

No. 24-560

IN THE
Supreme Court of the United States

DENNIS HOPKINS, *et al.*,
Petitioners,

v.

SECRETARY OF STATE WATSON, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF *AMICUS CURIAE* OF
THE AMERICAN PROBATION AND
PAROLE ASSOCIATION
IN SUPPORT OF PETITIONERS**

LOUIS P. PETRICH
Counsel of Record
BALLARD SPAHR LLP
2029 Century Park East
Suite 1400
Los Angeles, CA 90067-2915
(424) 204-4400
petrichl@ballardspahr.com
Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE¹

The American Probation and Parole Association (“APPA”) respectfully submits this brief as amicus curiae in support of Petitioners Dennis Hopkins, Herman Parker, Jr., Walter Wayne Kuhn, Jr., Byron Demond Coleman, Jon O’Neal, and Earnest Willhite, individually and on behalf of a class of all others similarly situated.

The APPA is an international association of professionals who work in probation, parole, and community-based corrections. The APPA is a non-profit organization founded in Houston, Texas in 1974 and is now based in Lexington, Kentucky. The APPA’s membership in the United States includes more than 1,400 individual probation or parole officers, and more than 200 state and local probation and parole agencies, who together employ more than 39,000 probation and parole professionals. All told, the APPA represents the interests of the probation and parole officers who supervise more than five million individuals on probation and parole.

The APPA provides training, education, and technical assistance to its members in support of its mission to promote a fair and effective system of community justice for individuals in the parole and probation system. The APPA conducts two major conferences

¹ Pursuant to Rule 37.6, undersigned counsel of record certifies that no party’s counsel authored this brief in whole or in part, no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than counsel for *Amicus Curiae* American Probation and Parole Association contributed monetarily to the preparation of this *amicus* brief. All parties timely received notice of the American Probation and Parole Association’s intent to submit this *amicus* brief pursuant to Rule 37.2.

each year; publishes a quarterly journal, *Perspectives*, dedicated to issues of concern to the probation and parole community; and conducts both on-site and online training programs for its members on a year-round basis.

As part of its work, the APPA has focused on ways in which the parole and probation systems can be improved to better reintegrate individuals back into society. The APPA has found that restoring the right to vote to people with criminal records who have been released from incarceration is of critical importance to that mission. Accordingly, in 2007, the APPA adopted a formal resolution advocating for the full “restoration of voting rights upon completion of an offender’s prison sentence,” and for “no loss of voting rights while on community supervision.”² In addition, the Executive Director of the APPA has testified before Congress on the importance of restoring voting rights.³ The APPA has also filed an amicus brief in at least three other cases in support of restoring voting rights to people with criminal records.⁴

² Am. Probation & Parole Ass’n, *Resolution Supporting Restoration of Voting Rights* (Sept. 2007), https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e.

³ *Democracy Restoration Act of 2009: Hearing on H.R. 3335 Before the Subcomm. On the Constitution, Civil Rights & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 59 (2010) (statement of Carl Wicklund, Exec. Dir., Am. Probation & Parole Ass’n).

⁴ See *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010); *Voice of the Ex-Offender v. State of Louisiana*, No. 2017-1141 (La. App. 1 Cir. Apr. 27, 2018); *Hand v. Scott*, No. 18-11388 (11th Cir. June 28, 2018).

The APPA has deep knowledge of the parole and probation systems throughout the country and a strong belief in the importance of voting rights to the reintegration of people who have committed offenses into the community. The APPA respectfully submits this brief to explain how arbitrarily disenfranchising citizens following completion of their sentence, probation, and/or parole undermines the rehabilitation and reintegration of offenders and negatively impacts their communities.

SUMMARY OF ARGUMENT

This brief will focus on the devastating practical impact of Mississippi's laws regarding felon disenfranchisement. As shown below, the disenfranchisement of people who have committed offenses undermines their successful reintegration into the community, and harms them, their families, their children and their communities. Voting is one of the basic foundations of citizenship and provides a tangible pathway to responsible civic engagement for people who have committed offenses and their families. Denying released offenders this basic right takes away their full dignity as citizens, separates them from the rest of their community, and reduces them to second-class citizens. It makes their reintegration into society more difficult, increases recidivism and social ostracism, and lowers community participation in the political process.

