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Florida's 'Disappeared Voters': Disfranchised by the GOP

by GREGORY PALAST

In Latin America they might have called them *votantes desaparecidos*, "disappeared voters." On November 7 tens of thousands of eligible Florida voters were wrongly prevented from casting their ballots--some purged from the voter registries and others blocked from registering in the first instance. Nearly all were Democrats, nearly half of them African-American. The systematic program that disfranchised these legal voters, directed by the offices of Florida Governor Jeb Bush and Secretary of State Katherine Harris, was so quiet, subtle and intricate that if not for George W. Bush's 500-vote eyelash margin of victory, certified by Harris, the chance of the purge's discovery would have been vanishingly small.

The group prevented from voting has few defenders in either party: felons. It has been well reported that Florida denies its nearly half a million former convicts the right to vote. However, the media have completely missed the fact that Florida's own courts have repeatedly told the Governor he may not take away the civil rights of Florida citizens who committed crimes in *other* states, served their time and had their rights restored by those states.

People from other states who have arrived in Florida with a felony conviction in their past number "clearly over 50,000 and likely over 100,000," says criminal demographics expert Jeffrey Manza of Northwestern University. Manza estimates that 80 percent arrive with voting rights intact, which they do not forfeit by relocating to Florida.

Nevertheless, agencies controlled by Harris and Bush ordered county officials to reject attempts by these eligible voters to register, while, publicly, the governor's office states that it adheres to court rulings not to obstruct these ex-offenders in the exercise of their civil rights. Further, with the aid of a Republican-tied database firm, Harris's office used sophisticated computer programs to hunt those felons eligible to vote and ordered them thrown off the voter registries.

After reviewing *The Nation's* findings, voter demographics authority David Bositis concluded that the purge-and-block program was "a patently obvious technique to discriminate against black voters." Bositis, senior research associate at the Joint Center for Political and Economic Studies in Washington, DC, notes that based on nationwide conviction rates, African-Americans would account for 46 percent of the ex-felon group wrongly disfranchised. Corroborating Bositis's estimate, the Hillsborough County elections supervisor found that 54 percent of the voters targeted by the "scrub" are African-American, in a county where blacks make up 11 percent of the voting population.

Positis suggests that the block-and-purge program "must have had a partisan motivation. Why else spend \$4 million if they expected no difference in the ultimate vote count?" Florida's black voters gave Al Gore nine out of ten of their votes; white and Hispanic felons, mostly poor, vote almost as solidly Democratic. A recently released University of Minnesota study estimates that, for example, 93 percent of felons of *all* races favored Bill Clinton in 1996. Whatever Florida's motive for keeping these qualified voters out of the polling booths on November 7, the fact is that they represented several times George W. Bush's margin of victory in the state. Key officials in Bush's and Harris's agencies declined our requests for comment.

The NAACP, tipped off to the racially suspect voter purge by early reports of this investigation, added the tainted felon-hunt to its lawsuit, filed January 10, against Harris, her elections unit chief Clay Roberts and their private database contractor. The suit accuses them of violating the Voting Rights Act of 1965 and the Constitution's equal protection amendment. The NAACP demands an immediate injunction to halt the felon purge.

The disfranchisement operation began in 1998 under Katherine Harris's predecessor as secretary of state, Sandra Mortham. Mortham was a Republican star, designated by Jeb Bush as his lieutenant governor running mate for his second run for governor.

Six months prior to the gubernatorial contest, the Florida legislature passed a "reform" law to eliminate registration of ineligible voters: those who had moved, those who had died and felons without voting rights. The legislation was promoted as a good-government response to the fraud-tainted Miami mayoral race of 1997.

But from the beginning, the law and its implementation emitted a partisan fragrance. Passed by the Republican legislature's majority, the new code included an extraordinary provision to turn over the initial creation of "scrub" lists to a private firm. No other state, either before or since, has privatized this key step in the elimination of citizens' civil rights.

In November 1998 the Republican-controlled office of the secretary of state handed the task to the single bidder, Database Technologies, now the DBT Online unit of ChoicePoint Inc. of Atlanta, into which it merged last year.

