

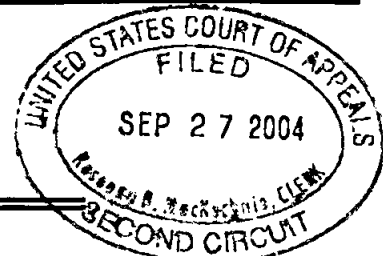
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To be argued by
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United States Court of Appeals
for the
Second Circuit



JOSEPH HAYDEN; LUMUMBA AKINWOLE-BANDELE; WILSON ANDINO; GINA ARIAS;
WANDA BEST-DEVEAUX; CARLOS BRISTOL; AUGUSTINE CARMONA; DAVID GALARZA;
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NILDA RIVERA; MARIO ROMERO; JESSICA SANCLEMENTE; PAUL SATTERFIELD; and
BARBARA SCOTT, on behalf of themselves and all individuals similarly situated,

Plaintiffs-Appellants,

- against -

GEORGE PATAKI, Governor of the State of New York, and CAROL BERMAN, Chairperson, New
York State Board of Elections,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFFS-APPELLANTS

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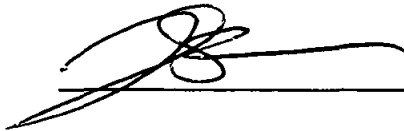
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the NAACP Legal Defense and Educational Fund, Inc., Community Service Society of New York, and the Center for Law and Social Justice at Medgar Evers College, by and through the undersigned counsel, make the following disclosures:

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PRELIMINARY STATEMENT

Plaintiffs-Appellants (hereinafter, "Plaintiffs") seek to challenge the New York State laws that deny the franchise to voting-age citizens incarcerated or on parole for a felony conviction on the grounds that such laws (1) were enacted with the intent to discriminate against African Americans, (2) have the present-day effect of disfranchising African Americans and Latinos on account of race at a rate vastly disproportionate to Whites, and (3) are applied unequally among persons convicted of a felony in New York State. Plaintiffs appeal from those portions of the final judgment and order of the United States District Court for the Southern District of New York (Hon. Lawrence M. McKenna, J.) dated and entered on June 14, 2004, dismissing Plaintiffs' claims for relief under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Fifteenth Amendment of the United States Constitution, and Section 2 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973, et seq. ("Voting Rights Act" or "VRA"). The premature dismissal of Plaintiffs' claims is directly contrary to controlling precedent of the Supreme Court and this Court concerning pleading requirements generally and the elements of equal protection claims in particular and, therefore, should be reversed.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Plaintiffs' claims for declaratory and injunctive relief arise under the Fourteenth and Fifteenth Amendments of the United States Constitution and under § 2 of the Voting Rights Act. Thus, the district court had subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. §§ 1973(f) and §1983. The final judgment and order dismissing Plaintiffs' claims was entered on June 14, 2004. On July 13, 2004, Plaintiffs filed their notice of appeal in the district court.

ISSUES PRESENTED FOR REVIEW

- I. Whether the district court improperly and against the weight of relevant case law heightened the pleading requirements for Plaintiffs' amended complaint in dismissing their claims under Federal Rule of Civil Procedure 12(c).
- II. Whether Plaintiffs' amended complaint, which alleges that New York's felon disfranchisement laws were originally enacted with the intent to exclude Blacks from the franchise, states a claim under the Equal Protection Clause of the Fourteenth Amendment and under the Fifteenth Amendment.
- III. Whether Plaintiffs' amended complaint, which alleges that, without adequate justification, New York law disfranchises only those persons with felony convictions who are incarcerated or on parole, but not persons receiving other

sentences for felony convictions, states a claim under the Equal Protection Clause of the Fourteenth Amendment.

IV. Whether the district court erred in applying a wholly deferential standard of rational basis review to Plaintiffs' equal protection claim against New York's non-uniform practices of disfranchising only those persons with felony convictions who are incarcerated or on parole and in finding a rational basis for such practices.

STATEMENT OF THE CASE

This case was originally filed pro se by plaintiff Joseph Hayden on November 9, 2000, in the Southern District of New York, alleging that New York Election Law § 5-106, which prohibited him from voting in New York solely because of his felony conviction and incarceration, violated his rights under the Voting Rights Act and under the U.S. Constitution. Defendant Carol Berman, Chairperson of the New York State Board of Elections ("Berman"), and Defendants George Pataki ("Pataki"), Governor of the State of New York, and Glenn Goord, Commissioner of New York State Department of Correctional Services ("Goord"), filed answers on January 5, 2001 and on February 28, 2001, respectively.

On January 15, 2003, Hayden, on parole, but, nonetheless disfranchised by operation of New York's felon disfranchisement laws, moved (by and through the undersigned attorneys) for leave to file an amended complaint for declaratory and

injunctive relief. Judge McKenna granted this motion on February 21, 2003. The amended complaint added new plaintiffs¹ and expanded the claims in this action against defendants Pataki and Berman in their official capacities.² The Amended Complaint includes detailed allegations in support of the Constitutional and Voting Rights Act claim of intentional discrimination in the original enactment of New York's felon disfranchisement laws, as well as claims under the First Amendment, the Due Process Clause of the Fourteenth Amendment, the Civil Rights Acts of 1957 and 1960, and customary international law. Defendants Berman and Pataki answered this amended pleading on April 8, 2003, and April 14, 2003, respectively.

On April 10, 2003, Judge McKenna denied Defendants' motion to stay discovery until this Court adjudicated Muntaqim v. Coombe, 366 F.3d 102 (2d Cir. 2004), pet. for cert. filed, 73 U.S.L.W. 3113 (U.S. July 21, 2004) (No. 04-175), a pro se case challenging New York's felon disfranchisement laws under the Voting

¹ The additional Plaintiffs may be grouped within three separate subclasses: a) Blacks and Latinos eligible to vote but for their incarceration for a felony conviction; b) Blacks and Latinos eligible to vote but for their parole for a felony conviction; c) Black and Latino voters who reside in specific communities in New York City and whose collective voting strength is unlawfully diluted because of New York's disfranchisement laws. Plaintiffs filed a motion to certify these subclasses on November 3, 2004, which the district court denied as moot in its June 14, 2004 judgment and order granting Defendants' Motion for Judgment on the Pleadings.

² Goord was not named as a defendant in the amended complaint and is no longer a party to this action.

Rights Act. Discovery by all parties commenced pursuant to a scheduling order issued by Magistrate Judge Henry Pitman on May 19, 2003. Defendants filed a motion for judgment on the pleadings in July 10, 2003 and Plaintiffs filed a brief in opposition in September 9, 2003.

