

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

Should Felons Have the Right to Vote?—Air Date: 10/23/06

Currently, 4.7 million Americans are unable to vote due to state policies that bar convicted felons from the polls. In some states the ban is permanent despite the fact that the defendant may have served his or her time and been released from probation and parole. Last year the U.S. Supreme Court refused to hear a lawsuit from Florida challenging as unconstitutional felon disenfranchisement laws, but activists continue to push for reforms that will enable convicted felons to participate in the political process. Tune in to this edition of Justice Talking as we ask whether those who commit serious crimes should have the right to vote.

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MARGOT ADLER: From NPR, this is Justice Talking. I'm Margot Adler. This Election Day more than 5 million Americans who are in prison, or on probation or parole, won't be able to cast a ballot.

UNIDENTIFIED MALE: Today I'd say the United States is very much unusual in disenfranchising such a large proportion of the electorate.

MARGOT ADLER: Should a felony conviction mean you lose your right to vote? The debate over felon disenfranchisement, on today's Justice Talking. We'll hear from a college student whose drug conviction has cost him the right to vote until 2037, and a congressman from one of the most restrictive states in the Union tells us why he thinks taking away a felon's right is bad for democracy. We'll also hear from a woman from Alabama who wanted to make sure her daughter's murderers would never be allowed to vote--after the news. Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show we're talking about whether convicted felons should have the right to vote. Andres Idarraga is 28 years old. He is a junior at Brown University in Rhode Island. He is also an ex-con. He served six-and-a-half years in prison for drug and gun possession. In his home state of Rhode Island, people convicted of a felony lose the right to vote until they have completed probation and parole. Andres Idarraga won't be able to cast a ballot until 2037, but the right to vote is a high priority for him. Andres says he first began thinking about his voting rights while educating himself in prison.

ANDRES IDARRAGA: While I was in prison receiving an education there was something there that I was missing. I couldn't quite put my finger on it. But then my first year out of prison I enrolled at the University of Rhode Island, and through my classes, through learning about some of the historical precedents, some of the historical struggles that people have gone through to get the right to vote in the first place, I became very aware and very conscious that I could not vote, and that I wanted to vote.

MARGOT ADLER: The right to vote may not rank as highly for every felon right out of prison. For some there are other, more immediate concerns like finding a job or a place to live. But Andres argues that the ability to vote and the responsibility that comes along with it helps a felon's re-entry into society.

ANDRES IDARRAGA: For many of us, when we come home and there's so many obstacles for us to re-integrate, whether it is housing, um, education--there's so many obstacles for us that stripping us of the right to vote is almost like another slap in the face. And giving us that back goes along way, first of all, to restoring our decency as U.S. citizens. But second of all it also gives us our say whether if we have children how school funds can be dispersed through our communities. We also try to become role models for our children when they go to vote. And families that go out to vote, their children grow up modeling that behavior. And then the neighborhoods that I grew up in, underprivileged neighborhoods, we need that sorely.

MARGOT ADLER: Under current Rhode Island law Andres won't be able to vote for another 30 years. He imagines what that right will feel like.

ANDRES IDARRAGA: First of all, I will feel like a complete citizen once again. And second of all, now I know that any time a local city council candidate, school board candidate, comes to my door and knocks, they have to take my voice into account. Because currently as soon as I say I'm an ex-felon they know I can't vote. So they just exert their energy somewhere else. So it don't make me feel, I mean, extremely powerful.

MARGOT ADLER: Andres Idarraga is a comparative literature and economics major at Brown University and is currently on probation for drug and gun possession. This election day in Rhode Island voters will decide on a ballot initiative, which if passed, would allow felons to vote once they are released from prison, and would bring Andres that much closer to casting his first vote. Later in the show we'll hear from a woman whose daughter was murdered. She was shocked to find out that one of the killers might someday be allowed to vote.

UNIDENTIFIED FEMALE: Well, it never occurred to me that someone who could do such a heinous crime, that it would ever be considered that they could ever vote again.

MARGOT ADLER: We'll also bring you a debate about whether felons who have served their time should be allowed to vote. And we'll hear about a man and his mission to change New York's law to allow criminals to vote in prison. But first, Christopher Uggen is here to explain our current laws and where they come from. He's a criminologist and chair of the sociology department at the University of Minnesota. He is co-author of "Locked Out: Felon Disenfranchisement and American Democracy." Welcome to Justice Talking. Chris, explain the difference between a felony and a misdemeanor. Not everyone convicted of a crime loses their right to vote.

CHRISTOPHER UGGEN: That's right. Felon is an old term. It relates to the common law. The idea is that we're going to set off some serious crimes from garden-variety minor offenses. Now over time it's come to mean anything that is punishable by a year or more in a state prison as opposed to in a local jail. And so a felony can be anything from marijuana possession to homicide.

