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Dear Readers,

Thank you for picking up this issue of the Binghamton Law Quarterly! This issue is one that commemorates our recent successes as an organization, the growth it continues to experience, and the future accomplishments that await it under the newly elected Executive Board. As a graduating senior who has had the privilege of participating in this organization since shortly after its founding, this issue is also bittersweet. The Binghamton Law Quarterly has achieved many feats since our second issue, from our charter with the Student Association to our most recent collaboration with the Human Rights Institute's Source Project; we continue to grow and improve at an exceptional pace. There are many individuals to thank for assisting in our publications, and as always, we are bound to miss a few.

With that said, our commitment to disseminating interesting topics within the law to the general public would not be possible without the kind and continued support of the Philosophy, Politics, and Law department. We must also thank the Pre-Law office and the Harpur Law Council for their assistance in our recruiting efforts and events. Their continued aid in our operations allows us to serve Binghamton University as a space for the discussion of legal issues and provides the opportunity to insert these findings into the public discourse. This publication also features some of the work of contributors to the Human Rights Institute's Source Project, who were kind enough to collaborate with us in our mission to bring legal issues to the forefront of public discussion at Binghamton University.

With regard to the content in this issue, we are excited to include articles ranging from law in Guantánamo Bay to legal issues regarding college

athletics. Our collaboration with the Human Rights Institute also influenced our theme for this cycle. We received many exceptional articles, but ultimately chose those representing the rights of various groups. Some specific highlights are intellectual property rights, the rights of convicted felons, and the future of welfare through initiatives such as Universal Basic Income. Overall, we are hopeful that you enjoy this issue as much as we relished the opportunity to assemble it.

For all readers, whether you are intent on attending law school or are simply interested in the topics we have chosen to discuss, I welcome you to the content inside and hope that you can gain a better understanding of the law and its relation to the world around you. The law reflects and affects the world we live in, and it is our hope that the content we produce inspires in you an interest in this interplay. Thus, we must thank our talented writers and hard-working editorial staff, without whom this issue would not be sitting before you. We are always searching for more writers, editors, and designers to help make our publications the best they possibly can be. If you are interested in joining our team, please contact us at Quarterly@BinghamtonSA.org and mention the capacity in which you would like to become involved. With this, our eighth issue published, we are extremely proud of what we have accomplished, and are excited about what the future entails for our organization. We hope that you continue to join us on our journey and in our further engagement with the law.

Sincerely,

Mathew Anekstein,

Chief Editor

THE IMPACT OF CIVIL DISABILITIES ON RECIDIVISM

By Adrian Erazo

For millions of Americans being convicted of a felony is a life sentence, irrespective of the severity of their crime, or whether they served time in a correctional facility. To be convicted of a felony in the U.S criminal justice system is to be stripped of civil rights and privileges, to be subjected to exclusionary employment laws; it is -as Joshua Price described- to be condemned to permanent social exclusion and reduced to "modern subhumanity".¹ Attached to a criminal conviction are collateral consequences, referred to as "civil disabilities," which deny those who are convicted of basic necessities such as eligibility for public housing and social welfare. These civil disabilities are spread throughout legal statutes at both the federal and state level, working together to construct profound barriers for ex-convicts trying to reenter society.

One of the most well known civil disabilities in the United States is felony disenfranchisement. Felony disenfranchisement laws prohibit those with prior criminal

convictions from voting in elections. These laws are established at the state level, meaning that they vary greatly from state to state. Currently, 48 states have at least some form of felon disenfranchisement laws, with the only exceptions being Maine and Vermont, which allow convicted felons to vote from prison with absentee ballots.² Kentucky and Iowa, on the other hand, have strict laws which permanently disenfranchise all people with felony convictions for life. Instead of having permanent disenfranchisement, most states that strip felons of their voting rights have procedures in place in which former felons can gain their voting rights back after their release from prison.