ARGUMENT**I. TENS OF THOUSANDS OF MISSISSIPPI RESIDENTS WHO HAVE COMPLETED THEIR SENTENCES ARE IMPACTED BY MISSISSIPPI'S DISENFRANCHISEMENT SCHEME**

Nearly 50,000 people convicted between 1994 and 2017 have been permanently deprived of the right to vote under Mississippi's felony disenfranchisement law, Section 241 of the Mississippi Constitution.⁵ This is only a partial estimate of the state's disenfranchised residents, not including those with older or more recent convictions.

As of 2018, approximately 60 percent of those individuals— more than 29,000 people – had already completed their sentences.⁶ Despite having paid their debt to society, they continue to be subject to a punishment that marks them as unfit to take part in the democratic process, deprives them of political representation, and harms their ability to reintegrate into the community. As this brief will demonstrate, Mississippi's disenfranchisement scheme threatens formerly incarcerated residents' chances at successful reentry. And the law, which was adopted in 1890 with the express aim of preventing Black residents from voting, continues to achieve its purpose, depriving Black people of voting rights at a rate more than twice that of white residents.

⁵ Record in the Fifth Circuit Court of Appeals ("Record") at 19-60662.1768 (Report of Dov Rothman, Ph.D., filed in *Harness v. Hosemann*, No. 3:17-cv-791-DPJ-FKB, consolidated with *Hopkins v. Hosemann*, No. 3:18-cv-188-DPJ-FKB, on Aug. 15, 2018 (Dkt. 44-1)), ¶ 14.

⁶ *Id.* at ¶ 17.

II. LIFETIME DISENFRANCHISEMENT PREVENTS THOSE WITH FELONY CONVICTIONS FROM REINTEGRATING INTO SOCIETY, AND DISCOURAGES VOTING AMONG THEIR FAMILIES AND COMMUNITIES

Mississippi's disenfranchisement scheme prevents formerly incarcerated persons from fully reintegrating into their communities, and research has shown it harms ex-offenders' family and community members as well by discouraging them from voting.

A. Mississippi's Disenfranchisement Scheme Undermines Formerly Incarcerated Individuals' Reentry

Section 241 is antithetical to reintegration because it deprives ex-offenders of representation in government. Without the right to vote, they are forever denied a say in "policies affecting schools, taxes, policing and more," ensuring the creation of "a permanent underclass that ... officials are free to disregard."⁷ Disenfranchisement involves "sever[ing]" ex-offenders "from the body politic" and makes full reintegration impossible. *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S.D. Miss. 1995) ("the disenfranchised is ... condemned to the lowest form of citizenship, where voiceless at the ballot box ...[he] must sit idly by while others elect his civic leaders and while others choose the fiscal and governmental policies which will govern him and his family.").

⁷ Bonnie Pitz, *Permanent disenfranchisement hurts families and communities*, Des Moines Register (Sept. 23, 2016), <https://www.desmoinesregister.com/story/opinion/abetteriowa/2016/09/23/permanent-disenfranchisement-hurts-families-and-communities/90848580/>.

Equally important, Mississippi's disenfranchisement laws discourage civic engagement, which studies have proven is critical for the successful transformation from prisoner to citizen.⁸ When an individual identifies as a responsible citizen, including participation in volunteer work, community involvement and voting, it benefits his or her reentry: "Those who participate in the democratic process have a greater investment in the resulting decisions, and more importantly, an investment in preserving that process."⁹ One study found that the "desire to 'be productive and give something back to society'" was vital to full reintegration.¹⁰ Restoring voting rights for people with criminal records sends a message that they have repaid their debt to society and are being welcomed back as valuable members of their communities. "When people have a say in the policies they are impacted by, it lets them know they belong, and gives them a positive mechanism for bringing the resources they need to live happy, healthy lives[.]"¹¹

⁸ Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 299 Ann. Rev. Soc. 89, 97 (2003).