MARGOT ADLER: So examples of crimes where you lose your right to vote.

CHRISTOPHER UGGEN: Well it really runs the gamut. Of course violent felonies count, sex offending and homicide and things like that but many property offenders, thieves, people who may have even gotten too much in a public assistance check, or people who have been convicted of fraud, check forgery. It runs the complete spectrum of criminal severity as well as frequency.

MARGOT ADLER: Now how many people currently can't vote because of a past or current felony conviction?

CHRISTOPHER UGGEN: Right now it's about 5.3 million Americans who are affected by these laws.

MARGOT ADLER: Now I've heard that the practice of disenfranchising felons dates all the way back to ancient Rome.

CHRISTOPHER UGGEN: That's right. It's an ancient idea and really if you think of the concept of banishment there's always been some mechanism for casting out those who offend against the state or against the king or against the society more generally. But today I'd say the United States is very much unusual in disenfranchising such a large proportion of the electorate.

MARGOT ADLER: Now when and why did we start seeing these types of laws in the United States?

CHRISTOPHER UGGEN: In the United States there are really two waves of legal activity. The first one came in the 1870s, 1880s, 1890s during the Civil War and Reconstruction Era. And that's when many of the most serious restrictions were passed, often disenfranchising felons for

life. Then about 100 years later, in the 1960s, the 1970s, we began to see a loosening of those laws with the civil rights movement. So if you think about those two waves, I think you get most of the action.

MARGOT ADLER: So a lot of it has to do with issues involving African-Americans I would imagine?

CHRISTOPHER UGGEN: That's clearly the case and in some states we have very good evidence. Alabama, for example, when they called the Constitutional Convention in 1900 the opening speech suggested that disenfranchisement would help avert the menace of Negro domination. But that's rather unusual to have that sort of historical record. And so in many states the origins are a bit cloudier than that.

MARGOT ADLER: And when did people begin fighting to repeal the laws restricting voting rights of felons. You said it began with the Civil Rights Movement?

CHRISTOPHER UGGEN: Well, I'd say that's when we saw the most activity. There have been moves to repeal disenfranchisement or limit disenfranchisement throughout American history. But that's where we saw it spread from state to state. And in particular what states began to do was say we don't need to restrict the right to vote for life but we can restrict it while one is under supervision or perhaps just while one is incarcerated. And so now we're left with this patchwork quilt of laws that vary from state to state. So that in states like Maine and Vermont even prisoners can vote. In states like Minnesota one can't vote in prison or while on probation or parole and supervised in the community. And there are states like Florida in which one can't vote for life unless one receives clemency and has restoration of the right to vote.

MARGOT ADLER: And all this is left to the states, correct? Does Congress have any power here?

CHRISTOPHER UGGEN: Well, that's a matter of some debate in the law but the states have broad discretion over the right to vote. There have been a number of challenges to the practice of disenfranchisement. But there's a strong Supreme Court precedent that was established in the 1970's in a Rehnquist Decision that really said that felons may be disenfranchised on the basis of a section in the 14th Amendment. Which was designed to screen out rebels and those convicted of rebellion and other crimes. So the practice has been upheld constitutionally except where there's a real smoking gun that points to racial animus in its passage.

MARGOT ADLER: Now some argue that preventing felons from voting violates the Voting Rights Act or the 14th Amendment, or both. What are the arguments there?

CHRISTOPHER UGGEN: It's a basic democratic issue. It's that to get a representative view of the American electorate that you need to have, count everyone's vote. And to exclude systematically 5 million Americans, mostly very impoverished Americans, predominantly people of color, that you're diluting the votes of those groups.

MARGOT ADLER: Could denying the vote be seen as a kind of double jeopardy since no person is supposed to be punished twice for the same criminal offense?

CHRISTOPHER UGGEN: Some have made that argument. Others have made the argument on the basis that it constitutes a poll tax because those who are able to pay off their financial obligations are often able to vote or able to be reinfranchised and those who can't are locked out. So there have been a number of fairly strong arguments in favor of repealing the disenfranchisement restrictions.

MARGOT ADLER: In your book *Locked Out* you suggest that if felons in Florida had been allowed to vote in 2000, they would have most likely swung the state toward Al Gore. How did you reach this conclusion?

CHRISTOPHER UGGEN: Well, the Florida election was so closely contested that even a small number of votes certainly could have made a difference. In a way it was sort of a perfect storm in that Florida has the most disenfranchised felons of any state, over a million, and what Jeff and I did, Jeff Manza, was model what was their expected voting behavior. How many of them would turn out to vote. And based on their demographic characteristics we estimated that they'd turn out at rates roughly half those of the general population in that election. And would they favor one party or another. And we found that about seven in ten of the votes, 70-80 percent, would likely have gone to the Democratic candidate in most of the elections that we looked at and in the 2000 presidential election, as well. This party preference is largely based on race. That African-Americans are disproportionately incarcerated, disproportionately punished in American criminal justice. They also have very strong Democratic Party preferences, upwards to 90 percent in recent national elections. And so that combination in Florida led to a situation where had convicted felons been permitted to vote, even just those who had already completed their sentences, the outcome would have been different in that state. And in the election, nationally as a whole.