All parties actively engaged in discovery through June 14, 2004, at which time Judge McKenna issued a final Memorandum and Order granting Defendants' Motion for Judgment on the Pleadings in its entirety. The district court held that Plaintiffs' Voting Rights Act claims must be dismissed in light of the ruling by a panel of this Court earlier this year in Muntaqim v. Coombe, which held that the VRA does not apply to felon disenfranchisement laws. The court below further held as a matter of law that Plaintiffs had not alleged facts sufficient to state claims against Defendants under the Fourteenth and Fifteenth Amendments. This appeal followed.

STATEMENT OF FACTS

A. New York's Felon Disfranchisement Laws

N.Y. Const. art. II, § 3 provides that "[t]he Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or any infamous crime."³ Id. New York Election Law § 5-106(2) provides:

³ The term "infamous crime" has come to mean felony under New York State law. (JA 00107 [FAC ¶ 49]).

No person who has been convicted of a felony pursuant to the laws of the state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole. The governor, however, may attach as a condition to any such pardon a provision that any such person shall not have the right of suffrage until it shall have been separately restored to him.

B. The Amended Complaint

In eighteen separate allegations in their amended complaint (Joint Appendix (“JA”) 00105-109 [First Amended Complaint (“FAC”) ¶¶ 39 – 57]), Plaintiffs outline over one-hundred years of constitutional history in New York and made allegations of specific acts of intentional discrimination to deny the franchise to Blacks.

The allegations of the amended complaint detail how the framers of the New York State Constitution in 1777 intentionally excluded Blacks from the polls by limiting suffrage to property holders and free men (JA 00106 [FAC ¶ 43]), requirements that disproportionately disfranchised Blacks. Id. Further, when in 1801 the legislature removed all property restrictions from the suffrage requirements for the election of delegates to New York’s first Constitutional

Convention, at the same time it expressly excluded Blacks from participating in this election. (JA 00106 [FAC ¶ 45]).

New York's felon disfranchisement provisions originated in this historical period, specifically at the Constitutional Convention of 1821 – a convention dominated by an express, racist purpose to deprive the vote from “men of color.” (JA 00107 [FAC ¶48]). Delegates clearly expressed their conviction that Black New Yorkers were unequipped and unfit to be part of the democratic process (JA 00106-107 [FAC ¶¶ 46-47]) and crafted new voting requirements that were aimed at stripping Blacks of their previously held, albeit severely restricted, right to vote. Id. Race-based suffrage requirements, such as heightened property requirements applicable only to Blacks, were written into Article II of the New York State Constitution. (JA 00107 [FAC ¶ 48]). The discriminatory effect of these measures was evident; only 298 out of 29,701 Blacks, or less than 1% of the Black population of the State, met these new requirements. Id. New citizenship requirements were also devised and applied in a racially discriminatory manner. Id.

The delegates to the 1821 Constitutional Convention also adopted a provision that permitted the legislature to exclude from the franchise those “who have been, or may be, convicted of infamous crimes.” (JA 00107 [FAC ¶ 49, quoting N.Y. Const. (1821), art. II, § 2]). In 1826, the State Constitution was

amended to expand White male suffrage without any alteration of either the onerous property requirements for Black males, or the felon disfranchisement provision. (JA 00107 [FAC ¶ 50]).

Delegates to New York's 1846 Constitutional Convention made explicit references to their belief that Blacks were unfit to vote. (JA 00107 [FAC ¶ 51]). They adopted a new Constitutional provision expanding the Legislature's authorization to deny the franchise to "all persons who have been or may be convicted of bribery, of larceny, or of any infamous crime." (JA 00107-108 [FAC ¶ 52, quoting N.Y. Const. art. II, § 2 (amended 1894)]). As in 1821, the delegates to the 1846 Constitutional Convention acted with knowledge that felon disfranchisement would disproportionately reduce the numbers of Black voters (JA 00108 [FAC ¶ 53]); one speaker, for example, noted that "the proportion of 'infamous crime' in the minority population was more than thirteen times that in the white population." (JA 00107 [FAC ¶ 51]). The delegates were, therefore, aware of the racially discriminatory impact of the felon disfranchisement law. (JA 00108 [FAC ¶ 53]).

In the aftermath of the Civil War and the advent of Reconstruction, another Constitutional Convention was convened in New York from 1866-67. At this Convention, again the issue of equal manhood suffrage for Blacks was considered

but rejected. (JA 00108 [FAC ¶ 54]). And the felon disfranchisement provision was not removed or altered. Id.

It took the power of the federal government finally to bring equal manhood suffrage to New York with the ratification of the Fifteenth Amendment in 1870. (JA 00108 [FAC ¶ 55]). But two years after the passage of the Fifteenth Amendment, an unprecedented committee convened to amend the New York State Constitution's disfranchisement provision to require the State Legislature, at its following session, to enact laws excluding persons convicted of infamous crimes from the franchise. (JA 00108 [FAC ¶ 56], see, N.Y. Const. art. II, § 2 (amended 1894)). Until that point, enactment of such laws had been permissive. (JA 00108 [FAC ¶ 56]). This new mandate for felon disfranchisement was reaffirmed at a Constitutional Convention in 1894. (JA 00108-109 [FAC ¶ 57]).

Plaintiffs' allegations in their amended complaint thus describe the genesis of present Article II, § 3 of the New York Constitution in the 1821 and 1846 Constitutional Conventions, reaffirmed and extended in 1872 and 1894, and which resulted in New York Election Law § 5-106 under which Blacks and Latinos incarcerated and on parole for felony convictions are presently disfranchised in New York State.

C. The Public Record

In addition to the allegations in the amended complaint, which by themselves suffice to state cognizable claims against defendants, the district court below had before it numerous references from the public record, the laws of New York, and historical scholarship that supported and elaborated upon the detailed allegations in the amended complaint that race, indeed, played a significant role in the adoption of New York's felon disfranchisement laws.⁴ These references included the following:

- 1) At the New York Constitutional Convention of 1821 the question of Black suffrage sparked heated debates during which delegates expressed their views that Blacks, as a "degraded" people, and by virtue of their natural inferiority, were unfit to participate in civil society. Nathaniel Carter, William Stone, & Marcus Gould, Reports of the Proceedings and Debates of the Convention of 1821,

⁴ Plaintiffs introduced these facts in opposition to Defendants' Motion for Judgment on the Pleadings in order to provide additional context for their legally sufficient allegations of intentional discrimination and to offer a sample of the evidence that exists to support such claims. Plaintiffs provided these references without the benefit of the full expert reports by the historians they retained, since, as noted above, Judge McKenna's decision was issued while the parties were in the throes of discovery. Moreover, while this showing is not necessary to withstand a motion for judgment on the pleadings, it provided the district court with ample information with which to measure the strength of plaintiffs' allegations.

at 198 (Albany: E. & E. Hosford, 1821) (hereafter “Debates of 1821”).

