "[T]he underlying conditions that foster disparate treatment of minorities have existed for decades in New Jersey ... and will not be changed overnight." (at page 6)

(2) "Despite these efforts and official policies to address the issue of racial profiling, based upon the information that we reviewed, minority motorists have been treated differently than non-minority motorists during the course of traffic stops in the New Jersey Turnpike. For the reasons set out in this report we conclude that the problem of disparate treatment is real not imagined." (at p. 7-8)

(3) "We are thus presented with data that suggest that minority motorists are disproportionately subject to searches (eight out of every ten consent searches conducted by troopers assigned to the Moorestown and Cranbury stations

involved minority motorists)." (at p. 9)

(4) In the period from 1996 to 1998, the State Police from the Newark, Moorestown and Cranbury stations made a total of 2,871 arrests for "more serious offenses" (generally excluding traffic, including drunk driving arrests). Of these, 932 (32.5% involved white persons; 1,772 (61.7%) involved black persons, and 167 (5.8%) involved persons of other races. (at p. 27) As the Report then noted: "The fact that the arrest rates for whites was comparatively low does not mean that white motorists are less likely to be transporting drugs, but that they were less likely to be suspected of being drug traffickers in the first place, and, thus, less likely to be subjected to probing investigative tactics designed to confirm suspicions of criminal activity such as, notably, being asked to consent to a search." (at p. 32)

(c) Despite efforts by the State Police to curb racial profiling, the practice has continued into the 21<sup>st</sup> Century, according to the testimony of Attorney General John Farmer before the Senate Judiciary Committee on April 3, 2001. For example, Farmer testified that a study of Troop D in early 2001 showed that white drivers were subjected to consent searches 19 per cent of the time, while blacks were at 53 per cent and Hispanics at 25 per cent. "Thus, blacks and Hispanics were subjected to consent searches at rates higher than their presence on the road and higher than their stop

rates.” (at p. 16)

38. The increasing use of incarceration for drug offenders, many of whom are arrested as a result of police encounters which disproportionately focus on members of the minority community, has had an especially disproportionate impact on African-Americans and Hispanics, even though African-Americans and Hispanics do not use illegal drugs any more frequently than whites. On information and belief, back in 1982, 12 per cent of the state’s prisoners were drug offenders, and 31 per cent of the inmates were white. In 2001, 34 per cent of the state’s prison population were drug offenders and only 18 per cent of the prison population was white, a ratio attributed by the New Jersey Department of Corrections to the impact of the 1986 Comprehensive Drug Reform Act, which led to targeting of inner-city neighborhoods where the population is overwhelmingly minority.

39. On information and belief, between 1986 and 1999, the rate at which African-Americans were incarcerated for drug offenses increased by 475 percent, while the rate at which whites were incarcerated for drug offenses increased by only 112 percent.

40. On information and belief, young people of color have particularly suffered from disparate incarceration for drug offenses – and suffer the consequences of disfranchisement when on parole and probation. The rate of

increase of imprisonment between 1986 and 1999 for African-American youth was 646 per cent, compared to 186 per cent for white youths. The result is that an entire generation of minority youths is not being educated about the responsibilities and participatory benefits of voting. This will perpetuate a culture of non-participation in future generations.

41. National research shows that whites and African-Americans use illegal drugs at similar rates. According to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), in 2002, 8.5 percent of whites, and 9.7 percent of African-Americans reported using illegal drugs in the preceding month, and 9.3 percent of whites, and 9.5 percent of African-Americans reported themselves to be dependent on an illicit substance. In New Jersey, a survey is conducted every three years by the New Jersey Division of Criminal Justice among high school students, leading to the publication of results under the title, "Drug and Alcohol Use Among New Jersey High School Students." The last such report, issued in 1999, indicates consistently higher percentage rates of reported usage of illicit substances by white New Jersey high school students than African American and Hispanic high school students. For example, 46.7 percent of white high school students reported marijuana use, 40.1 percent of African American high school students,

and 36.3 percent of Hispanic high school students reported such use. 8.6 percent of white high school students reported cocaine use, while 2.4 percent of African American students and 6.4 percent of Hispanic students reported cocaine use.

42. Felon disfranchisement perpetuates and compounds the harm caused by discrimination in the New Jersey criminal justice system.