MARGOT ADLER: Christopher Uggen is a criminologist and chair of the sociology department at the University of Minnesota. He is co-author of "*Locked Out: Felon Disenfranchisement and American Democracy*." Chris, thanks for joining me on Justice Talking.

CHRISTOPHER UGGEN: Thank you so much, Margot.

MARGOT ADLER: You can hear more of my conversation with Chris Uggen at justicetalking.org. He tells us why he thinks Maine and Vermont are so lenient and Florida is so strict in their felon voting policies. Coming up: the debate over felon disenfranchisement.

UNIDENTIFIED MALE: So we talk a great game about exporting democracy to other nations but in fact we need to restore democracy right here in the United States by restoring voting rights to people who have served their time.

MARGOT ADLER: But should someone who has broken the law be allowed to help shape the law? Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show we're talking about felon disenfranchisement laws. Each state makes its own law about when and whether to allow felons to vote. Only two states, Vermont and Maine, allow people to vote in prison. Three states take away a felon's right to vote for life. But most states are somewhere in between these two extremes. Some restore the vote to people as soon as they are released from prison while other states only allow felons to vote once the entire sentence is served. Which may include probation or parole. With me to talk about felon voting are Spencer Overton and John Lott. Spencer Overton is a law professor at George Washington University. He served on the Carter-Baker Commission on Federal Election Reform, and he's the author of "Stealing Democracy: The New Politics of Voter Suppression." John Lott is the Deans Visiting Professor of Economics at the State University of New York at Binghamton. He was formerly with the American Enterprise Institute, where he specialized in criminal justice. Welcome both of you to Justice Talking. There are around 5 million people in the country who cannot vote because of a felony conviction. I want each of you to tell me why that matters. Let's start with you Spencer.

SPENCER OVERTON: Well let me start with Debbie Hardy. She's a manager at Burger King. She turned her life around. Debbie kicked her drug habit. She helped her older sister to do the same. But Debbie, she can't vote because she lives in Florida. And Florida prevents everyone who's committed a felony for life. And as you point out Margot, Debbie Hardy is not alone. Across the nation there are over 2 million Americans who served their time, not on probation, not on parole, completely served their time, who can't vote. Now that's more voting aged Americans than the population of Delaware, North Dakota, Vermont, and Wyoming combined. And this has a devastating impact in some communities. In Florida, for example, 30 percent of African-American men can't vote as a result of a felony conviction. So we talk a great game about exporting democracy to other nations but, in fact, we need to restore democracy right here in the United States by restoring voting rights to people who've served their time.

MARGOT ADLER: I want to let John Lott weigh in right now. Tell me why this matters.

JOHN LOTT: Well, I think we punish people in many different ways when they've committed a felony. We have about thirty different types of penalties that we impose on people after they leave prison. Everything from lost business licenses, professional licenses difficulties, being able to join unions, inability to get truck drivers licenses in many states. Things like not being able to hold public office, a whole range. Not being able to own a gun, for example. And we have these penalties for two reasons. One is we want to discourage people from committing crimes to begin with. And the second reason why we do it is that we learn something about them. When somebody goes and commits multiple rapes we think we've learned something about whether that person intrinsically cares about other people in society. Just as we may not want to let the person go and own a gun, because we feel we've learned something important about that individual we also feel we've learned something about them in terms of whether they care enough about other people to go and let them go and vote.

MARGOT ADLER: Now over the past ten years a number of states have changed their laws about who can vote. Most of them seem to be moving in the direction of allowing more ex-felons to vote. John, do you think the country is heading in that direction?

JOHN LOTT: The big change has basically occurred since the 2000 Florida election when I think it dawned on a lot of people how heavily felons vote Democratic. And so I think a lot of this issue has primarily been a political issue. Because it's not clear why given all the different sanctions that we impose on people after they leave prison this is going to be the one out of thirty-some different types of post-prison penalties that we impose on people. That this would be the only one that we would try to remove.

MARGOT ADLER: Spencer, do you think everyone should be able to vote even if they are currently in prison?

SPENCER OVERTON: Well I think that's actually a different question with a different set of issues here. On one hand there are a number of other great nations that allow incarcerated people to vote, like Australia, Canada, Germany, Italy, Japan, and Spain. On the other hand some people might make the argument that improper coercion of voters could occur if we allow people who were in prison to vote. But I think really, Margot, that's a distraction from the real question. The real question right here, right now is why should people who serve their time, serve their debt to society be denied the right to vote. Eighty percent of Americans believe that people who have served their time should be able to cast a ballot.