- 2) One delegate to the 1821 convention instructed his colleagues to “[l]ook to your jails and penitentiaries. By whom are they filled? By the very race, whom it is now proposed to cloth with power of deciding upon your political rights.” Id. at 191.
- 3) Another delegate to the 1821 convention urged the other delegates to “[s]urvey your prisons – your alms houses – your bridewells and your penitentiaries and what a darkening host meets your eye! More than one-third of the convicts and felons which those walls enclose, are of your sable population.” Id. at 199.
- 4) As is made manifest by their own language, the delegates not only understood that enacting the felon disfranchisement provision would result in the disproportionate disfranchisement of Blacks, but actively sought to preserve the franchise for Whites only: “[A]ll who are not white ought to be excluded from political rights.” Id. at 183.
- 5) As articulated by one delegate to the 1821 Constitutional Convention, the new property qualification “was an attempt to do a thing indirectly which we appeared to either be ashamed of doing,

or for some reason chose not to do directly This freehold qualification is [for Blacks] a practical exclusion [from the franchise].” New York State Constitutional Convention Committee, Problems Relating to Home Rule and Local Government, at 143 n.13 (Albany, NY: J.B. Lyon Co., 1938).

- 6) Heightening the requirements for Black voters previously outlined in the New York State Constitution of 1777, delegates to the New York Constitutional Convention of 1821 required that Black males be citizens of New York for three years while Whites were only required to be “inhabitants” for one year. N.Y. Const. (1821), art. II, § 1 (repealed 1870).
- 7) Moreover, as an additional barrier to voting, in 1821 it was decided that Blacks were required to possess a freehold estate worth \$250 for the year preceding any election. Id.
- 8) In the 1846 Constitutional Convention, the delegates continued to advocate for the denial of equal suffrage to Blacks including one delegate’s assertion that: “[Blacks] were an inferior race to whites, and would always remain so.” Constitutional Convention of 1846, Debates of 1846, at 1033 (hereafter “Debates of 1846”).

- 9) The understanding by the delegates that Blacks were thirteen times more likely to commit “infamous crimes” than Whites, set out in ¶ 51 (JA 00107) of the amended complaint, was substantiated by a citation to the record of those debates, Debates of 1846, at 1033.
- 10) Moreover, the delegates were well aware of and sought the same the success of other slaveholding states in excluding Blacks from the ballot. As one delegate suggested to the convention, “in nearly all the western and southern states . . . the [B]lacks are excluded . . . would it not be well to listen to the decisive weight of precedents furnished in this case also?” Id. at 181.
- 11) In the 1866-67 Constitutional Convention, instead of abolishing the suffrage distinction for Blacks, the delegates favored a separate submission to the voters on the issue of equal Black suffrage. “[I]t must be done by the direct and explicit vote of the electors. We are foreclosed from any other course by the repeated action of the State.” Documents of the Convention of the State of New York, 1867-68, No. 16, 3, Vol. One (Albany: Weed, Pearsons & Co. 1868) (hereafter “1867-68 Documents”).
- 12) Previous separate submissions to the voters on equal Black suffrage had proven that it was an unsuccessful way to abolish the legacy of

the 1821 Convention. For instance, an 1846 referendum to extend the franchise to Blacks failed by a vote of 85,306 to 223,884. In 1850, the reintroduced referendum failed by a vote of 197,503 to 337,984. Documents, No. 16, 3, Vol. One.

- 13) During Reconstruction, additional measures were taken that would reveal the racial motivation of the state actors with regard to voting; for example, after initially ratifying the Fifteenth Amendment, New York withdrew its ratification. Cong. Globe, 41st Cong., 2d Sess., at 1447-81.

In short, the sampling of historical references that Plaintiffs highlighted to the district court, even in the absence of full expert discovery, demonstrated to the court that Plaintiffs could proffer evidence to bolster the specific allegations in their amended complaint. The district court's premature dismissal of Plaintiffs' claims, however, foreclosed further development of the case.

D. The District Court's Opinion Regarding the Claims on Appeal

In evaluating Plaintiffs' claims for intentional discrimination, the district court stated that Plaintiffs could withstand judgment on the pleadings "only if [they] sufficiently allege[d] that New York's decision to disenfranchise incarcerated and paroled felons was motivated by discriminatory intent." (JA

00018 [00 Civ. 8586 Mem. & Order, at 7]). The court then referred to plaintiffs' allegations in support of this claim and held that they do not "necessarily mean New York Constitution Article II, § 3 and § 5-106(2) or their predecessors were . . . enacted with [discriminatory] intent." (JA 00019 [00 Civ. 8586 Mem. & Order, at 8]). The court further held that "[t]he majority of allegations" in support of the intentional discrimination claim are "entirely conclusory in nature," stating that only one of plaintiffs' factual allegations "could possibly support a finding of discriminatory intent." (JA 00019 [00 Civ. 8586 Mem. & Order, at 8]). The district court then determined that "this one allegation is simply an insufficient basis, even under the liberal standards of a 12(c) motion, from which to draw the inference that these provisions or their predecessor were enacted with discriminatory intent." (JA 00020 [00 Civ. 8586 Mem & Order, at 9]).

With respect to plaintiffs' claim that New York's non-uniform practices violate equal protection guarantees, the district court did not explicitly challenge the sufficiency of plaintiffs' pleadings concerning this claim. Rather, the district court applied a wholly deferential standard of rational basis review and asserted, sua sponte, a justification for New York's non-uniform felon disenfranchisement laws. (JA 00020-23 [00 Civ. 8586 Mem. & Order, at 9-12]). For these reasons, the district court dismissed Plaintiffs' well-pleaded claims for intentional

discrimination and non-uniform application of New York's felon disfranchisement laws.

SUMMARY OF THE ARGUMENT

Plaintiffs alleged specific facts regarding the history of official discrimination against racial and ethnic minorities in New York State, including facts from which to infer intentional discrimination in the enactment of New York's felon disfranchisement provisions. Moreover, Plaintiffs specifically alleged facts concerning the unequal application of New York Election Law § 5-106(2) that set forth a violation of the Equal Protection Clause of the Fourteenth Amendment because, Plaintiffs alleged, there is neither a compelling state interest nor a rational basis for the distinction in the law or the resulting disparity. Because these allegations easily satisfy the liberal pleading requirements under Rules 12(c) and 8(a), the district court's dismissal of Plaintiffs' Fourteenth and Fifteenth Amendment claims should be reversed. Moreover, the district court's dismissal of Plaintiffs' VRA claims should be vacated pending disposition of the Petition for Certiorari filed seeking review of this Court's ruling in Muntaqim v. Coombe.

STANDARD OF REVIEW

An appellate court reviews the district court's ruling on a Rule 12(c) motion for judgment on the pleadings de novo. Vargas v. City of New York, 377 F.3d 200, 205 (2d Cir. 2004).

