

# THE OTHER ELECTION SCANDAL

MILLIONS OF FORMER PRISONERS HAVE LOST THE RIGHT TO VOTE FOREVER. IS THIS JUSTICE? BY SASHA ABRAMSKY

**I**N JULY, EIGHT MONTHS AFTER THE MOST CLOSELY fought presidential election in U.S. history, two surveys hit the headlines. The first, by the *New York Times*, found that George W. Bush's campaign team had encouraged the counting of irregular overseas ballots in Florida counties where the Republicans enjoy heavy support. The second, a joint study by the Massachusetts Institute of Technology and Cal Tech, found that the use of faulty and outdated voting technology had resulted in 4 million to 6 million votes not being properly counted nationwide in the race for the presidency. But neither report addressed what has

become arguably the worst violation of the democratic process: As many as 5 million free U.S. citizens are prohibited from casting votes by the laws of the states in which they live.

Florida and eleven other states have laws that bar residents who have been convicted of a felony from voting for the rest of their lives. And because the prison population has more than quadrupled in the past twenty years, this voting restriction once a relatively minor problem, is now having a major impact on electoral politics in the United States. In Florida, Mississippi, Alabama, Virginia, Kentucky, Iowa, Nevada and Wyoming, the bar applies to all felons. Tennessee and Washington disenfranchise people convicted prior to the mid-1980s. And Arizona and Maryland impose lifelong disenfranchisement on two-time felons. Many other states require waiting periods before ex-cons regain the right to vote. All but two states forbid prisoners from voting.

Of the 4 million to 5 million prisoners and former prisoners who are legally prevented from casting their votes, more than half are black or Latino. Many were convicted of felonies in their teens and twenties, and now,

out of prison, have become America's new subcitizens. In several states, including Florida and Alabama, roughly thirty percent of African-American men are permanently disenfranchised. In Florida alone, the state where the presidency was determined by a few hundred votes, experts believe that roughly half a million people were denied the right to vote last November as a result of the exclusion of ex-felons.

With a class-action lawsuit now in the Florida court system, and with many Florida Democrats pledging to make disenfranchisement an issue in the 2002 gubernatorial election, the right of ex-cons to vote is becoming a signature civil-rights theme. "For years," says Florida state legislator Chris Smith, who represents the Fort Lauderdale area, "it was just an African-American issue. Now, with the very close election, all of a sudden the Democrats are waking up and saying, 'Hey, this is an issue!'"

Had ex-felons in states such as Florida or Gore's home state of Tennessee, and those on probation or parole in

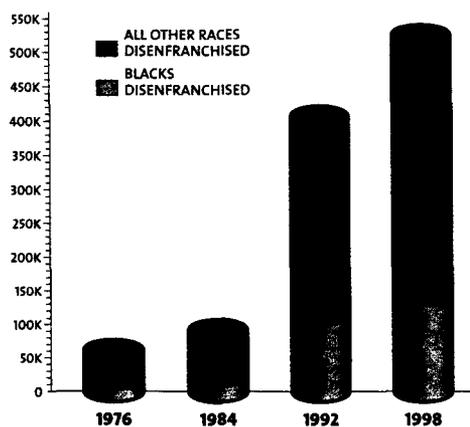
other parts of the country, been allowed to vote, not only would Democrats have retained the White House in November, but it is possible they would also now control the House of Representatives. Two congressional seats in Florida, one in Long Beach, California, a couple in Pennsylvania and one in Georgia all were won by Republicans with the tiniest of majorities, ranging from a couple of hundred to a couple of thousand votes.

It is likely that these seats would have been won by Democrats; established voting patterns suggest that an overwhelming majority of the disenfranchised would vote for Democrats. At the state level, it can also be assumed that had these barred voters

been allowed to participate in several crucial political contests during the past few years - such as the races for two seats on the Alabama Supreme Court - Democrats would have been victorious instead of Republicans.

Nobody knows exactly how many of the country's disenfranchised citizens might vote for Democrats, but it is conceivable that millions have been removed from the party's polls. In a country as closely divided politically as today's United States, that's the difference between power and second place. "Close elections are the norm in a two-party system," asserts University of Minnesota sociologist Christopher Uggen. "So when you're talking about disenfranchising two to three percent of the electorate, it makes a potentially big impact."