MARGOT ADLER: So John what about that? Aren't you supposed to do your time, pay for your crime, return to society as a citizen?

JOHN LOTT: Well I guess that's the point that I've been trying to make: that there are lots of penalties that we impose on people for life after they've been released from prison. If you've been a lawyer or a stockbroker or a doctor or a dentist, or if you've been a barber even, you're going to lose your license. And you don't just lose it for five years as some states may have you lose the right to vote or for ten years. You lose it for life. You lose inheritance. You lose marital rights. You lose all sorts of different rights. And they're not just for temporary periods of time. They're for life. And I guess the question is we know why we impose those other penalties on people. I assume we're not debating about whether felons should be given their rights to own a gun back? We could say, well they've served their time. They should be able to own a gun. So I think it's a bit of a mis-statement to just say they've served their time and so therefore we're not going to impose any more penalties or restrictions on these people. I guess the question to ask is why is it just this one particular type of penalty that we're focusing on?

MARGOT ADLER: Let's let Spencer weigh in here. I assume that you'd agree that some rights should be taken away from a convicted felon. For example, owning a gun, right?

SPENCER OVERTON: Well that may serve a legitimate purpose. Denying someone the right to vote does not serve a legitimate purpose. Certainly it has no deterrent effect. Young people who commit crimes don't think about losing voting rights when they're committing crimes. There's

also no rehabilitation purpose. Indeed denying the right to vote prevents rehabilitation. Studies show that former felons who vote have lower recidivism rates than those who don't vote. Now there is a distinction. I disagree with John. I think there is a distinction. And that in many states the original purpose of felon disenfranchisement was the same as poll taxes and literacy tests to disenfranchise African-Americans. One delegate to the Virginia Constitutional Convention, for example, said that felony disenfranchisement laws, quote, "will eliminate the darky as a political factor in this state in less than five years, so that in no single county will there be the least concern felt for the complete supremacy of the white race in the affairs of government," end of quote. Now another difference here is, this is not just about individual responsibilities and individuals paying the price. This is about vote dilution, the reason that a literacy test and poll taxes are problematic. Even though there are a lot of people who could afford a poll tax. There are a lot of people who are poor who could read. But the reason those are improper is because they deny a government of, by, and for the people. They reduce turnout from certain communities. And they skew election outcomes so that we don't have government that reflects the will of the people. So voting is very different from those other examples that John Lott provided.

MARGOT ADLER: Spencer, is there any scenario where you would be willing to take away someone's right to vote?

SPENCER OVERTON: I think that we could talk about if someone was incarcerated, possibly, I really do believe that for moral reasons, for practical reasons, once someone has served their time they should be allowed to vote.

MARGOT ADLER: Now, John, isn't reintegrating an ex-con important? And isn't voting something that helps a citizen feel invested in the society? For example, if you can't vote how can you model that behavior to your children? I took my son with me, for example, to vote when he was very young. To show him, you know, how important voting is. And I'm wondering-- don't you therefore sort of imperil the next generation if you don't let felons vote.

JOHN LOTT: Well, I think having a job, I think being able to defend one's self, I think those are also important arguments that one can make. And we have all, it wasn't clear from Spencer's answer whether he agrees or not that all these other restrictions that prevent you from getting certain types of jobs or other things should be lifted also when...

SPENCER OVERTON: I think some of them should.

JOHN LOTT: Okay.

SPENCER OVERTON: Some of them that prevent someone from, for example, getting a job, someone who has committed a non-violent offense cannot become a barber and cut hair. I think that that is a problem. I think it actually encourages crime in the future because it prevents someone from engaging in legitimate activity to put food on the table for their kids. So I do think that some of those other re-entry policies are problematic.

JOHN LOTT: Right but it seems like you're drawing a distinction between violent and non-violent criminals. You still seem to think that a violent criminal is somebody we should treat differently with regard to jobs. And...

SPENCER OVERTON: No, what I'm saying is if someone has a propensity for violence, maybe it makes sense to prevent them from owning a gun, or prevent them from having scissors for somebody who has used scissors to stab someone. Maybe that makes sense.

JOHN LOTT: Because we've learned something about them.

SPENCER OVERTON: Just because you've committed a crime you can't cut someone's hair and can't vote...

JOHN LOTT: No, no, no, but...

SPENCER OVERTON: That doesn't make sense to me.

JOHN LOTT: No, but you're saying we don't trust them in certain ways because we've learned something about them. They've demonstrated multiple times that they don't care about other people in the same way we'd like other people to do it. And so you say we want to protect society by restricting these people in certain ways.