⁹ Holona Leanne Ochs, "Colorblind" Policy in Black and White: *Racial Consequences of Disenfranchisement Policy*, 34 Pol'y Stud. J. 81, 89 (2006).

¹⁰ Christopher Uggen, Jeff Manza, & Angela Behrens, 'Less Than the Average Citizen': *Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, in *After Crime and Punishment: Pathways to Offender Reintegration* 263 (Shadd Maruna & Russ Immarigeon eds., 2004) (quoting Shadd Maruna, *Making Good: How Ex-convicts Reform and Rebuild Their Lives* (2001)).

¹¹ Juan Moreno Haines, *To Act Like a Democracy*, 68 UCLA L. Rev. Disc. 88, 94 (2021) (quoting email from James King, who was formerly incarcerated and is co-director of programs for the Ella Baker Center for Human Rights); Tanya N. Whittle, *Felony*

By contrast, disenfranchisement denies them “the recognition of their peers as re-integrated stakeholders in society.”¹² Lifetime voting bans “remind[] those with a felony criminal record that they are perpetually inferior” and can prevent them from being seen as fully reformed members of the community, which is critical to reintegration.¹³ Indeed, “exclusion from the ballot box hinders reintegration and presents an ongoing stigma.”¹⁴

Removing this stigma can have a profound positive effect on ex-offenders’ civic engagement. This was evident in Virginia when former Governor Terry McAuliffe restored the voting rights of more than 170,000 formerly incarcerated citizens between 2013 and 2018.¹⁵ Afterward, many voted for the first time since their imprisonment. Their comments on the experience reflected its great impact on how they viewed themselves and their role in the community.

Collateral Sanctions Effects on Recidivism: A Literature Review, 29 *Crim. Just. Pol’y Rev.* 5, 505-524 (2018) (“the right to vote is a powerful symbol of being a community stakeholder”).

¹² Neel U. Sukhatme, Alexander Billy & Gaurav Bagwe, *Felony Financial Disenfranchisement*, 76 *Vand. L. Rev.* 143, 209 (2022).

¹³ James M. Binnall, *A “Meaningful” Seat at the Table: Contemplating Our Ongoing Struggle to Access Democracy*, 73 *SMU L. Rev. F.* 35, 49 (2020); see also Defendant-Appellant’s En Banc Brief, filed in *Hopkins v. Watson*, No. 19-60662, Dkt. 218, at 30 (arguing that “[s]ection 241 implements a judgment that those convicted of listed felonies lack the character appropriate for exercising the franchise.”).

¹⁴ Nora V. Demleitner, *Criminal Disenfranchisement in State Constitutions: A Marker of Exclusion, Punitiveness, and Fragile Citizenship*, 26 *Lewis & Clark L. Rev.* 531, 544-545 (2022).

¹⁵ Laura Vozzella, *Va. Gov. McAuliffe Says He Has Broken U.S. Record for Restoring Voting Rights*, *Wash. Post* (Apr. 27, 2017); Vann R. Newkirk II, *How Letting Felons Vote is Changing Virginia*, *The Atlantic* (Jan. 8, 2018), <https://bit.ly/2CTIpVO>.

LaVaughn Williams, who had not voted in decades, said after voting, “I now felt like a citizen. I now felt like I will make a difference in some kind of way.”¹⁶ Sylvester Hall, who was convicted in 1978 of buying \$25 worth of cigarettes using another person’s bank check, voted again for the first time in 40 years, at age 79. He felt like a weight had been lifted from him: “It’s hard to describe,” Hall said. “It’s been beautiful.”¹⁷ Muhamad As-saddique Abdul Rahman voted for the first time in his life at age 53, having been imprisoned for a felony at age 16. Abdul-Rahman explained: “[H]aving my right to vote back has made me feel whole as a human being.”¹⁸ Mississippi’s continuing enforcement of Section 241 denies ex-offenders this opportunity to engage in the democratic process.