## FLORIDA BARS HALF A MILLION FROM VOTING



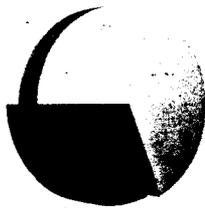
In Florida, the number of ex-felons has risen to a crisis level of more than 525,000 - from 61,000 in 1976 - because of new mandated sen-

tencing procedures. The number of convictions shows "racial amplification": Blacks are prosecuted out of proportion to their crime rate.

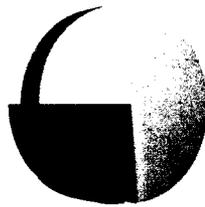
SOURCE: COMPLAINT, JOHNSON, ET AL. V. BUSH

**A** BBA'S PLACE IS A storefront church, with a bright-red-painted pulpit on wheels, in the Springfield section of Jacksonville, Florida. Here, Ernest Setzler, a self-described former "pimp, pusher, thief, liar robber," preaches to a congregation made up mostly of Jacksonville's homeless, addicted and desperate. Setzler, 49, is a large man with bulging biceps and a smile pocked by missing teeth and gold caps. A former heroin addict, he served nine years in prison for armed robbery.

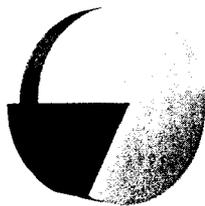
## THE VOTING BAN'S IMPACT ON BLACK MEN



Thirty-one percent of black men in Alabama and Florida are permanently barred from voting. This may have affected the makeup of the Alabama Supreme Court.



Iowa, Mississippi, New Mexico, Virginia and Wyoming ban twenty-six percent of black men from ever voting. In Virginia, more than 216,000 people are prohibited from voting.



About seventeen percent of black men in Minnesota, New Jersey, Rhode Island and Wisconsin can't vote due to a conviction; U.S. society does not consider these men full citizens.

SOURCE: THE SENTENCING PROJECT

Since his release in 1985, Setzler has set about the business of saving souls. He has also provided many other local services - operating a food bank, visiting prisons to sing gospel music and, more recently, rallying inner-city residents to vote. On November 7th 2000, Setzler drove twenty-five mostly elderly people from his congregation to local polling places. There was one catch: Setzler himself, as an ex-con, couldn't vote.

Now, as Democrats across the country wake up to the impact of disenfranchisement on the party's voting strength, many are making the argument that people such as Setzler, who have paid their dues to society and rehabilitated themselves as law-abiding citizens, should regain the right to vote. Last year, Delaware replaced its lifetime voting ban with a five-year post-prison waiting period. In March of this year, New Mexico's legislature passed a bill returning the vote to felons after their release from prison. Democracy Works, an advocacy center in Connecticut, successfully pushed through legislation allowing that approximately 36,000 residents who are on probation in that state to register to vote. In April, representatives in Maryland got a re-enfranchisement bill passed in the House and succeeded in getting the state Senate to appoint a task force to study the issue; a report is due at year's end. In June, Virginia's State Crime Commission also established a task force to study re-enfranchisement. And in Kentucky, legislators voted to make the restoration of voting rights easier by requiring the Department of Cor-

rections to help inmates fill out the requisite paperwork.

At a federal level, bills introduced to Congress by Rep. John Conyers (D-Mich.) and Sen. Harry Reid (D-Nev.) to permit ex-felons across the country to vote in federal elections failed to pass last spring, but will be reintroduced this year. In Florida, a package of electoral reforms that included eliminating police roadblocks near voting centers was successfully passed, but a

series of bills for the re-enfranchisement of ex-cons died in committee in May, because they were opposed by a Republican-dominated legislature.

"It's not a big issue to me in terms of rectifying the situation," says Florida House Speaker Tom Feeney, a Republican. "I wouldn't go out of my way to bump an education-reform bill or a growth-management or a cut-the-costs-of-prescription-drugs bill so we could hear automatic restoration of felons' voting rights. People in my district don't think that the problem we had was insufficient numbers of ex-felons qualified to vote."

Feeney goes on to express his reservations about the whole concept of universal suffrage. "At some point," he declares, "you have to ask yourself whether or not - with an electorate that is increasingly less likely to be literate - expanding the franchise to just everyone who has two arms and two legs is the best way to govern a democracy for the future. It's less important to me that I have the right to vote than that the people who do are upholding the integrity and legitimacy of the society and culture. The fact that an individual, because he has permanently lost the right to vote, for example, is not going to be able to go vote every two years - as long as the voters who do vote responsibly - it shouldn't affect his ability to enjoy the blessings of the First Amendment and the Twentieth Amendment and all his constitutional rights."