SPENCER OVERTON: Yeah.

JOHN LOTT: And the question is why doesn't that also apply to their making public policy decisions for other people.

MARGOT ADLER: Spencer, let me rephrase it a little bit because the question that you get from people who are against felon voting is something like why should somebody whose proven they don't respect the law have any say in who our lawmakers are. Or what the laws should be?

SPENCER OVERTON: Well, I'll tell you why. Because if we go down that path there are many people that we should exclude because we don't like their thinking. We should, we could say for example racists and anti-Semites shouldn't be able to vote because they're not trustworthy. We could say that people who push for lower taxes are greedy because they want to hold onto their money and they don't have the best interests of the Nation in their mind. We could say that only people who own property should be able to vote because they're most vested or maybe people who are...

MARGOT ADLER: And that is what we started out as a country. That's actually, was the law, in our country.

SPENCER OVERTON: Propertied white males. That's absolutely right. We could also say that only people who are literate should be able to vote because they're educated and they make

better decisions. But the problem with felon disenfranchisement and all these other qualifications is that they prevent us from having government that reflects America. In terms of individual liberty all of these qualifications allow politicians to selectively exclude voters prone to vote against them. We know that politicians already do this with gerrymandering and hold on to power. Why should we give politicians even more devices to shape the electorate and to exclude certain people?

JOHN LOTT: First of all there is a deterrence effect. I mean you claimed earlier that people value this. Well if it's something people value it can deter them if they risk losing it. And you bring up the evidence about lower recidivism rates with regard to people who vote, the problem with the research that you point to is that they don't distinguish who gets their votes restored. The most violent, the most vicious felons are the ones who aren't getting their rights restored and you're including them along with ones who do relatively minor felonies who are. And those are different types of people. With regard to this disenfranchisement that's somehow denying people the right to vote is one of these many penalties for people who have committed felonies against others. I think this is something that's been around since the beginning of the country. When the radical Republicans passed the 14th Amendment, which explicitly allows states to deny people the right to vote who've committed these types of felonies against other citizens. It would be hard I think to go and argue that the radical Republicans after the Civil War were including that because they were racists. The whole point of the different amendments that they were doing was to go and try to ensure the rights of blacks who had just been freed. And so to go and point out that somehow they included that part in the Constitution.

MARGOT ADLER: But why do you think that Maine and Vermont have made a different decision?

JOHN LOTT: Well, because they have quite a different prison structure. They have many small places that they have around the state. It's not as concentrated in a few major prisons. Now if you want to go and decentralize the types of prisons that we have in other states in the country maybe it wouldn't have the same effect. But the risk that you have if you were to change that is you would have sheriffs campaigning in prisons for votes because more than half the voters in the county would be in prison.

MARGOT ADLER: There are very few places in the world where losing the right to vote is part of criminal punishment. And in some cases even people who have done murders and are in prison can vote. For example, in Israel, Yitzhak Rabin's assassin can still vote even though he's behind bars. And the Israeli courts said they separated contempt for the act from respect for his right. And in Canada for example the courts say denial on the basis of moral unworthiness is inconsistent with respect to the dignity of every person that lies at the heart of Canadian democracy. So I'm wondering first, John, how you respond to that argument. And then let me let Spencer reply.

JOHN LOTT: If Israel wants to go and give this person who killed the Prime Minister additional input in the political system, you know, that's their decision. But I think this is something that's been around since the beginning of our country. States have had this from the beginning. And I think there are strong public policy reasons. These people are different. My guess is that you

couldn't go out and rob somebody. Or harm them in some serious way. Look, we're desperate to try to discourage people from committing crimes. And so if we can find something that people seem to care passionately about and we can go and say look we'd rather not punish you. Don't go and commit these crimes to begin with and we won't have to take this away from you. But it's a voluntary choice on these criminals' parts. Nobody forced them to go and do the violent acts against other people and risk losing these rights.

MARGOT ADLER: Spencer.

SPENCER OVERTON: I think they're, this distinction in terms of violence and non-violence, you know, people have engaged in anti-social behavior whether it's violent or non-violent. And I think we want to encourage them to engage in constructive behavior like voting which is certainly critical. And I'll tell you I think that these people are Americans. And certainly there's some problems in that they need to be punished. But there is a certain point where the punishment ends and they've got to be functioning parts of society. And they've got to engage and be responsible and it's important to hear their voice so we can define some effective policies for example on how a re-entry works best so that people don't re-commit crimes. And also I think that there's just a humanity aspect that these people are God's children too. And after they are punished then they need to be recognized as Americans.