The elections unit within the secretary of state's office immediately launched a felon manhunt with a zeal and carelessness that worried local elections professionals. *The Nation* has obtained an internal Florida State Association of Supervisors of Elections memo, dated August 1998, which warns Mortham's office that it had wrongly removed eligible voters in a botched rush "to capriciously take names off the rolls." However, to avoid a public row, the supervisors agreed to keep their misgivings within the confines of the bureaucracies in the belief that "entering a public fight with [state officials] would be counterproductive."

That November Jeb Bush had an unexpectedly easy walk to the governor's mansion, an election victory attributed, ironically, to his endorsement by black Democratic politicians feuding with their party.

Over the past two years, with Republicans in charge of both the governorship and the secretary of state's office, now under Harris, the felon purge has accelerated. In May 2000, using a list provided by DBT, Harris's office ordered counties to purge 8,000 Florida voters who had committed felonies in Texas. In fact, none of the group were charged with anything more than misdemeanors, a mistake caught but never fully reversed. ChoicePoint DBT and Harris then sent out "corrected" lists, including the names of 437 voters who indeed had committed felonies in Texas. But this list too was in error, since a Texas law enacted in 1997 permits felons to vote after doing their time. In this case there was no attempt at all to correct the error.

The wrongful purge of the Texas convicts was no one-of-a-kind mishap. The secretary of state's office acknowledges that it also ordered the removal of 714 names of Illinois felons and 990 from Ohio--states that permit the vote even to those on probation or parole. According to Florida's own laws, not a single person arriving in the state from Ohio or Illinois should have been removed. Altogether DBT tagged for the scrub nearly 3,000 felons who came from at least

eight states that automatically restore voting rights and who therefore arrived in Florida with full citizenship.

A ChoicePoint DBT spokesman said, and the Florida Department of Elections confirms, that Harris's office approved the selection of states from which to obtain records for the felon scrub. As to why the department included states that restore voting rights, Janet Modrow, Florida's liaison to ChoicePoint DBT, bounced the question to Harris's legal staff. That office has not returned repeated calls.

Pastor Thomas Johnson of Gainesville is minister to House of Hope, a faith-based charity that guides ex-convicts from jail into working life, a program that has won high praise from the pastor's friend Governor Jeb Bush. Ten years ago, Johnson sold crack cocaine in the streets of New York, got caught, served his time, then discovered God and Florida--where, early last year, he attempted to register to vote. But local elections officials refused to accept his registration after he admitted to the decade-old felony conviction from New York. "It knocked me for a loop. It was horrendous," said Johnson of his rejection.

Beverly Hill, the elections supervisor of Alachua County, where Johnson attempted to register, said that she used to allow ex-felons like Johnson to vote. Under Governor Bush, that changed. "Recently, the [Governor's Office of Executive] Clemency people told us something different," she said. "They told us that they essentially *can't* vote."

Both Alachua's refusal to allow Johnson to vote and the governor's directive underlying that refusal are notable for their timing--coming after two court rulings that ordered the secretary of state and governor to recognize the civil rights of felons arriving from other states. In the first of these decisions, *Schlechter v. Florida Department of State*, issued in June 1998, Florida's Court of Appeal ruled unanimously that Florida could not require a man convicted in Connecticut twenty-five years earlier "to ask [Florida] to restore his civil rights. They were never lost here." Connecticut, like most states, automatically restores felons' civil rights at the end of their sentences, and therefore "he arrived as any other citizen, with full rights of citizenship."

The *Schlechter* decision was much the talk at a summer 1998 meeting of county elections officials in Orlando. So it was all the more surprising to Chuck Smith, systems administrator with Hillsborough County, that Harris's elections division chiefs exhorted local officials at the Orlando meeting to purge all out-of-state felons identified by DBT. Hillsborough was so concerned about this order, which appeared to fly in the face of the court edict, that the county's elections office demanded that the state put that position in writing--a request duly granted.

The Nation has obtained the text of the response to Hillsborough. The letter, from the Governor's Office of Executive Clemency, dated September 18, 2000, arrived only seven weeks before the presidential election. It orders the county to tell ex-felons trying to register that even if they entered Florida with civil rights restored by another state's law, they will still be "required to make application for restoration of civil rights in the state of Florida," that is, ask Governor Bush for clemency--exactly the requirement banned by the courts. The state's directive was all the more surprising in light of a second ruling, issued in December 1999 by another Florida court, in which a Florida district court judge expressed his ill-disguised exasperation with the governor's administration for ignoring the prior edict in *Schlechter*.