It is this inability to understand the psychological and political importance of being considered a full citizen that

has African-Americans, in particular, up in arms nationwide. "It's not fair," Setzler argues. "I should be afforded every opportunity everyone else is. I should have every right to choose who should lead me. A man can't pay for something forever."

"Punishment for a crime is supposed to be finite, except for the most heinous offenses," says Columbia University historian Eric Foner, who has written about the nation's disenfranchisement laws. "Permanently depriving someone of a fundamental right as a citizen after he or she has completed a sentence related to the specific punishment for a crime is simply unfair - I would like to see it challenged as a cruel and unusual punishment."

With the failure of legislative reform in Florida, attention has shifted to the courts and to the gubernatorial campaign. Local attorneys, in conjunction with New York's Brennan Center for Justice, are suing the state in a class-action lawsuit that argues that the racial breakdown of this disenfranchised pop-

## OF THE 4 MILLION TO 5 MILLION PEOPLE WHO ARE LEGALLY PREVENTED FROM CASTING THEIR VOTES, MORE THAN HALF ARE BLACK OR LATINO.

ulation violates the Fourteenth and Fifteenth amendments, as well as the 1965 Voting Rights Act. In late January, a judge refused the state's request to dismiss the case, and the trial is set to begin in early 2002. Should the plaintiffs

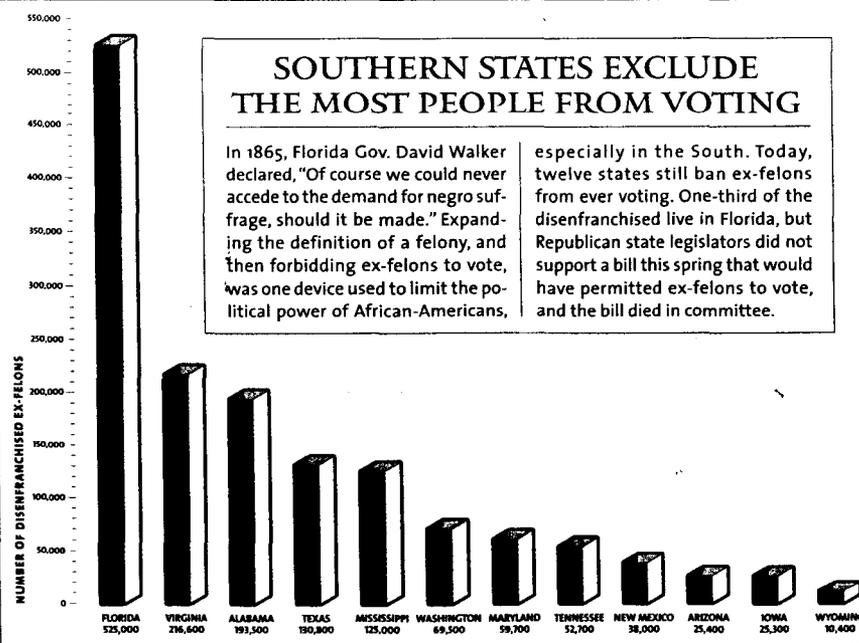
win, Florida's law will be struck down, possibly paving the way for the largest single expansion of the franchise since the enactment of the Voting Rights Act itself - and for a rash of similar lawsuits in other states. In March, lawyers for the American Civil Liberties Union launched a second legal salvo against Florida, alleging that the Department of Corrections isn't even doing the minimum necessary to inform soon-to-be-released prisoners about the clemency-appeal process that does exist for those seeking to have their rights restored.

Gov. Jeb Bush, who opposes the lawsuits, has countered by arguing that ex-felons can, at least in theory, regain their vote in

## SOUTHERN STATES EXCLUDE THE MOST PEOPLE FROM VOTING

In 1865, Florida Gov. David Walker declared, "Of course we could never accede to the demand for negro suffrage, should it be made." Expanding the definition of a felony, and then forbidding ex-felons to vote, was one device used to limit the political power of African-Americans,

especially in the South. Today, twelve states still ban ex-felons from ever voting. One-third of the disenfranchised live in Florida, but Republican state legislators did not support a bill this spring that would have permitted ex-felons to vote, and the bill died in committee.



SOURCES: THE SENTENCING PROJECT AND HUMAN RIGHTS WATCH

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