MARGOT ADLER: Clearly there are very strong opinions here and unfortunately we have to wrap it up right now. Spencer Overton is a law professor at George Washington University. He's served on the Carter-Baker Commission on Federal Election Reform. And he's the author of "Stealing Democracy: The New Politics of Voter Suppression." John Lott is the Deans Visiting Professor of Economics at the State University of New York at Binghamton. He was formerly with the American Enterprise Institute, where he specialized in criminal justice. Spencer Overton and John Lott, thank you for talking with me today.

JOHN LOTT: Thank you very much.

SPENCER OVERTON: Thank you.

MARGOT ADLER: Coming up on Justice Talking, efforts in New York State to liberalize the felon voting laws are meeting with stiff opposition.

UNIDENTIFIED MALE: I think there should be legislation put forward that says that these violent felons should, even after they've served their time, should never have that right to vote. You would have in this scenario somebody that committed rape and then served their time in jail would be able to cancel out the vote of the law-abiding citizen that they raped. And that doesn't seem fair.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Today we are discussing the five million Americans who cannot cast a ballot this coming election day. They have either temporarily or permanently lost their right to vote because of a felony conviction. In Virginia, Florida, and Kentucky a felon loses the right to vote for life. In Virginia only the governor can reinstate that right. Democratic Congressman Bobby Scott from Virginia joins me now. Welcome to Justice Talking. Virginia is one of the most restrictive states in the country. What do you think of the current law in your state?

BOBBY SCOTT: Well, you know, you ought to begin with the presumption that everyone ought to be able to vote. If you're going to take away someone's right to vote there are ought to be some policy, some positive policy, to recommend it. There is certainly no criminal justice principle involved. I mean that nobody is going to be deterred from committing a crime. What are you going to serve... I wouldn't have minded serving 10 years but I might have lost my right to vote so I didn't rob the grocery store. It has no deterrent effect. And actually in terms of rehabilitation it has an adverse effect. People who can get back in the community including voting and be part of the community are less likely to commit crimes in the future. So if anything it has an adverse effect just from a criminal justice perspective.

MARGOT ADLER: The Congressional Black Caucus has come out against felon disenfranchisement laws.

BOBBY SCOTT: Right.

MARGOT ADLER: As a member of the CBC, tell me more about their position.

BOBBY SCOTT: In many areas significantly more African-Americans are disenfranchised than whites. So the discriminatory effect against minorities is severe. And in fact it is so severe that in many states it has significant political implications. There's no question that if they give, if Florida didn't have felony disenfranchisement that President Bush would not be president today. In Florida you've got hundreds of thousands of people that cannot vote because of the felony disenfranchisement law.

MARGOT ADLER: You are on the House Judiciary Committee and in fact you're on a subcommittee on the Constitution. Some claim that felon-voting restrictions violate the 14th Amendment. Is there anything to that claim?

BOBBY SCOTT: There are constitutional problems with dealing with it on a federal basis. The Constitution allows disenfranchisement--specifically allows disenfranchisement for a crime. Specifically. It also says that qualified voters shall be determined by the State. So the federal, dealing with it on a federal level is problematic because of the way the Constitution reads. If you can show that you are intentionally using this process to discriminate against African Americans you might have something to work with. But you've got to have some fairly intense findings to be able to show that.

MARGOT ADLER: Now we've heard from a number of people in today's show about felon voting laws. But you, unlike them, actually depend on the votes of people. What does it mean to

you that in your state and around the country there are people who have lost the right to vote because they've broken the law?

BOBBY SCOTT: Well, I think you like everyone to be able to vote and you know when you're campaigning and running a voter registration drive it is not unusual to approach someone and ask if they're registered to vote. And they kind of drop their head. And you kind of get an idea what the deal is with that prospective voter. And they'll mumble something. You know, I don't think I can vote. You know not to pursue it because it's probably someone who can't register because of a felony. And you try to inform them of the process to get rights reinstated in Virginia.

MARGOT ADLER: One of the things we've heard from the people who are against felon voting is that they've argued that it's not good for democracy to allow people who've broken the law to have a voice in making the law. How do you answer that?

BOBBY SCOTT: Well the question is how did the law get there to begin with? And should everybody have a say in making the law? Again 10 percent of the African-American males can't vote and if the next election people depend on keeping them from voting in order to win the next election, that's not fair. You have the same argument with the literacy test. And politicians, incumbent politicians, had an incentive to provide no education in the African American community to make sure that they couldn't learn how to read and write and therefore couldn't vote. I mean here you have an incentive to jerry-rig the criminal justice system to make sure as many people in one community get felony convictions. And the only way to deal with that is the political process, to make sure everybody votes. Everybody has an opportunity to make the laws. And you can't do that if 10 percent of one side is prevented from voting.

MARGOT ADLER: Representative Bobby Scott from Virginia is serving his seventh term in Congress. Congressman Scott, thank you for talking with me today.