In sum, Mississippi’s permanent voting ban deprives ex-felons of a voice in their government, imposes on them a lifelong stigma of criminality, and isolates them from the larger community, thus harming their ability to successfully reintegrate. However, the harmful effects of Section 241 extend further: It discourages voting among the families and communities of formerly incarcerated residents, and has the broader potential of discouraging *all* ex-felons, even those whose felonies were not disqualifying offenses, from voting.

¹⁶ Sam Levine, *In Virginia, Ex-Felons Voted for the First Time After Regaining Their Rights*, Huffpost (Nov. 8, 2017), https://www.huffpost.com/entry/virginia-restoration-of-voting-rights_n_5a026556e4b092053058cd0e.

¹⁷ Moriah Balingit, *“It’s been beautiful”: With rights restored, 79-year-old felon votes again after 40 years*, Wash. Post (Nov. 8, 2016).

¹⁸ Camila DeChalus, *In Virginia, Ex-Felons Find Empowerment in the Voting Booth*, CNN Politics (Nov. 5, 2016), <https://www.cnn.com/2016/11/05/politics/virginia-felons-voting-rights/index.html>.

B. Disenfranchising Citizens Who Have Committed Felonies Harms Their Families and Communities

Preventing people with criminal records from voting also harms their families and their communities. Evidence suggests that when heads of households are disenfranchised, the level of civic engagement for the entire family drops.¹⁹ “Since voting is in large part a communal activity – we frequently discuss upcoming elections with family members and friends, or drive to the voting polls together – then any diminution of this activity may have a spillover effect.”²⁰ Voting is an experience, in many cases, passed on from parent to child. Parents often take their children into the voting booth at young ages, exposing the children to their first act of civic engagement. Research confirms that “[a] parent’s electoral participation plays a significant role in determining whether his child will become civically engaged.”²¹ One study found that a parent’s political participation had the greatest effect, more than any other factor, on a child’s decision to vote when he or she becomes eligible.²²

¹⁹ Erika Wood, *Restoring the Right to Vote*, Brennan Ctr. For Justice (2009) at 13, <https://goo.gl/Gr5pMG>.

²⁰ Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 *How. L.J.* 549, 561 (2011).

²¹ *Id.*; see also Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 *Am. Pol. Sci. Rev.* 41, 43 (2002); Melanie Bowers & Robert R. Preuhs, *Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons*, 90 *Soc. Sci. Q.* 722, 725 (2009).

²² Plutzer, *supra* note 21, at 48.

Moreover, the effects of disenfranchisement extend beyond an individual's household to other members of the community.²³ Studies have found that where there are restrictions on the right to vote for some members of a community, overall voter participation drops, "even among people who are legally eligible to vote."²⁴ One study found that in the 1996 and 2000 presidential elections, there was lower voter turnout in states with the most restrictive criminal disenfranchisement laws, and higher turnout in states with less restrictive criminal disenfranchisement.²⁵ Additional studies analyzed nationwide voter surveys and found that in states with strict felony disenfranchisement laws, nonfelons in Black communities were less likely to vote: "[T]he effects of [felony disenfranchisement] policies are not limited to those that arise from the direct removal of ex-felon populations from the voting booth. [Felony disenfranchisement] policies affect *nonfelons'* propensity to vote as well."²⁶ Thus, the

²³ See Wood, *supra* note 19 at 12; Martha Guarnieri, *Civil Rebirth: Making the Case for Automatic Ex-Felon Vote Restoration*, 89 Temp. L. Rev. 451, 480-81 (2017) ("Voting and civic participation are connected with prosocial behavior, such as participation in stable work and family relationships").

²⁴ Marc Mauer, *Disenfranchising Felons Hurts Entire Communities*, Joint Ctr. For Pol. & Econ. Stud., (May/June 2004), at 5, <https://goo.gl/zY6w5f>; see also Arman McLeod, et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 Va. J. Soc. Pol'y & L. 66, 80 (2003).

²⁵ McLeod, *supra* note 24, at 77.