However, these procedures are often made to be so tedious that they prevent ex-felons from getting these rights back. A study done by Marc Mauer observed that in eleven states with felony disenfranchisement laws, less than three percent of ex-felons had gotten their right to vote back.³ Felony disenfranchisement laws are highly contested due the lack of justification for why

prohibiting ex-convicts from voting is in the best interest of a democratic nation. The constitutionality of felony disenfranchisement laws has been challenged several times under Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The constitutionality of disenfranchising felons derives from the 1974 Supreme Court case *Richardson v. Ramirez*. In *Richardson*, the court interpreted section 2 of the Fourteenth amendment which states voting rights may be revoked in the case of "Rebellion or other crime" as permitting states to disenfranchise those who have committed a crime.⁴

Interestingly, the court did not think that the high scrutiny standard -which is normally applied to cases where the right to vote is being restricted or abridged- should be applied for criminal disenfranchisement laws.⁵ Strict scrutiny is the highest level of judicial review and requires that a law be justified by a compelling governmental interest, that it be narrowly tailored, and that it be the least restrictive means of achieving that specific government interest. Since this landmark decision many legal scholars have criticized

the court's decision in applying a lower standard of scrutiny for ex-felons than all other cases regarding voting classification. Under the strict scrutiny standard, felon disenfranchisement laws would almost certainly be ruled unconstitutional. However, the courts have consistently ruled in agreement with the precedent that strict scrutiny need not be applied for felon disenfranchisement laws, providing strong legal standing for the states' right to disenfranchise convicted felons.⁶

Finding employment after being released from prison is essential in order for ex-felons' successful integration back into society. Research has demonstrated that there is a strong relationship between employment and recidivism; one researcher found that being unemployed made an ex-convict 16 times more likely to recidivate/reoffend.⁷ Despite this, ex-convicts face numerous barriers to finding employment after their release in the form of federal and state restrictions and discriminatory hiring practices. Many state laws prohibit ex-felons from receiving any type of professional license or make it much more difficult to receive one. Licensing is needed for a wide variety of technical and skilled professions which don't need college degrees - which many

ex-convicts don't have. The devastating result is an even smaller portion of the job market, mostly in the private sector, in which ex-felons can look for a job. However, even this isn't a viable option due to discriminatory hiring processes limiting those with criminal records from getting a job. States that allow criminal records to be accessed publicly have been found to generally have higher rates of recidivism; additionally states which had passed laws which prevent employers from discriminating against ex-convicts in the hiring process have observed lower recidivism rates than states which have not.⁸

Unlike the legal response to felony disenfranchisement, there have been several successful challenges to employment discrimination laws. The ruling in *Kindem v. City of Alameda* (1980), a case brought to a US district court in California, particularly illuminates the court's belief that laws should be narrowly tailored; in it the court ruled that the "across-the-board ban on hiring ex-felons" implemented by the City of Alameda, violated the equal protection clause and was therefore unconstitutional.⁹ In general, courts have struck

down laws that ban employment of all people with criminal convictions; instead of these so called "blanket bans", the courts have ruled in favor of laws that take individual circumstances into account.¹⁰

Some scholars have questioned the different legal approach taken by the courts in dealing with matters relating to employment discrimination as opposed to political disenfranchisement.¹¹ A reason for this may be that the effects of political disenfranchisement on reintegration and recidivism are much less visible than unemployment. Numerous scholars have posited that disenfranchisement only serves to further isolate ex-convicts from society by not allowing them to participate in the political process.¹²

However, the results of this isolation and how it might relate to ex-convicts' recidivism as a result of never fully integrating back into society is unknown and difficult to measure. The results of unemployment, however, have results that are drastically more visible, and the correlation between unemployment and recidivism has been well accepted, whereas many doubt whether not being able to participate in the political process is

a significant factor in whether or not they will recidivate.

The effect of civil disabilities on the successful integration of former convicts into society is profound and unnecessary. These laws have detrimental effects on ex-convicts after they have already served their time and are trying to reintegrate back into society. As our society continues to attempt to alleviate the detrimental mass incarceration policies of the last three decades, the number of incarcerated individuals has continued to decline precipitously. These ex-convicts are being released in increasing numbers and trying to reintegrate into society, however, civil disabilities severely limits their ability to do so successfully.

According to a recently published report by the Bureau of Justice Statistics about 77 percent of prisoners that were released in 2005 were arrested for a new crime within five years.¹³ At a time when the reintegration of ex-felons has emerged as a critical issue, lawmakers should be looking to lower the astronomically high recidivism rate of our criminal justice system. Ostensibly, the goal of criminal justice system

is to reduce crime by punishing and rehabilitating offenders before reintegrating them into society; however, civil disabilities seemingly do more to increase crime than to fight it. By stripping away their basic rights, civil disabilities only serve as roadblocks to ex-convicts' reentry into society and increasing the likelihood they'll reoffend, therefore these laws should be eliminated because they are not in keeping with the goal of the criminal justice system.

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