43. The disadvantage suffered by African-Americans and Hispanics from felon disfranchisement is a consequence of closely related governmental action that is discriminatory. The disadvantage is the fruit of governmental toleration, if not encouragement, of discrimination, and, accordingly, must bear a heavier burden of justification than a law that only incidentally disadvantages African-Americans and Hispanics.

**Felon Disfranchisement Does Not Further State Interests**

44. Over the past 150 years, voting restrictions in the United States have been progressively eliminated and the principle of universal suffrage has been affirmed.

Depriving citizens of the right to vote should only occur when there is a compelling state reason and only to the extent that those reasons are furthered. The state cannot show a compelling interest in disfranchising persons on parole and probation.

45. Felon disfranchisement conflicts with the general purposes of the provisions governing the sentencing of

offenders codified in Title 2C of the New Jersey Code of Criminal Justice. N.J. Stat. § 2C:1-2(b) (2002). Specifically, disfranchisement hinders the rehabilitation of offenders. Disfranchisement causes an isolation and alienation from society which contravenes the rehabilitation and social reentry process. Furthermore, application of N.J.S.A. 19:4-1 to persons on parole and probation fails to "safeguard offenders against . . . arbitrary punishment" and fails to "differentiate among offenders with a view to a just individualization in their treatment". N.J. Stat. § 2C:1-2(b) (4), (6).

#### **FIRST CLAIM FOR RELIEF**

46. Plaintiffs hereby reallege and incorporate by reference the allegations of Paragraphs 1 through 45 above.

47. The disfranchisement of persons on parole and probation under N.J.S.A. 19:4-1 has a disparate and disproportionate impact on African-Americans and Hispanics, and thereby violates the guarantee of Equal Protection of the Laws embodied in the New Jersey Constitution.

48. The application of N.J.S.A. 19:4-1 denies the minority community in New Jersey, consisting of persons of African-American and Latino descent, an equal opportunity to participate in the electoral process, including the ability to elect to public office candidates of their choice and to maximize their influence on public policy decision making, all in violation of the guarantee of Equal Protection of the

Laws embodied in the New Jersey Constitution. In fact, the state interest in rehabilitation of offenders codified in N.J.S.A. 2C:1-2(b) negates any claim that disfranchisement of persons on parole and probation serves a legitimate government interest.

49. The State of New Jersey has no compelling interest to justify the effects of N.J.S.A. 19-4-1.

50. Plaintiffs and the communities represented by the organizational plaintiffs are suffering irreparable injury and have no adequate remedy at law.

#### **SECOND CLAIM FOR RELIEF**

51. Plaintiffs hereby reallege and incorporate by reference the allegations of Paragraphs 1 through 50 above.

52. The disfranchisement of persons on parole and probation pursuant to N.J.S.A. 19:4-1 has a grossly disproportionate impact on African-Americans and Hispanics.

53. As a result such persons are denied an equal opportunity to participate in the political process in New Jersey.

54. The discriminatory impact of New Jersey's felony disfranchisement law serves to deny African-Americans and Hispanics on parole and probation the Equal Protection of the Laws guaranteed by the New Jersey Constitution.

#### **THIRD CLAIM FOR RELIEF**

55. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 54 above.

56. N.J.S.A. 19:4-1 violates customary international law because it denies persons who are on parole or on probation for conviction of an indictable offense the right to vote and has a disparate impact on African-Americans and Hispanics on account of their race, color, descent or national or ethnic origin.

57. As a result of N.J.S.A. 19:4-1, Plaintiffs are denied the enjoyment of guaranteed political rights, such as the right to vote and participate in the political process without regard to race or ethnicity, in violation of customary international law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask this Court

(1) To declare that the application of N.J.S.A. 19:4-1 to persons on parole and probation denies the Equal Protection of the Laws to the minority community in New Jersey consisting of persons of African-American and Hispanic descent;

(2) To enter a preliminary and permanent injunction forbidding Defendant, his agents and representatives from enforcing N.J.S.A. 19:4-1 against persons on parole and probation in New Jersey, and directing said Defendant to instruct the various persons responsible for supervising voter registration in New Jersey's counties to accept registrations from persons convicted of indictable offenses who are no longer incarcerated;



(3) To award Plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees; and

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

Respectfully submitted,

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