²⁶ Bowers & Preuhs, *supra* note 21, at 738, 740; see Bridgett A. King & Laura Erickson, *Disenfranchising the Enfranchised: Exploring the Relationship Between Felony Disenfranchisement and African American Voter Turnout*, 47 J. Black Stud. 799, 804 (2016) (same).

harmful effects of disenfranchisement laws are amplified in communities with a significant number of formerly incarcerated residents.²⁷

C. Mississippi’s Scheme Further Suppresses Voting by Citizens Convicted of Non-Qualifying Felonies, Who Mistakenly Believe They Are Disenfranchised

The state’s lifetime voting ban is limited to persons with felony convictions for murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy. However, numerous residents convicted of other felonies have refrained from voting in a mistaken belief that they were among those disenfranchised by the law.²⁸ Even Mississippi state legislators have introduced bills to restore voting rights for ex-felons who were convicted of non-qualifying offenses such as aggravated assault and possession of a controlled substance – and thus, were never disenfranchised in the first place. In 2016, then state Senator Sean Tindell, R-Gulfport, introduced a

²⁷ Christopher Uggen, Ryan Larson, Sarah Shannon, Robert Stewart & Caleb Lueder, *The denial of voting rights to people with criminal records*, from *Beyond Bars: A Path Forward from 50 Years of Mass Incarceration in the United States* (K. Budd, D. Lane, G. Muschert & J. Smith, eds. 2023) at 74 (“When states tie voting eligibility to criminal convictions, disparities in the criminal legal system spill over to affect the political system, as groups that are more likely to be surveilled, arrested, convicted, and incarcerated lose political power relative to more advantaged groups.”).

²⁸ Anna Wolfe & Michelle Liu, *Not all ex-felons are barred from voting in Mississippi, but no one is telling them that*, Mississippi Today (Nov. 1, 2018), <https://mississippitoday.org/2018/11/01/not-all-ex-felons-are-barred-from-voting-in-mississippi-but-no-one-is-telling-them-that/>.

bill to restore the voting rights of Steven Gunn, who had been convicted of aggravated assault.²⁹ In 2017, Rep. Larry Byrd, R-Petal, introduced a bill to restore the franchise to Seagie Pace, who was convicted of possession of a controlled substance with intent.³⁰ Each of these “de facto disenfranchised” citizens had been convicted for more than 10 years before learning they never lost the right to vote. “Defendants are often unaware of their rights, are not provided information, and, if provided, the information is often misleading, confusing, or inaccurate.”³¹ As a result, “[m]any defendants who are eligible to vote are simply unaware or confused by disenfranchisement laws. The lack of knowledge about their eligibility prevents many defendants from voting.”³²

Thus, Mississippi’s permanent voting ban has a ripple effect of discouraging voting in ex-offenders’ communities and among the broader population of those with any felony conviction.

III. RESTORING VOTING RIGHTS ENHANCES PUBLIC SAFETY, BECAUSE THERE IS A CORRELATION BETWEEN VOTING AND REDUCED RECIDIVISM

In addition to helping individuals to re-enter their communities, reinstating the right to vote is strongly tied to lower recidivism rates and increased public

²⁹ See https://billstatus.ls.state.ms.us/2016/pdf/all_measures/allmsrs.xml.

³⁰ See https://billstatus.ls.state.ms.us/2017/pdf/all_measures/allmsrs.xml.

³¹ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 Fla. L. Rev. 287, 314 (2023).

³² *Id.* at 314-315.

safety.³³ Research suggests that there are “consistent differences between voters and non-voters in rates of subsequent arrests, incarceration, and self-reported criminal behavior.”³⁴ One study found that former offenders who voted were half as likely to be re-arrested as those who did not.³⁵ Another study found that states that permanently disenfranchise people with criminal records experience significantly higher rates of repeat offenses than states that do not.³⁶ Voter disenfranchisement serves “only to further alienate and isolate a group of individuals at a time when they are trying to re-integrate into society.”³⁷ Indeed, disenfranchisement creates a “perpetual criminal underclass unable to fully rejoin society after their

³³ Amy Heath, *Cruel and Unusual Punishment: Denying Ex-Felons the Right to Vote*, 25 Am. U. J. Of Gender, Soc. Pol’y & L. 327, 356 (2017).