BOBBY SCOTT: Thank you so much. It's been a pleasure.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. The U.S. Supreme Court has confirmed that citizenship is not lost with imprisonment. But it has also ruled that states have the power to determine voting requirements. Including voting restrictions for people who have committed a crime. The result is a patchwork quilt of voting laws that vary from state to state. In New York state felons cannot vote if they are incarcerated or out on parole. One convicted felon who is now on parole wants to change that. He filed a case from his prison cell several years ago seeking to grant all prisoners in the state the right to vote. Susan Phillips reports.

SUSAN PHILLIPS: Joseph "Jazz" Hayden has done time for drugs and murder but he believes his record should have nothing to do with his voting rights. Hayden's New York case, Hayden vs. Pataki, hinges on his belief that universal suffrage is a fundamental right of citizenship.

JOSEPH HAYDEN: As I sit here before you now I'm still on parole and the law states that as long as I'm in prison or on parole I've lost my right to vote. But yet every time I get a paycheck the federal government, the state government, are taking a piece of that check.

SUSAN PHILLIPS: Hayden has made it his mission to overturn New York's felon disenfranchisement law. In September 2000 he first filed a case from prison challenging the law's restrictions on the voting rights of prisoners and parolees. A few months later he was released on parole. To Hayden the right to vote should never be lost to anyone in a democracy. Without the vote he says hundreds of thousands of people are mere ghosts occupying a citizen's chair.

JOSEPH HAYDEN: If you opposed the war in Iraq, so what? If you don't like the distribution of the services and resources in your community, so what? You're upset about the high unemployment rate among African-Americans, so what?

SUSAN PHILLIPS: Hayden and his supporters are bolstered by the fact that felon disenfranchisement laws disproportionately impact black and Latino men. Thus weakening the political clout of their home communities. After Hayden was released from prison, the NAACP Legal Defense Fund took up his case. They added as a class of plaintiffs residents of New York City neighborhoods such as Harlem, the Bronx, and the Lower East Side. These plaintiffs have never been convicted of any crimes but many of their neighbors are doing time in upstate New York. Hayden's lawsuit claims that the resulting vote dilution suffered by these home communities violates the Voting Rights Acts of 1965. Ryan Haygood is a lawyer with the NAACP Legal Defense Fund. He says 80 percent of those who don't vote in New York State because of a felony conviction are black or Latino.

RYAN HAYGOOD: As you look across the country and as you look at New York City in particular you'll find that the vast majority of those who are incarcerated disproportionately are racial minorities. So we're seeing blacks and Latinos in particular losing their voting rights at staggering rates. And the problem is that the main way we effectuate change in our country is through the political process. And it's these areas that really suffer from a host of social economic ills albeit substandard housing or health care or employment or education. And the primary means through which we make our communities better is through the vote.

SUSAN PHILLIPS: But the 2nd Circuit Court of Appeals rejected their argument this spring on the grounds that Congress did not intend to include felon disenfranchisement laws when it passed the Voting Rights Act back in 1965. Despite the setback, Hayden continues to argue racial discrimination on the basis of the 14th Amendment. The NAACP's Ryan Haygood says the constitutional claims are tougher to argue because of the requirement to prove discriminatory intent on the part of lawmakers.

RYAN HAYGOOD: Our constitutional claims are that under the 14th Amendment, when New York enacted its felon disenfranchisement scheme, it did so with the purpose of disqualifying blacks in voting in an unconstitutional manner. And we have language from legislators themselves who recognize the disproportionate number of blacks who are incarcerated at that time. And also recognize that the felon disenfranchisement law will be a way for them to block

blacks from voting. And our argument is that under the 14th Amendment that's precisely what they did in violation of the Constitution of the United States.

SUSAN PHILLIPS: Hayden's constitutional claims have yet to be considered by the court and efforts to change the law through legislation is unlikely to get support. Ryan Moses is the executive director of the New York Republican State Committee. He thinks the current law, which does not allow felons on parole to vote, should be even more restrictive.

RYAN MOSES: I think there should be legislation put forward that says that these violent felons should even after they've served their time should never have that right to vote. You would have in this scenario somebody that committed rape and then served their time in jail would be able to cancel out the vote of the law-abiding citizen that they raped. And that doesn't seem fair.

SUSAN PHILLIPS: Moses says felon-voting restrictions protect crime victims who would suffer again from having their perpetrator be able to vote. But Hayden says the right to vote should not be lost on the basis of moral judgment.

JOSEPH HAYDEN: To the question if you have committed a crime, why should you have the right to vote? My answer is this: that moral character is not a requirement for the right to vote. We don't know what the moral character is. We don't ask that when people come to the polls. There's no morality test on that voter registration form. Are you a citizen of the United States? Are you over 18 years of age? Are you a resident of the state? Are you otherwise eligible to vote? And you sign that, and that's it. It says nothing about character. Nothing. Because if that was the case, man, you know there's all kinds of people we can exclude.