ARGUMENT

I. The District Court Substantially Misapplied the Standard for Dismissal Under Rule 12(c)

The district court substantially misapplied — and indeed heightened — the pleading requirements under Federal Rule of Civil Procedure 12(c) in deciding the Defendants’ motion for judgment on the pleadings. Despite recognizing that Rule 12(c) requires it to “accept[] the allegations contained in the complaint as true and draw[] all reasonable inferences in favor of the [Plaintiffs],” (JA 00015-00016 [Hayden v. Pataki, No. 00 Civ. 8586, 2004 WL 1335921, at *4-5 (S.D.N.Y. June 14, 2004), (quoting Ziemba v. Wezner, 366 F.3d 161, 163 (2d Cir. 2004))]), the district court conducted a cursory analysis of Plaintiffs’ legally cognizable claims and, without regard to relevant and controlling case law, granted Defendants’ motion. Moreover, the district court incorrectly held that plaintiffs’ amply-pleaded complaint stated mere legal conclusions and did not set forth sufficient factual allegations. Id.⁵

⁵ The district court incorrectly relied on the inapposite case of De Jesus v. Sears, Roebuck & Co., 87 F.3d 65 (2d Cir. 1995), which held that conclusory allegations unsupported by factual assertions are insufficient to satisfy 12(b)(6), to support its improper dismissal of the plaintiffs’ complaint. In that case, however, this Court upheld the dismissal of the plaintiffs’ complaint against a parent company for the alleged fraudulent activity of its subsidiary because plaintiffs’ pleadings did not allege “*any* specific facts or circumstances . . . from which it may be inferred” that the parent company or its employees exercised actual domination over the subsidiary. Id. at 70 (emphasis in original). The facts of the instant case are clearly distinguishable from De Jesus, as the Plaintiffs’ amended complaint

Here, Plaintiffs' allegations, far from merely stating general legal conclusions, are well supported by factual assertions that sufficiently satisfy the Rule 12(b)(6) (and, therefore, Rule 12(c)) standard. See Patel v. Contemporary Classics of Beverly Hills, 259 F.3d 123, 126 (2d Cir. 2001) (citing Irish Lesbian & Gay Org. v. Giuliani, 143 F.3d 638, 644 (2d Cir. 1998)). Specifically, Plaintiffs' amended complaint asserts that New York's extensive history of intentional racial discrimination against Blacks in voting dates back to its Constitution in 1777 and spans more than a century. During this time, delegates to Constitutional Conventions and legislators purposefully erected barriers, including requiring the Legislature to enact a felon disqualification statute, that were intended to, and have had the effect of, disfranchising Blacks and other racial minorities. Plaintiffs also allege that without any adequate justification, New York disfranchises only those persons with felony convictions who are incarcerated or on parole, but not those persons convicted of felonies but given probation, a suspended or commuted sentence, or other form of conditional or unconditional discharge.⁶ These facts,

specifically alleges facts and circumstances from which it can be inferred, without much effort, that New York's felon disfranchisement laws were enacted with intent to disqualify Blacks from voting.

⁶For ease of reference in the balance of this Brief we generally refer to such alternate forms of sentence or disposition upon conviction of a felony as "probation."

taken as true, sufficiently state the basis for this Court to reverse the district court's ruling and remand this case for trial.

A. The District Court's Premature Dismissal of Plaintiffs' Amended Complaint is Contrary to the Law of this Circuit and Supreme Court Precedent

While its uncertain which standard of review the district court may have applied to Plaintiffs' claims, it is clear that the district court failed to follow the current precedent of the Supreme Court and this Circuit on pleading requirements. The standard for evaluating Defendants' motion for judgment on the pleadings under Rule 12(c) is identical to that of a 12(b)(6) motion for failure to state a claim. See Patel, 259 F.3d at 123. Thus, in deciding a Rule 12(c) motion, a court must accept the allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. DeMuria v. Hawkes, 328 F.3d 704, 706 (2d Cir. 2003) (citing Scutti Enters., LLC v. Park Place Entm't Corp., 322 F.3d 211, 214 (2d Cir. 2003)); see also Williams v. Apfel, 204 F.3d 48,49 (2d Cir. 1999)).

In applying this liberal pleading standard, "[t]he court may not dismiss a complaint unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief." DeMuria, 328 F.3d at 706. In addition, in considering a Rule 12(c) motion, the court's function "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in

support thereof.” Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984); Giesler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980). In assessing the sufficiency of a pleading under Rule 12(c), “[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” DeMuria, 328 F.3d at 706.

This Court requires that this already demanding standard for prevailing on a Rule 12(c) motion be applied with “particular strictness when the plaintiff complains of a civil rights violation.” Irish Lesbian & Gay Org., 143 F.3d at 644; see also Shechter v. Comptroller of New York, 79 F.3d 265, 270 (2d Cir. 1996); (Dwyer v. Regan, 777 F.2d 825, 829 (2d Cir. 1985), modified on other grounds, 793 F.2d 457 (2d Cir. 1986)(same)).

In addition to the foregoing, courts must be mindful of the relatively low standard and relaxed rules of pleading, which require a plaintiff to provide only a “short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), that “[a]ll pleadings shall be so constructed as to do substantial justice.” Fed. R. Civ. P. 8(f). Consistent with the spirit of Rule 8, this Court has made clear that the Rule does not even require that a plaintiff plead all relevant facts. Dioguardi v. Durning, 139 F.2d 774, 775 (2d Cir. 1944) (finding that although plaintiff could not demonstrate precisely how medical tonics were improperly disposed of, it was sufficient to plead that an impropriety had been

committed). Indeed, presentation of voluminous and/or specific evidence during the pleading, rather than at the discovery phase, is not only unnecessary, but also undesirable. See Nagler v. Admiral Corp., 248 F.2d 319, 326 (2d Cir. 1957).

In Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (2002), the Supreme Court unanimously rejected a heightened pleading standard upon the plaintiff. In Swierkiewicz, a panel of this Court had affirmed the dismissal of the plaintiff's lawsuit against his former employer on the grounds that his complaint did not adequately allege facts constituting a prima facie case of racial discrimination under the McDonnell Douglas⁷ standard. See 534 U.S. at 509-510. In reversing the panel's decision, the Supreme Court noted that a heightened pleading standard in employment discrimination cases is inappropriate because "the prima facie case under McDonnell Douglas . . . is an evidentiary standard, not a pleading requirement." Id. at 510.

The Supreme Court also held that a heightened pleading requirement conflicted with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Id. at 512. Such a statement, the Supreme Court reasoned, must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (quoting Conley v. Gibson, 355 U.S.

⁷ McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

41, 47 (1957)). Under this simplified pleading standard, “[a] court may dismiss a complaint [under Rule 12] only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Id. at 514.

Relying on the Supreme Court’s ruling in Swierkiewicz, this Court in Phillip v. University of Rochester, 316 F.3d 291, 298-99 (2d Cir. 2003), announced that it would apply the lowered pleading standard set forth in Swierkiewicz. Indeed, even before the Supreme Court’s ruling in Swierkiewicz, this Court had recognized that “[w]hile clarity and precision are desirable in any pleading, the Federal Rules of Civil Procedure (F.R.C.P.) require little more than an indication of the type of litigation that is involved. A *generalized summary* of the claims and defenses, sufficient to afford fair notice to the parties is enough.” Friedlander v. Cimino, 520 F.2d 318, 319 (2d Cir. 1975) (citing Conley, 355 U.S. at 41, 47) (emphasis added). Accordingly, this Court has acknowledged that dismissal on the pleadings is reserved only for the cases in which “the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988).