³⁴ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004).

³⁵ *Id.* at 205; see also Nat’l Academies of Sciences, *The Limits of Recidivism: Measuring Success After Prison* (R. Rosenfeld & A. Grigg, eds. 2022) at 93, <https://nap.nationalacademies.org/catalog/26459/the-limits-of-recidivism-measuring-success-after-prison> (surveying studies of voting and recidivism) (“[a]lthough some of the association between voting and recontact with the criminal legal system is likely due to preexisting differences between voters and nonvoters, the results suggest a link between political participation and desistance from crime,” and voting may “help to reinforce an identity as a law-abiding citizen.”).

³⁶ Guy Padraic Hamilton-Smith & Matt Vogel, *The Ballot as Bulwark: The Impact of Felony Disenfranchisement on Recidivism*, 19-20, 22 (Aug. 30, 2011), <https://goo.gl/jGTmcm>.

³⁷ Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 La Raza L. J. 407, 413 (2015).

sentence is served,” which only increases the potential for an increase in criminal activity.³⁸

IV. LAW ENFORCEMENT OFFICIALS AND THEIR PROFESSIONAL ORGANIZATIONS, WHO ARE CLOSEST TO THE ISSUES AT STAKE, SUPPORT RESTORING THE FRANCHISE

Probation and parole officers are the state officials most directly responsible for reintegrating offenders back into society after their term of imprisonment. Among these officers, there is a growing consensus that voting plays an important role in the reintegration process.³⁹

The APPA passed a resolution in support of restoring voting rights in 2007, finding that “disenfranchisement laws work against the successful reentry of offenders.”⁴⁰ The National Black Police Association and the Association of Paroling Authorities International, among others, have passed similar resolutions.⁴¹ In addition, the American Correctional Association stated that “continuing to disenfranchise people after they have completed their sentence works

³⁸ *The Ballot as Bulwark*, *supra* note 36, at 21.

³⁹ *See Hearing on the Democracy Restoration Act of 2009*, *supra* note 3, at 60.

⁴⁰ *See Resolution Supporting Restoration of Voting Rights*, *supra* note 2.

⁴¹ Nat’l Black Police Ass’n, *Resolution on Restoring Voting Rights* (June 1, 2008), <http://goo.gl/Z4uVPk>; May 30, 2019 letter to Kevin McCarty from Brennan Center for Justice, <https://www.brennancenter.org/sites/default/files/2020-06/Letter%20of%20Support%20ACA%206%20and%20AB%20646%20%285.3.19%29.pdf>, at 2 n.5 (citing Ass’n of Paroling Auths. Int’l, *Resolution on Restoring Voting Rights* (Apr. 30, 2008)).

against the successful reentry of offenders as responsible, productive citizens into the community.”⁴²

This position has been echoed by prosecutors, police officers, and other officials intimately familiar with the parole and probation systems. “Annually, we spend millions to rehabilitate offenders and bring them back into society only to let an outdated system push them back with one hand while we pull with the other,” argues one former prosecutor from Kentucky.⁴³ The former President of the Police Executive Research Forum explained that it is “better to remove any obstacles that stand in the way of offenders resuming a full, healthy productive life.”⁴⁴ And the former President of the Police Foundation (now National Policing Institute) argued that, rather than treating people who have committed offenses as a “pariah class,” “we need to bring people back as whole citizens” in order to have “effective policing.”⁴⁵

V. DISENFRANCHISED RESIDENTS HAVE NO REALISTIC PATH TO GET BACK THE RIGHT TO VOTE

Under Mississippi law, the process to reinstate voting rights after a conviction is onerous and ineffective. A disenfranchised voter has two options to seek restoration of his or her rights: a gubernatorial pardon or a “suffrage bill” passed by a two-thirds

⁴² See November 11, 2020 letter from James A. Gondles, Jr., executive director of the American Correctional Association, to Iowa Governor-Elect Terry Branstad, <https://www.brennancenter.org/sites/default/files/analysis/IA%203%20ACA.pdf>.

