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A BALLOT'S BREADTH AWAY FROM REJOINING SOCIETY

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Many ex-offenders want to reclaim their vote. But one month before the presidential election, confusion about eligibility still reigns. > *By Curtis Stephen*



Parolee Kenneth Harrigan is passionate about voting. Here he poses outside New World Stages, where he's acting in an autobiographical play called "The Castle." Photos by Rosie McCobb

Life is full this autumn for Kenneth Harrigan, who recently settled into a new apartment in Washington Heights after getting married in May. He's busy in his work at the Fortune Society – a local criminal justice reform group where he counsels criminal defendants enrolled in an alternative-to-incarceration program – teaches Sunday school at church, probes his own experience with the criminal justice system for his role in an off-Broadway play called "The Castle," and worries about his grown daughter. Plus he's excited, to put it mildly, about the presidential election and the historic possibility of witnessing the first African-American elected to the White House.

An ardent Obama supporter, Harrigan, 52, has been encouraging friends and strangers alike to vote. "I know what it's like to come through the '60s," he said. "When I saw that Obama's acceptance speech came forty-five years to the date after Dr. King's 'I Have A Dream' speech, that meant something to me." But unless the New York State Division of Parole makes a last-minute move, he won't be allowed to step inside a voting booth this Election Day.

That's because Harrigan is on parole for a burglary charge that sent him to prison for just over a decade – and New York law says that he and the state's 45,000 other parolees can't vote. They're some of the estimated 5.3 million people nationwide with past felony convictions who are barred from voting after their release from correctional

facilities, according to the Sentencing Project, a Washington-based nonprofit prison research and advocacy group. Among the 35 states with such provisions, Kentucky permanently strips the voting rights of those who have completed serving their entire prison sentences while Virginia reviews appeals on a case-by-case basis, and others – including Delaware, Wyoming and Nebraska – require waiting periods of two to five years before voting rights are restored to people convicted of some offenses.

Today, however, criminal justice advocates who have long been pressing the issue are beginning to claim some victories, as longstanding restrictive voting measures for ex-offenders are increasingly being modified or, in some instances, reversed. "The news is good and, notably, has been a bipartisan effort," says Marc Mauer, executive director of the Sentencing Project, which published a new [report](#) examining how reform measures enacted over the past decade have returned the right to vote to some 760,000 people across the country.

Not that support for such changes is universal. “Criminal studies show the high rate of recidivism for people on parole. These laws make perfect sense,” says Roger Clegg, president and general counsel of the Center for Equal Opportunity, a conservative think tank in Virginia focused on racial issues. Clegg says a significant number of jurisdictions remain staunchly opposed to overhauling voting bans on people convicted of felonies. “Despite political pressure from groups like the Sentencing Project, which is trying to make it easier for more ex-felons and even felons to vote, everyone doesn’t support their agenda,” he said, citing restrictive measures in Utah, Kansas and Massachusetts.

'Toward fuller reintegration'

In New York, though, with the backing of Gov. Paterson, New York’s voting climate is warming more to parolees. And a coalition of nonprofit groups last month began a broad advertising campaign in New York City and elsewhere to alert those with criminal records to the rights they *do* have – like the fact that voting rights are fully restored upon completion of one’s maximum sentence.

Harrigan is not yet feeling the state’s tentative embrace. He faced hurdles after being released from prison in 2004 – including a stay in a homeless shelter after failing to find housing, then moving into a residence for ex-prisoners run by the Fortune Society in Harlem – but was also focused on registering to vote for the first time in his life. “While I was incarcerated, I read about what makes this country run and saw how important it was to vote,” he says. But when Harrigan considered registering soon after the last presidential election, he discovered from his parole officer that he wasn’t eligible since he’s on lifetime parole.

In July, Gov. Paterson signed legislation that enabled the Board of Parole to discharge anyone from parole supervision where deemed to be “in the best interests of society.” Making such discharges had been a function of the board since 1930, until the law was changed in 1998 under then-Gov. George Pataki. In the amended provision, people on parole for at least three years can apply for an early discharge. Though he applied for release soon after the law was enacted, Harrigan says he has yet to learn whether his application has been approved. Concerned that his status won’t change in time to register to vote in the upcoming election, Harrigan wrote a [letter](#) about his plight to the New York Times, which was published in late September. “I can’t believe that I’m being deprived of the chance to have a say in what’s going on in the world,” he said in a subsequent interview. “The city has no problem taking my tax dollars, so why can’t I vote?”