The district court appears to have dismissed Plaintiffs’ amended complaint for both failure to meet Rule 8(a)’s pleading requirements, and for failing to set forth sufficient facts to state a legal claim. However, as set forth above, on either

ground, it is clear that the district court did not apply the appropriate standard of review and its ruling should therefore be reversed.

II. Plaintiffs Met the Pleading Requirements of Rule 8(a) by Alleging Facts that Put Defendants on Notice of Their Claims, and of Rule 12(c) by Setting Forth Sufficient Facts to State Legally Cognizable Causes of Action

Notwithstanding the district court's application of a heightened pleading standard in the instant case, Plaintiffs' amended complaint contains clear and sufficient allegations of intentional discrimination and violations of equal protection to withstand a dismissal at this stage of litigation. Far from asserting conclusory allegations, the complaint is well supported by factual averments that satisfy the Rule 12(c) standard. Plaintiffs' amended complaint also clearly gave Defendants fair notice of the basis for the claims and the grounds upon which the claims rested and stated claims upon which relief could be granted.

As noted above, the principal goal of Rule 8(a), particularly the "short and plain statement" requirement, is to guarantee that adverse parties receive notice of legal actions to which they must respond. Salahuddin v. Cuomo, 861 F.2d at 42 (holding that a "statement should be plain because the principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted so as to enable him to answer and prepare for trial.") (citing Geisler v. Petrocelli, 616 F.2d at 640.. Plaintiffs' amended complaint more than adequately puts Defendants on notice that they are challenging the racial animus

behind the original enactment of felon disfranchisement laws in New York, as well the equal protection violations inherent in a scheme that distinguishes among individuals with felony convictions, denying the right to vote to those sentenced to incarceration or serving parole, but not to those sentenced to probation. Likewise, Plaintiffs set forth sufficient allegations to support a cognizable cause of action, as required to survive a Rule 12(c) motion, and thus are “entitled to offer evidence to support [their] claims.” DeMuria v. Hawkes, 328 F.3d at 706. The district court erred in not allowing Plaintiffs to proceed to that stage.

Plaintiff’s amended complaint contains numerous, specific allegations that would support a complete review of the “circumstantial and direct evidence of intent as may be available,” Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977), regarding the role of race in the enactment of felon disfranchisement laws in New York. As detailed, *infra*, the complaint contains allegations that the framers of New York law in the 18th and 19th centuries, both the Legislature and the delegates to the various New York State Constitution Conventions intended to, and did, discriminate against persons of color with respect to the franchise and made “explicit statements of [their] intent” to that effect. (JA 00106 [FAC ¶ 41]). The amended complaint sets forth the unmistakable, *de jure* limitations on the ability of Black New Yorkers to vote, (JA

00106 [FAC ¶¶ 43-45]), that provided an historical context for the actions taken at the 1821 New York Constitutional Convention.

Additionally, the amended complaint sufficiently alleges that these actions had the discriminatory effect that the delegates had hoped for. For example, the delegates remarked explicitly that Blacks were thirteen times more likely than whites to be convicted of “infamous crime[s].” (JA 00107 [FAC ¶51]). Likewise, Plaintiffs included allegations regarding the equal protection violations that occur when the State discriminates among similarly situated individuals, denying the right to vote to some individuals convicted of a felony conviction but not others, and the racially disparate disfranchisement that results from this unequal application of law. (JA 0012 [FAC ¶¶ 77-79]).

Accordingly, Plaintiffs’ amended complaint represents the very “short and plain statement” contemplated by Rule 8(a), that would put any reader on notice that the role of race in the initial adoption of felon disfranchisement laws in New York is at the core of this case. Plaintiffs have also alleged sufficient facts setting forth a cognizable claim of intentional discrimination which, under the standard for assessing a Rule 12(c) Motion, allows them to proceed to discovery on these claims. Finally, Plaintiffs have alleged sufficient facts to put Defendants on notice of their race-neutral Equal Protection claim and to proceed to discovery on these claims.

A. Intentional Discrimination Claim

The amended complaint sufficiently alleges that New York's felon disfranchisement laws were enacted with the intent to discriminate against "persons incarcerated and on parole for a felony conviction . . . on account of their race" in violation of the Equal Protection Clause of the Fourteenth and the Fifteenth Amendment. (JA 00113 [FAC ¶¶ 85-86]). In dismissing Plaintiffs' intentional discrimination claim, the district court held that they did not allege any facts to support a finding of intentional discrimination and referred to a subset of the Plaintiffs' allegations, which it said, even if true, could not support a finding of intentional discrimination. This conclusion is patently in error, not only because it misstates the burden of pleading, but also because it fails to take into account the breadth of allegations in the amended complaint.

1. Elements of an Intentional Discrimination Claim.

Although Plaintiffs are not required to state each element of an intentional discrimination claim in order to survive a motion to dismiss or for judgment on the pleadings, it is useful nonetheless to understand the scope of such a claim in order to appreciate the extent to which Plaintiffs' claim of intentional discrimination easily satisfies the requirements of Rule 8(a) and 12(c). In Richardson v. Ramirez, 418 U.S. 24 (1974), the Supreme Court held that § 2 of the Fourteenth Amendment allows states to exclude from the franchise convicted felons, notwithstanding § 1's

requirement that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

Richardson did not, however, close the door on all Constitutional challenges to felon disfranchisement provisions; indeed it did not even close the door on Equal Protection challenges. Nearly a decade after deciding Richardson, the Court in Hunter v. Underwood, 471 U.S. 222 (1985), found that Alabama had enacted its felon disfranchisement provision with discriminatory intent, and therefore in violation of the Equal Protection Clause, on grounds that § 2’s authorization of state disfranchisement laws did not permit purposeful discrimination. Hunter, 471 U.S. at 233. Hunter, therefore, stands for the proposition that racially motivated disfranchisement statutes violate the Equal Protection Clause even if Richardson otherwise sanctions such laws (not adopted with discriminatory intent) under the Fourteenth Amendment. Id. at 232-33.

Facially neutral state laws that have a racially disparate impact, like New York’s felon disfranchisement laws, are subject to the test outlined in Arlington Heights in order to determine whether such laws violate the Equal Protection Clause of the Fourteenth Amendment. See Hunter, 471 U.S. at 228. In Arlington Heights, the Supreme Court held that although “[d]isproportionate impact is not irrelevant,” proof of “racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” 429 U.S. at 264-265 (quoting

Washington v. Davis, 426 U.S. 229, 242 (1976)). Indeed, determining whether invidious discriminatory purpose was a motivating factor behind an official action “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” Arlington Heights, 429 U.S. at 266. Accordingly, as evidence of intent courts may consider, among other things, whether the impact of an action bears more heavily on one race than another, the historical background of an official decision, and the legislative or administrative history of an official action, particularly where there are statements by members of the decision-making body. See id. at 266-67.