⁴³ R. David Stengel, *Let's Simplify the Process for Disenfranchised Voters*, Cent. Ky. News-J. (Jan. 28, 2007), <https://bit.ly/2Kia8Ea>.

⁴⁴ See Wood, *supra* note 19, at 10.

⁴⁵ *Id.*

majority of the state Legislature. Section 253 of the Constitution sets forth the latter option, which, from 2009 through 2023, only restored the rights of approximately 60 people – less than a third of those on whose behalf a bill was introduced.

The complex process for restoration of voting rights is completely discretionary and standardless at every level. A disenfranchised person must first ask his or her legislator to sponsor a suffrage bill. Then the individual's information is submitted to the Suffrage Subcommittee of the chamber's Judiciary Committee, where a background check is performed. The chair of the committee then subjectively selects which applications may be voted on by the full committee. If the bill of suffrage passes the committee, it then must pass the entire chamber by a two-thirds vote.⁴⁶ If it survives, the bill proceeds to the second chamber of the Legislature. Finally, a bill of suffrage passed in both chambers must be signed into law by the Governor, or the bill can become law if the Governor takes no action on it within five days.

From 2009 through 2023, fewer than one-third of suffrage bills introduced in the Legislature were passed into law (60 out of 187).⁴⁷ In four of those years – 2009, 2012, 2016, and 2023 – every bill failed.⁴⁸ Even if they had all passed, those whose rights were restored would comprise a tiny fraction of the state's vast number of disenfranchised citizens.

⁴⁶ Miss. Const. Ann. Art. 12 § 253.

⁴⁷ Mississippi Legislative Bill Status System, <http://billstatus.ls.state.ms.us/sessions.htm>.

⁴⁸ Out of 20, 10, 2 and 12 bills, respectively. *Id.*

VI. MISSISSIPPI'S DISENFRANCHISEMENT SCHEME, ENACTED IN 1890 TO SUPPRESS THE BLACK VOTE, CONTINUES TO DISPROPORTIONATELY IMPACT BLACK VOTERS

Mississippi enacted its felon disenfranchisement law at the 1890 constitutional convention, two and a half decades after the Civil War. Pet.App.42a. The convention's purpose, according to Mississippi senator James Z. George, was to ensure "a home government, under the control of the white people of the State."⁴⁹ Judge Solomon Saladin Calhoun, a former lieutenant colonel in the Confederate Army and the convention's president, gave an opening speech in which he declared that Mississippi's "ballot system must be so arranged as to effect one object" – white political control.⁵⁰ When African Americans had been in power, as during Reconstruction, it had "always meant economic and moral ruin," but white ascendancy resulted in "prosperity and happiness to all races."⁵¹ Months before the convention, Judge Calhoun had expressed his opinion in a published paper that "Negro suffrage is an evil and an evil to both races."⁵² Such sentiments

⁴⁹ Record 19-60662.1798-99 (Report of Dorothy O. Pratt, Ph.D., filed in *Harness v. Hosemann*, No. 3:17-cv-791-DPJ-FKB, consolidated with *Hopkins v. Hosemann*, No. 3:18-cv-188-DPJ-FKB, on Oct. 4, 2018 (Dkt. #65-2)), ¶ 19.

⁵⁰ Record 19-60662.1801-02 (Pratt report), ¶ 25; see also Ronald G. Shafer, *The 'Mississippi Plan' to keep Blacks from voting in 1890: 'We came here to exclude the Negro'*, Wash. Post (May 1, 2021) ("The 'Mississippi Plan' became the model throughout the South, part of a raft of racially oppressive Jim Crow laws that ended Reconstruction.").

⁵¹ Record 19-60662.1802 (Pratt report), ¶ 25.