SUSAN PHILLIPS: Hayden's convinced that one day the final group of Americans excluded from the polls will be casting their ballots from behind bars. He's looking forward to casting his vote for the first time in more than 30 years. Joseph Hayden will be off parole before the November 2007 general election. For Justice Talking, I'm Susan Phillips.

MARGOT ADLER: While Joseph Hayden hopes to change New York's felon voting law others are working to inform people who have served time about their current voting rights. Maggie Williams is one of those people. She works for the Bronx Defenders, a public defenders office in the South Bronx. She's the founder and project director of the Voter Enfranchisement Project there. I asked Maggie to tell me about the project.

MAGGIE WILLIAMS: The Voter Enfranchisement Project is an organization or project out of the Bronx Defenders that works to increase the civic participation of people who have criminal justice contacts.

MARGOT ADLER: Now, New York State prohibits felons from voting until they're out of prison and once parole has ended. But do people who have regained the right to vote know, for example, that they can register?

MAGGIE WILLIAMS: No, they don't, and it's interesting that you actually asked if they know they can register. Because that's really where the biggest obstacle is. A lot of people never even

make it through that registration process because they don't think they can vote. I mean, we've surveyed our clients here and found that about 40% of them who have some criminal justice involvement. Now what criminal justice involvement means is you've been arrested. I mean I spoke with these people after they'd been arrested and arraigned. So they may go onto being convicted of a misdemeanor. They may not. They may go on to being convicted of a felony. They may not. But they've had some contact with the criminal justice system. And about 40 percent of them were under the impression that they could not vote while they were on probation in New York. Now, probation and parole are two very different things. And people in New York State who are on probation actually can vote. So there's this whole pool of people who are under the impression that they cannot vote in New York State when they actually can. And that pool of people actually includes election officials unfortunately. So the Brynum Center and DMI have done similar studies to what I did but with election officials. They found that about 40 percent of them also think that someone in New York State cannot vote on probation. So there's this very pervasive myth in New York State, and I would imagine in a lot of other states as well, about who has the right to vote and who doesn't.

MARGOT ADLER: Tell us a little bit about how you work with the people who get registered. I mean do you walk them through the process? How do you educate them?

MAGGIE WILLIAMS: It can depend. I mean sometimes it's a one-on-one conversation where I will go outside of arraignments and sit with clients who are coming out of arraignments. And sometimes it's in a workshop setting or focus group setting. And we'll bring a group of clients together to have a conversation about the political process. And you know for many clients they'll talk about how they've been very frustrated with the political process and they haven't engaged. And then they'll remember the one time where their sister asked them to come and vote with them. And I think that that really highlights the importance of personal relationships and how important it is to connect voting, which can be very abstract, to our friends and our families and our neighborhoods and our communities.

MARGOT ADLER: While advocates like Maggie Williams hope to get felons who are now eligible to vote to the polls, there are grassroots organizers from the opposite side of the spectrum who argue that felons, particularly those who have committed a violent crime, have forfeited their right to cast a ballot forever. Miriam Shehane is the founder of a victim's rights group known as VOCAL. It stands for Victims Of Crime And Leniency. She started the organization in Montgomery, Alabama after her daughter was raped and murdered by three men. Miriam has been an outspoken critic of Alabama's efforts to reform the state's felon disenfranchisement laws. She is particularly concerned about violent offenders. One of her daughter's killers received a life sentence. He may one day be paroled. But Miriam believes he should never be able to vote.

MIRIAM SHEHANE: Well it never occurred to me that someone that could do such a heinous crime that it would ever be considered. That they could ever vote again. But there's a move to allow them to vote. And I just do not think, in fact, I think the guy that got the life sentence should have been put to death. And certainly he should not be able to vote.

MARGOT ADLER: Miriam says giving a violent felon the right to vote may compromise the rest of society.

MIRIAM SHEHANE: I do not want those type of people be able to put someone in office that is supposed to make decisions for law-abiding citizens.

MARGOT ADLER: She worries that someone who has committed a felony may have a different agenda when it comes to casting a ballot.

MIRIAM SHEHANE: They've already broken the law. And for them to make, have a position to vote to determine who we put in public office is scary. Their frame of mind is not what the innocent person's frame of mind is. They're going to put someone there who's going to be soft on crime.

MARGOT ADLER: Miriam Shehane is the founder of a victim's rights group known as VOCAL. It stands for Victims of Crime and Leniency.

Bill from Roland Heights, California wrote to us and said: "Once a person is convicted of a felony they should forfeit their right to vote forever. The vast majority of American citizens never get arrested. Period. We need good, honest people to participate in our election." Do you agree with Bill? You can share your opinion at justicetalking.org. While on our website check out our program on federal election reform. Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler.