2. The District Court Incorrectly Applied the Pleading Standard and Mischaracterized the Allegations in the Amended Complaint.

The district court provided a handful of cursory and conclusory reasons for dismissing Plaintiffs’ intentional discrimination claim, which are addressed in turn.

First, the district court took in isolation certain allegations concerning New York State’s history of discrimination in voting, stating that “just because some laws were enacted in the early to mid-1800s with the intent to discriminate against blacks and other minorities does not necessarily mean that New York Constitution Article II, § 3 and § 5-106(2) or their predecessors were similarly enacted with such intent.” (JA 00019 [00 Civ. 8586 (Mem. & Order, at 8)]). The district court’s

reasoning in this instance is a clear example of its misapplication of the pleading standard.

To substantiate the allegations in the amended complaint that an invidious racial purpose was a motivating factor in the enactment of New York's felon voting restrictions, Plaintiffs utilized the available historical background and legislative history of the restrictions, (JA 00105-109 [FAC ¶¶ 39-60]), and their disproportionate impact on Blacks and Latinos. (JA 00109-00111 [FAC ¶¶ 61-71]). However, the district court failed to read Plaintiffs' allegations in the light most favorable to them, as is indicated by the court's determination that such history "does not necessarily" signify the state's intent to discriminate through its felon disfranchisement laws. This is plainly the wrong standard. The question is not whether past racial discrimination in voting "necessarily" means that New York's felon disfranchisement laws were enacted with the intent to discriminate. Rather, the question is whether such allegations, which include facts concerning the enactment of the felon disfranchisement statute specifically, *could* support such a finding or entitle Plaintiffs to "offer evidence in support" of a finding that they were enacted for that purpose. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 511 (2002) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984)); see also DeMuria v. Hawkes, 328 F.3d at 706. The answer in this case is in the affirmative.

Arlington Heights holds that proof of intent to discriminate can be derived from a contextual analysis of a variety of factors that collectively support an inference of racial animus. 429 U.S. at 266 (finding that “whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”). This analysis would include examining allegations such as Plaintiffs’ assertions that African Americans were routinely intentionally denied suffrage on an equal basis as Whites, (JA 00105-107 [FAC ¶¶ 39-50]), openly regarded and referred to as being unfit for suffrage, (JA 00106-107 [FAC¶¶ 46, 51]), and described as being 13 times as likely as Whites to commit infamous crimes, (JA 00107 [FAC ¶51]) and that, “two years after the passage of the Fifteenth Amendment, an unprecedented committee convened and amended the disfranchisement provision of the New York Constitution to require the state legislature, at its following session, to enact laws excluding person convicted of infamous crimes from the right to vote Theretofore, the enactment of such laws was permissive.” (JA 00108 [FAC ¶ 56]).

Plaintiffs further alleged that the present-day impact of New York’s felon disfranchisement laws has the intended effect of denying the franchise to Blacks and Latinos in numbers vastly disproportionate to Whites. Specifically, Plaintiffs alleged that Blacks and Latinos are sentenced to incarceration at substantially

higher rates than Whites, and Whites are sentenced to probation at substantially higher rates than Blacks and Latinos. (JA 00110 [FAC ¶ 66]). Collectively, Blacks and Latinos make up 86% of the total current prison population and 82% of the total current parolee population in New York State, while they approximate only 31% of New York's overall population. (JA 00110 [FAC ¶ 64]). As a result, nearly 52% of those currently denied the right to vote pursuant to New York State Election Law § 5-106(2) are Black and nearly 35% are Latino. Id. at ¶ 68. Collectively, Blacks and Latinos comprise nearly 87% of those currently denied the right to vote pursuant to New York State Election Law § 5-106(2). Id.

Arlington Heights requires an evaluation of these factors as a whole, in order to appreciate the full context of the origin and effect of the laws in question, and not in isolation as the district court did here. (JA 00019-20 [Mem. & Order 00 Civ 8586, at 8-9]). The district court specifically addressed only "this one allegation" of Plaintiffs, that Blacks are 13 times more likely to commit a crime than Whites, and found it insufficient to state a claim for intentional discrimination. Id.

When read together in the light most favorable to the Plaintiffs, the allegations in the amended complaint tell a persuasive story of a pattern of historical intentional discrimination in voting, including repeated explicit statements about Blacks' fitness for suffrage, their perceived criminality, and the codification of mandatory disfranchisement during an unprecedented special

session at a time when overt denial of the franchise to African Americans was newly outlawed by the Fifteenth Amendment. These allegations are more than sufficient to notify Defendants of the claims lodged against them and are not meant or required to be exhaustive of all knowledge or evidence in Plaintiffs' possession.

Finally, the district court attempted to compare the allegations in the amended complaint to the evidence presented in Hunter after the plaintiffs in that litigation had the benefit of discovery and a trial on the merits. Even in making this inappropriate comparison for purposes of a 12(c) motion, the district court failed to recognize the actual similarities in the facts alleged in the instant case and those proven in Hunter. The district court notes that in Hunter:

[T]he plaintiffs in Hunter provided strong factual support showing a long history of racial discrimination including actual testimony of specific discriminatory statements made during the 1901 Constitutional Convention where a "zeal for white supremacy ran rampant." Here, plaintiffs have not alleged any such facts with respect to the enactment of New York Constitution Article II, § 4 and § 5-106(2) or their predecessors.

(JA 00020 [Mem. & Order 008586, at 9 n.3]) (citations omitted).

On the contrary, Plaintiffs' amended complaint asserts throughout that New York's extensive history of intentional racial discrimination in voting dates as far back as New York's Constitution in 1777 and spans more than 100 years, during which time delegates to Constitutional Conventions and legislators purposefully erected barriers intended to prevent Blacks from voting, (culminating in the

required enactment of a felon disqualification statute), that were intended to, and have had the effect of, disproportionately disfranchising Blacks and other racial minorities. (JA 00106-108 [FAC ¶¶ 41-42, 43-46, 51-52, 57]). These allegations, taken as true, sufficiently state the basis for this Court to find a violation of the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment.