It’s a point that criminal justice advocates have been raising for years. Although no legislation is forthcoming in the state legislature that would permit people on parole to vote in New York, Paterson supports the concept. “Voting would enable parolees to take a step closer towards fuller reintegration with society,” says Errol Cockfield, the governor’s spokesman.

Advocates also contend that thousands of New Yorkers with criminal records – who are in fact eligible to vote – are wrongly being denied the ability to do so. In 2007, the AdCo Foundation, a small private enterprise in Manhattan which has funded a range of community organizing initiatives in New York City since the early 1970s, decided to allocate more than \$50,000 to groups working on felony re-enfranchisement and voter registration programs in the run-up to this year’s presidential election. Among the organizations that received funding, including the grassroots groups Community Voices Heard and Citizens Against Recidivism, were the Fortune Society and the New York Civil Liberties Union (NYCLU).

Last month, the Fortune Society and the NYCLU used their grant to team up with the Brennan Center for Justice at NYU Law School to launch an advertising campaign aimed at persuading New Yorkers with prior felony convictions to contact them and find out whether they’re eligible to vote. The campaign includes ads posted inside MTA buses on all routes in Brooklyn, Manhattan and the Bronx. Other public service announcements can also be seen on a giant Times Square video billboard screen and on all metro rail trains running in Buffalo. The ad blitz will run through Oct. 10, which is the final day to register to vote in time for the November election.

Who is eligible?

As that deadline approaches, civil liberties groups have been scrambling to encourage New Yorkers with criminal histories to register to vote in a state where more than 100,000 people are convicted of felonies annually. That kind of outreach is a task that ex-offenders’ advocates argue has yet to be fully assumed by either the state Department of Correctional Services or any of the local elections boards. Indeed, there’s widespread confusion about who is eligible to vote – including among workers at state elections and criminal justice agencies – as the lack of a centralized notification system makes it difficult to inform the formerly incarcerated about their voting rights. “There are lots of people who are off parole and are actually eligible to vote, but they haven’t been given the proper information by authorities,” says Erika

Wood, deputy director of the Brennan Center's Democracy Program.

In New York – as in all states except Maine and Vermont – no one who is incarcerated is permitted to vote. Afterward, a distinction is made between people sentenced to probation, who are eligible to vote, and those who have been released from prison but remain on parole, which makes them ineligible to vote. Yet a 2006 [survey](#) conducted by the Brennan Center for Justice of election boards across 65 counties in New York State found that a surprising number of them had the wrong answer about whether individuals on probation or parole were permitted to vote.

"People on probation don't lose the right to vote, but a third of election boards around the state answered that question 'no,'" says Wood. "That could have some real devastating consequences for people seeking information about the right to vote and are being told that they're not eligible."

Also problematic, criminal justice advocates charge, is the improper request for paperwork. The New York State Division of Parole issues documents – known as the Certificate of Relief from Disabilities or the Certificate of Good Conduct – to local parolees who serve out their sentences (and sometimes to people still on parole). The certificates help people obtain employment licenses for jobs they would otherwise be denied access to after being convicted of a crime. But civil liberties groups have found instances in which people who are either on probation, or who completed parole long before, are being improperly asked by local elections boards to provide copies of those state-issued certificates. "When you're convicted, you're no longer registered to vote even if you had been before you went to prison," explains Corinne Carey, an NYCLU attorney and voting rights campaign coordinator. "There's a little code that the state uses with your name to indicate that you were convicted of a crime, but there's no mechanism in place for removing this code at the Board of Elections."



Harrigan sits onstage during a soundcheck for "The Castle" -- named after the Fortune Society building and involving people who lived there.

At the Queens-based Fortune Society, which provides support to 3,500 people who are either formerly incarcerated or enrolled in its alternative-to-prison program, Glenn Martin, the agency's vice president of development and public affairs, says that he works with people every day who are uncertain about their voting rights. "The confusion lies with the fact that laws differ from state to state," he adds. "It's not just people who were in prison who are confused, but if you asked people on the street about it, a lot of them would assume that you lose your voting rights forever when you're incarcerated because of what happens in other states." Meanwhile, in Congress, legislation has been introduced by Michigan Rep. John Conyers and Wisconsin Sen. Russ Feingold, both Democrats, to allow people who are released from prison, period – regardless of parole or probation status – to vote in national elections.

