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Are Certain Candidates Beyond Redemption?

By Jerry Goldfeder

On May 4, 2021, Gov. Andrew Cuomo signed legislation making it easier for formerly incarcerated felons to vote. Instead of "returning New Yorkers" having to apply on a case-by-case basis, the new law permits an "immediate and automatic restoration of the right of people on parole to vote in all elections." Its purpose was "to facilitate community reintegration and participation in the civic process," and the law even provides that the Department of Corrections facilitate re-registration upon their release. This law followed enactment by the New York City Council of amendments to the city's Fair Chance Act, which "significantly expand[s] employment protections for applicants and employees with criminal charges or arrests," and the New York Housing Authority's expanded rule to allow most of those with criminal records to apply for its coveted apartments. Moreover, the state legislature is poised to pass the Clean Slate Act, sealing most criminal records after a period of time so that employers cannot reject job applicants for past unlawful conduct.

These reforms are part of a national trend to eliminate, or at least mitigate, the vestigial discrimination against those with a criminal past. Such reintegration into society is driven by policy considerations as well as the principle of redemption, a central tenet held dear in our

nation. The general view is that once a person has "paid the price" of a crime committed, they should be permitted to lead a life unencumbered by their previous misconduct. This is what undoubtedly drove a whopping 65% of Floridians to vote in a 2018 referendum to restore voting rights to most prior felons.

In January 2021, however, the New York City Council took a step backward on this path toward reintegration by passing a City Charter amendment barring certain felons from running for or holding office in New York City. Specifically, the bill "disqualif[ied] any person that [had] been convicted of certain felonies, in relation to public corruption and depriving the public of honest services, from holding the office of Mayor, Public Advocate, Comptroller, Borough President or Council Member." Its lead sponsor told the media that he "believe[s] in redemption and second chances, but no one should be given a second chance at betraying the public trust as an elected official."

However one may feel about the new ban, the timing was ill-advised. It was enacted after candidates had been campaigning for the 2021 primary elections in New York City: many had already registered with the New York City Campaign Finance Board's public matching funds program; hundreds of thousands of dollars in contributions had been solicited and received; endorsements had been sought and made. The law would take effect "immediately," right before candidates were scheduled to circulate petitions to get on the ballot. In that the bill lay dormant since its introduction in 2018, it was generally thought to have been enacted in 2021 to prevent one particular candidate—Hiram Monserrate—from running for the New York City Council this year. Monserrate had pled guilty in 2012 to two felonies relating to his misappropriation of $109,000 of city grant monies. He had already been found guilty of a misdemeanor assault on his then-woman friend, and had been expelled from the New York State Senate. As it turns out, however, there was another candidate in this category. Eric Stevenson, a former Assemblyman, had been convicted of taking bribes and other corruption charges while in office. He, too, wanted to run for the City Council, from the Bronx. As a result of the new law, however, the Board of Elections ruled Monserrate and Stevenson off the ballot. Each unsuccessfully sought to nullify the law in court. See *Monserrate v. Espinal,* 194 A.D.3d 887 (2d Dep't 2021).

Neither Monserrate nor Stevenson are sympathetic figures. But putting them aside, there is a more fundamental issue that I have written about previously: In an era when the rights of the formerly incarcerated are expanded here in New York and around the country, should felons—even those convicted of public corruption—be barred from running for office? Another way of looking at it is: Shouldn't voters be able to choose their public officials as they see fit?

I wrote about this on these pages several years ago. In *Shouldn't It Be Up to the Voters?*, I explored Lackawanna, N.Y.'s refusal to seat Mohamed Albanna, a successful City Council candidate who had been convicted of the felony of operating an unlicensed money transmission business eleven years before the election. Media coverage during the campaign informed voters of the candidate's past, but the court overrode the election results by deeming his crime to be one of "moral turpitude," a disqualifying characteristic identified in that city's charter. See *Szymanski v. Albanna*, 157 A.D.3d 1189 (4th Dep't 2018). In my view the decision

was unfortunate: Albanna served five years in prison; his voters knew about his past misconduct and voted for him anyway; and the term moral turpitude is certainly ambiguous.

Unlike the Lackawanna City Charter disqualification provision, the recent New York City Charter provision is neither elusive nor all-encompassing. It identifies only certain public corruption-related felonies, and specifies which penal laws disqualify putative candidates. There is no ambiguity in its terms. The issue for me is whether any particular crime by a candidate should deprive a voter of choosing who may represent them. And are such laws consistent with modern values? To forever mark a person as beyond redemption seems anathema to who we are as a people. It is certainly worth considering.

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