The allegations contained in the amended complaint are, in fact, more detailed and specific than those contained in the complaint in Hunter. In Hunter, the Supreme Court relied on a number of historical factors presented to the District Court as evidence of Alabama's discriminatory intent, including the racial composition of members of the convention that enacted the bill, comments made by the President of the convention, historical studies noting that the Alabama convention was part of a movement to disfranchise Blacks, evidence that the crimes selected for inclusion in the provision were more commonly committed by Blacks, and witness testimony that the provision had an immediate and predictable disparate impact on Black voters. Hunter, 471 U.S. at 224-30. Although these factors were enumerated as evidence of discriminatory intent by both the Supreme Court in Hunter and the 11th Circuit, Underwood v. Hunter, 730 F.2d 614 (11th Cir. 1984), *aff'd* 471 U.S. 222 (1985), none of these factors was mentioned in the

original complaint filed by plaintiffs in the case. See Compl., Underwood v. Hunter, No. CA-78-Mo704S (N.D. Ala., filed June 21, 1978).⁸

By contrast, the amended complaint in this case reveals a historical pattern of discrimination by New York intended to disfranchise Black voters. (JA 00105-108 [FAC ¶¶ 39-57]). The historical development of New York's felon disfranchisement laws in the amended complaint is not embodied in merely one comment made at one convention, but rather is a culmination of specific efforts aimed at disfranchising Blacks that spanned the course of more than 100 years. (JA 00106-108 [FAC ¶¶ 43, 45-46, 51-52, 57]). As a result, Plaintiffs' amended complaint clearly alleges Equal Protection and Fifteenth Amendment claims consistent with the Supreme Court's holding in Hunter. Finally, the issue is not whether Plaintiffs will ultimately prevail, but whether Plaintiffs are entitled to offer evidence to support the claims in the amended complaint. See Swierkiewicz, 534 U.S. at 511. Thus, Plaintiffs are not required to produce evidence, direct or otherwise, or necessarily allege facts identical to those in Hunter as the district court suggests. Rather, Plaintiffs are required to, and indeed do, sufficiently allege

⁸ It is important to note here, however, that this is evidence that must be developed through discovery, including expert testimony, and was not required to be proven or alleged in exhaustive detail by plaintiffs at the stage of the litigation in which the complaint was dismissed. Plaintiffs-appellants should be afforded an opportunity to develop their case as plaintiffs were in Hunter. (JA 00033-35).

that New York practiced unlawful discrimination in violation of the Fourteenth and Fifteenth Amendments and the Supreme Court's rulings in Arlington Heights and Hunter.⁹

B. Applying Rational Basis Review in a Wholly Deferential Manner, the District Court Dismissed Plaintiffs' Claim that New York State's Non-Uniform Felon Disfranchisement Scheme Violates Equal Protection Guarantees Prior to Affording Plaintiffs the Opportunity to Develop and Present Evidence Regarding Defendants' Justifications for the Law.

In addition to an intentional race discrimination claim, Plaintiffs assert that §5-106(2)'s felon disfranchisement scheme violates equal protection guarantees because it distinguishes among felons, denying the right to vote only to those felons sentenced to incarceration or serving parole, and not to those sentenced to probation. The district court erred in dismissing these claims at the pleading stage, without subjecting the distinction to strict scrutiny review, and without providing Plaintiffs an opportunity to prove that no rational basis is served by the felon disfranchisement scheme.

⁹ As noted above, although Rule 12(c) does not require plaintiffs at this stage of the litigation to provide an exhaustive history of New York's intentional discrimination against Blacks, and the allegations contained in the amended complaint sufficiently state the basis for this Court to find a violation of the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment, plaintiffs here provide additional historical information to highlight the context in which New York's felon disfranchisement laws were enacted.

As a threshold matter, Plaintiffs meet Rule 8(a)'s pleading standard for alleging an equal protection claim. Plaintiffs allege that, as a result of New York's felon disfranchisement scheme, persons who are convicted of "bribery or of any infamous crime" and are sentenced to incarceration and/or parole are not permitted to vote, whereas their counterparts who have been pardoned, received a suspended or commuted sentence or been sentenced to probation or conditional or unconditional discharge are permitted to vote. (JA 00109 [FAC ¶ 58-59]). In addition to allegations regarding the racial animus underlying the felon disfranchisement scheme, (JA 00105-108 [FAC ¶¶ 38-56]), Plaintiffs' amended complaint contains allegations that this distinction described above has a racially disproportionate impact on Blacks and Latinos, who are prosecuted, convicted and sentenced to incarceration at rates vastly disproportionate to Whites. (JA 00109-110 [FAC ¶¶ 60-67]). Thus, Plaintiffs sufficiently state an equal protection claim. See DeMuria, 328 F.3d at 707 (finding that allegations of impermissible motive and animus is sufficient to allow plaintiffs to proceed with equal protection claim "at this earliest stage of the proceedings"). The court nevertheless dismissed Plaintiffs' claims, applying the incorrect standard of review and prohibiting Plaintiffs from presenting any evidence to counter the purported justification for the felon disfranchisement scheme.

1. **The district court erred in dismissing Plaintiffs' equal protection claims without subjecting §5-106 to strict scrutiny.**

The Equal Protection Clause requires that all persons who are similarly situated be treated alike. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). The “threshold question” in an equal protection challenge “is the appropriate level of scrutiny to be applied.” Benjamin v. Jacobson, 124 F.3d 162, 174 (2d Cir. 1997). In addressing this “threshold question,” the Supreme Court has held that a statute is subject to “heightened scrutiny” when it “burdens [a] fundamental right.” Id. Here, as Plaintiffs alleged in their amended complaint, New York’s felon disfranchisement scheme strips individuals who are convicted of a felony and sentenced to incarceration or parole of the right to vote, while leaving the voting rights of those sentenced to probation intact. (JA 00109 [FAC ¶ 58-59]). Because it severely burdens the fundamental right to vote of one class of individuals with felony convictions, the statute must be strictly scrutinized. See Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621, 626-27 (1969) (“If a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.”). In dismissing Plaintiffs’ equal protection claim, the district court applied a deferential standard wholly inconsistent with this heightened scrutiny

requirement, thereby failing to perform its own searching analysis of Defendants' asserted justification for the voting ban. And, by dismissing Plaintiffs' claim at this stage of litigation, the court denied Plaintiffs the opportunity to develop and present such an analysis to the court as well.

As the Supreme Court has stated, "voting is of the most fundamental significance under our constitutional structure." Burdick v. Takushi, 504 U.S. 428, 433 (1992), see also Reynolds v. Sims, 377 U.S. 533, 562 (1964) (stating that, by denying some citizens the right to vote, durational residence requirements deprive them of a "fundamental political right, . . . preservative of all rights.") (quoting Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)). When Fourteenth Amendment rights are "subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" Burdick, 504 U.S. at 434 (1992) (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)); see also Dunn v. Blumstein, 405 U.S. 330, 336 (1972) (stating that "before the right [to vote] can be restricted, the purpose of the restriction and the asserted overriding interests served by it must meet close constitutional scrutiny"). A heightened standard of review is applicable in this case because New York's felon disfranchisement scheme directly deprives Plaintiffs' of their fundamental right to vote, and indeed denies the right to vote to felons who are incarcerated or on parole, while preserving the voting rights of individuals convicted of similar offenses yet sentenced to probation.