Voting rights attorneys who reviewed the cases for *The Nation* explained that the courts relied on both Florida statute and the "full faith and credit" clause of the US Constitution, which requires every state to accept the legal rulings of other states. "The court has been pretty clear on what the governor can't do," says Bruce Gear, assistant general counsel for the NAACP. And what Governor Bush can't do is demand that a citizen arriving in Florida ask him for clemency to restore a right to vote that the citizen already has.

Strangely enough, the governor's office does not disagree. While Harris, Bush and a half-dozen of their political appointees have not returned our calls, Tawanna Hayes, who processes the requests for clemency in the governor's office, states unequivocally that "we do not have the right to suspend or restore rights where those rights have been restored in another state." Hayes even keeps a copy of the two court decisions near her desk and quotes from them at

length. Then why have the governor and secretary of state ordered these people purged from the rolls or barred from registering? Hayes directed us to Greg Munson, Governor Bush's assistant general counsel and clemency aide. Munson has not responded to our detailed request for an explanation.

A letter dated August 10, 2000, from Harris's office to Bush's office, obtained under Florida's freedom-of-information act, indicates that the chief of the Florida State Association of Supervisors of Elections also questioned Harris's office about the purge of ex-cons whose rights had been restored automatically by other states. The supervisors' group received the same response as Hillsborough: Strike them from the voter rolls, and if they complain, make them ask Bush for clemency.

While almost all county supervisors buckled, Carol Griffen did not. Griffen, Washington County's elections chief, concluded that running legal voters through Jeb Bush's clemency maze would violate a 1993 federal law, the National Voter Registration Act, which was designed to remove impediments to the exercise of civil rights. The law, known as "Motor Voter," is credited with helping register 7 million new voters. Griffen quotes from the Florida section of the new, NVRA-certified registration form, which says, "I affirm I am not a convicted felon, or if I am, my rights relating to voting have been restored." "That's the *law*," says the adamant Griffen, "and I have no right stopping anyone registering who truthfully signs that statement. Once you check that box there's *no discussion*." Griffen's county refused to implement the scrub, and the state appears reluctant to challenge its action.

But when Pastor Johnson attempted to register in Alachua County, clerks refused and instead handed him a fifteen-page clemency request form. The outraged minister found the offer a demeaning Catch-22. "How can I ask the governor for a right I already have?" he says, echoing, albeit unknowingly, the words of the Florida courts.

Had Johnson relented and chosen to seek clemency, he would have faced a procedure that is, admits the clemency office's Hayes, "sometimes worse than breaking a leg." For New Yorkers like Johnson, she says, "I'm telling you it's a bear." She says officials in New York, which restores civil rights automatically, are perplexed by requests from Florida for nonexistent papers declaring the individual's rights restored. Without the phantom clemency orders, the applicant must hunt up old court records and begin a complex process lasting from four months to two years, sometimes involving quasi-judicial hearings, the outcome of which depends on Jeb Bush's disposition.

Little wonder that out of tens of thousands of out-of-state felons, only a hardy couple of hundred attempted to run this bureaucratic obstacle course before the election. (Bush can be compassionate: He granted clemency to Charles Colson for his crimes as a Watergate conspirator, giving Florida resident Colson the right to vote in the presidential election.)

Was Florida's corrupted felon-voter hunt the work of cozy collusion between Jeb Bush and Harris, the President-elect's brother and state campaign chief, respectively? It is unlikely we will ever discover the motives driving the voter purge, but we can see the consequences. Three decades ago, Governor George Wallace stood in a schoolhouse door and thundered, "Segregation now! Segregation tomorrow! Segregation forever!" but he failed to block entry to African-Americans. Governor Jeb Bush's resistance to court rulings, conducted at whisper level with high-tech assistance, has been far more effective at blocking voters of color from the polling station door. Deliberate or accidental, the error-ridden computer purge and illegal clemency obstacle course function, like the poll tax and literacy test of the Jim Crow era, to take the vote away from citizens who are black, poor and, not coincidentally, almost all Democrats. No guesswork there: Florida is one of the few states to include both party and race on registration files.

Pastor Johnson, an African-American wrongfully stripped of his vote, refuses to think ill of the governor or his motives. He prefers to see a dark comedy of bureaucratic errors: "The buffoonery of this state has cost us a President." If this is buffoonery, then Harris and the Bushes are wise fools indeed.