There are no firm statistics on the number of New Yorkers who are not voting because they incorrectly assume that their felony convictions restrict them. But with 120,000 people on probation in New York, criminal justice advocates charge that local and state agencies have not been doing enough to reach them. "There's no communication between the local Board of Elections and the criminal justice system," notes Wood, from the Brennan Center. "We're essentially asking the two agencies to talk to each other and to equip people, like parole officers, who are working with this population most closely to have the right information."

Voter education

With no central voter-notification system in place for the formerly incarcerated, eyes are on legislation introduced last year by Assemblyman Keith Wright, a Harlem Democrat, and co-sponsored by state Senator Dale Volker, a Buffalo-area Republican, that is set to be reintroduced in January. It would require the state Board of Elections, along with the state departments of parole and corrections, to develop a fully-coordinated notification process. "It's got a lot of traction and would help to ensure that the information is regularly getting out to those who need it," says NYCLU's Carey. Other

advocates, however, are less optimistic. "It's an important step toward making sure that people who are eligible to vote can," says Martin. "But I have no confidence that this bill is going to be advanced while the state Senate is Republican-controlled."

For its part, the Board of Elections says it responds to questions but doesn't have the resources to do more. "We don't keep a database to know who was convicted of a crime and where they will live when they're back out," says spokesman Bob Brehm. "Given the economic downturn, it doesn't look like the government will have the resources to make blanket announcements about [voting rights]. There's a lot of rumors about the process that take on a life of their own, but whenever someone contacts us, we share the information."

And the New York State Department of Correctional Services contends that people who are incarcerated are told about their voting rights while they're enrolled in transitional programs that prepare them for life after prison. "We tell them that those rights are automatically restored upon the completion of their maximum sentence," says spokesman Erik Kriss. "This is a standard program in all of our facilities."

But some kind of breakdown in the system prevented Maria Perez, 39, from being allowed to vote in the last presidential election. Perez was released from prison in 2000 after serving more than two years on an assault charge. She was on parole for six more months. In 2004, Perez decided to register to vote. "I just happened to be shopping one day and someone gave me a form, so I filled it out," she recalled. But weeks later, she received a notice in the mail that indicated that she was not eligible to vote. "I just thought that I was being labeled a criminal and that I didn't count for anything," she said, and tried to forget about it, even though she first registered to vote at 19.

New roles

It was only last month when Perez learned that she was, in fact, eligible to vote. At the Strand bookstore in Union Square, where she has worked since 2000, her boss asked her, during a casual conversation, whether she was registered. "I felt comfortable enough to tell him that I didn't think that I had that right," she recalls. After being encouraged by her manager to contact the NYCLU, Perez did so and re-registered with the organization's assistance (a short film on her experience is available [here](#)). About three weeks later, Perez was approved. "For me and my three children, being able to vote means that I'm being a productive citizen," she says. In fact, one of the people who saw her video on YouTube was a friend whom Perez says had been incarcerated for 10 years. "He thought he couldn't vote, but he wasn't on parole," she adds. After Perez encouraged him to register, it wasn't long before she learned that he would also be voting in November. "He's looking forward to it. I'm just happy that I was able to inspire him," she says.

While felony disenfranchisement laws are rooted in centuries-old attitudes broadly considered outdated, those who support the rules dispute the notion that they're undemocratic. "Being a voter requires you to meet certain minimum, objective standards of loyalty, responsibility and trustworthiness," says the CEO of the think tank's Clegg, a former deputy assistant attorney general in the Reagan and George H.W. Bush administrations who also testified before Congress in support of the restrictions. "People who commit serious crimes don't meet those standards. The left is trying to overturn these laws because it's in their best interest to do so."

But it's an issue that Martin of the Fortune Society says goes well beyond politics. "Let's be honest, a lot of people coming out of prison are poor and have been disenfranchised in a lot of ways," he explains. "This isn't just about the right to vote and getting people with felonies out to vote. It's about making a connection between their vote and the roles they should be allowed to play in shaping their communities after paying their debt to society."

For Kenneth Harrigan, the restless wait to determine whether he'll be able to register in time to vote on Nov. 4 goes on. After his letter was published in the Times, Harrigan says that his parole officer resubmitted his paperwork to apply for an early release from parole. "A lot of people have been made aware of my case, so I know that I'll get through," he says. "But will it happen in time to vote? If not, I'll want to know why it took so long. But I will definitely be voting in the next one if I'm alive to see it."

In fact, Harrigan has been so fascinated by this year's presidential race that he's already made plans for Election Day. He applied, and was accepted, to work the polls at a yet-to-be-determined location as a door clerk. "One way or the other," he says, "I just have to be there."

- Curtis Stephen