To perform this rigorous inquiry, the court was required to examine the propriety of New York's felon disqualification statute and sustain it only if it concluded that the statute is drawn narrowly to advance a compelling New York State interest. Burdick, 504 U.S. at 434. Yet, the district court did no such thing. Rather, in dismissing Plaintiffs' equal protection claims, the district court found that New York's non-uniform scheme of disfranchising only those felons sentenced to incarceration or serving parole met the deferential standard of "rational, not arbitrary." Hayden v. Pataki, No. 00 Civ. 8586, at *10 (quoting Williams v. Taylor, 677 F.2d 510, 516 (5th Cir. 1982)). The court simply accepted Defendants' explanation for the legislature's 1973 amendment, namely, that the amendment helped to make consistent the statutory scheme. Id. Moreover, going beyond the Defendants' articulated rationale, the district court consulted Black's Law Dictionary for the definitions of parole and probation to conclude that denying suffrage to one group and not the other "is certainly not arbitrary." (JA 00022 [00 Civ. 8586 Mem. & Order, at 11]). Thus, the district court did no searching review of justifications for the felon disfranchisement scheme. And in dismissing the Plaintiffs' claims at this early stage of the litigation, the Court denied Plaintiffs the opportunity to inquire into Defendants' justification, as well.

2. Even if Rational Basis is the Appropriate Level of Review for Plaintiffs' Equal Protection Claims, the District Court Erred in Applying the Standard in a Wholly Deferential Manner and Finding a Rational Basis for New York's Felon Disfranchisement Regime.

In addition and in the alternative, the district court should have applied rational basis review with some analysis of Defendants' asserted justification for the felon disfranchisement scheme, and only after providing Plaintiffs with the opportunity to present evidence to counter that justification. Specifically, the court should have looked beyond Defendants' articulated justifications when determining whether the felon disfranchisement scheme, which in some cases results in a lifetime ban on voting, is rational. At the very least, the Court should have provided Plaintiffs with the opportunity to develop and provide its own evidence regarding the purposes served by the law.

As the Supreme Court noted in Romer v. Evans, even when applying rational basis review, courts can "insist on knowing the relation between the classification adopted and the object to be attained." 517 U.S. 620, 632 (1996). This "search for the link between classification and objective gives substance to the Equal Protection Clause." Id. Indeed, "[b]y requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." Id.

In Romer, the Court examined the constitutionality of an amendment to the Colorado state constitution which effectively repealed state and local provisions barring discrimination on the basis of sexual orientation. Applying a rational basis level of the review, the court nonetheless found that the provision was “at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board.” Id. at 633.¹⁰

Here, by disfranchising individuals who are convicted of a felony and sentenced to parole, but not similarly situated individuals who are sentenced to probation, New York’s felon voting ban, too, makes a distinction based on the status of the individual. Moreover, this distinction results in the denial of a fundamental right — the right to vote. Further, in the case of individuals with a lifetime parole sentence, the distinction results in permanent disfranchisement. Plaintiffs assert that there is simply no rational justification for disfranchising — and in some cases permanently banning from voting — tax-paying citizens. As was the case in Romer, here, Defendants’ justification for the distinction must be

¹⁰ Rejecting the dissent’s reliance on the case of Davis v. Beason, 133 U.S. 333 (1890), the Court noted that to the extent that Davis “held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling could not stand without surviving strict scrutiny, a most doubtful outcome.” Romer, 517 U.S. at 635 (citing Dunn, 405 U.S. at 337. Although the court noted that Davis’ ruling that a convicted felon may be denied the right to vote under the equal protection clause, id. at 635 (citing Richardson), that statement did not address, and thus is not relevant to, the equal protection implications of singling out one group of similarly situated felons for disfranchisement.

examined in a manner more searching than done by the district court. At the very least, Plaintiffs should have been provided the opportunity to develop and present evidence concerning the interests served by the voting ban and whether the distinction is rational.

Even under the most deferential standard, when applying rational basis review, “[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.” Heller v. Doe, ex rel., 509 U.S. 312, 322 (1993). By dismissing Plaintiffs’ claims at this point, the Court denied Plaintiffs the opportunity to engage in this analysis. The district court thus erred in dismissing Plaintiffs’ equal protection claims after applying a wholly deferential standard of rational basis review.

C. Voting Rights Acts Claims

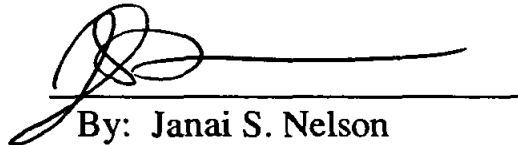
As noted above, the district court dismissed Plaintiffs’ Voting Rights Act claims based upon this court’s ruling in Muntaqim v. Coombe, 366 F.3d 102 (2d Cir. 2004), which held that the Voting Rights Act does not apply to felon disfranchisement laws. On July 21, 2004, Muntaqim, the plaintiff-appellant, filed a petition for a writ of certiorari that is currently pending before the United States Supreme Court.⁷ See 73 U.S.L.W. 3113 (U.S. July 21, 2004) (No. 04-175). In addition, there is a fully-briefed petition for writ of certiorari pending in a Ninth Circuit case, Farrakhan v. Washington, that presents the same question of whether

the Voting Rights Act applies to felon disenfranchisement laws. 359 F.3d 1116 (9th Cir. 2004), petition for cert. filed, 72 U.S.L.W. 3741 (U.S. May 24, 2004) (No. 03-1597). In order to preserve their claims under the Voting Rights Act pending final resolution in Muntaqim v. Coombe, Plaintiffs appealed the district court's judgment dismissing those claims. In light of the pendency of Muntaqim and Farrakhan before the Supreme Court, the judgment below should be vacated with instructions to the District Court to reconsider its dismissal in light of any action taken by the Supreme Court in those matters.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed in part, vacated in part, and the case remanded for further proceedings.

Dated: New York, New York
September 27, 2004



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RULE 32(a)(7)(B)(i) CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. Relying on the word count of the word processing system used to prepare this brief, I hereby represent that the brief of the NAACP Legal Defense and Educational Fund, Inc., Community Service Society of New York, and the Center for Law and Social Justice at Medgar Evers College for Plaintiffs-Appellants contains 9,217 words, not including the corporate disclosure statement, table of contents, table of authorities, and certificates of counsel, and is therefore within the word limit for 14,000 set forth under Fed. R. App. P. 32(a)(7)(B).



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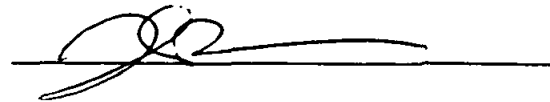
CERTIFICATE OF SERVICE

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that on September 27, 2004, I served upon the following, by United States Postal Service priority mail, postage prepaid, two true and correct copies of the attached BRIEF FOR PLAINTIFFS-APPELLANTS:

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