⁵² *Id.* at ¶ 26.

were echoed repeatedly in published statements of other delegates at the convention.⁵³ “We are embarked in the same ship of white supremacy, and it is freighted with all our hopes,” stated T.P. Bell, delegate from Kemper County.⁵⁴

The most important work at the convention was undertaken by the Franchise Committee, which drafted voter eligibility requirements that included a poll tax and literacy test intended to disenfranchise African Americans.⁵⁵ To further their goal of ensuring white political control, the committee recommended that eligible voters could not include people convicted of “bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy,” crimes which were more often prosecuted against black men than white men.⁵⁶ Mississippi Supreme Court Justice C.J. Cooper wrote that “the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race,” by selecting “the offenses to which its weaker members were prone.”⁵⁷ To limit the provision’s impact on whites, the convention adopted a measure allowing for restoration of voting rights to anyone disqualified by reason of crime, upon two-thirds

⁵³ *Id.* at ¶ 27.

⁵⁴ Exhibit 15 to Motion for Summary Judgment filed in *Harness v. Hosemann*, No. 3:17-cv-791-DPJ-FKB, consolidated with *Hopkins v. Hosemann*, No. 3:18-cv-188-DPJ-FKB, on Oct. 4, 2018 (Dkt. #65-15) (Summary Chart V, Selected Statements by Delegates to the 1890 Constitutional Convention, p. 3).

⁵⁵ Record 19-60662.1806-08 (Pratt report), ¶¶ 35-36, 38.

⁵⁶ Record 19-60662.1808, 1815 (Pratt report), ¶¶ 38, 51.

⁵⁷ *Ratliff v. Beale*, 20 So. 863, 868 (Miss. 1896).

approval by both houses of the Legislature.⁵⁸ The measure contained no standards of any kind, leaving the decision of whether to restore voting rights to the complete discretion of state lawmakers. The new voter eligibility requirements, remarked delegate Bell, “place[] the commonwealth of Mississippi for all time in the control of the white race – the only race fit to govern in this country.”⁵⁹

Section 241 has been amended only twice since its adoption: in 1950, when burglary was removed from the list of offenses,⁶⁰ and in 1968 when the offenses of rape and murder were added.⁶¹ Neither amendment did anything to address the law’s original race-based motivation. Section 241 has remained largely unchanged to the present day, and Mississippi is now one of only eleven states that imposes a permanent voting ban for a non-election-related felony.⁶²

The measures adopted at the 1890 convention were resoundingly effective in denying African Americans the vote, and continue to be so. Voter registration of Black men dropped from 66.9% of the Black voting age population in 1867, to 5.7% in 1892.⁶³ By contrast, white voter registration remained relatively unchanged at 55-56.5%.⁶⁴ Decades later, in 1964, 73.2% of adult

⁵⁸ Record 19-60662.1816-17 (Pratt report), ¶¶ 52, 54.

⁵⁹ Record 19-60662.1803 (Pratt report), ¶ 27.

⁶⁰ Miss. Laws 1950, ch. 569.

⁶¹ Miss. Laws 1968, ch. 614.

⁶² *Hopkins v. Hosemann*, 76 F.4th 378, 412 (Appendix) (5th Cir. 2023).

⁶³ Record 19-60662.1827 (Pratt report), ¶ 74.

⁶⁴ *Id.*

white Mississippians were registered to vote, while only 5.4% of adult black Mississippians were registered.⁶⁵

The disparate impact of the felon disenfranchisement law continues into the present, largely as a result of systemic racial inequalities in the criminal justice system. While African Americans make up 37% of Mississippi's population, they constitute 57% of its incarcerated population.⁶⁶ From 1994 through 2017, black voting-age Mississippians were disenfranchised at over twice the rate of white voting-age Mississippians.⁶⁷ One and three-tenths of a percent (1.3%) of white citizens of voting age in Mississippi were convicted of a disenfranchising crime during that time period (18,310 people), compared to 3.5% of the black citizen voting age population (29,052).⁶⁸ Accordingly, although the Black population makes up only 36% of the state's voting age citizens, Black people comprise 59% of individuals convicted of disenfranchising offenses.⁶⁹

Enforcing the felon disenfranchisement law results in the continuation of voting restrictions that were explicitly enacted to prevent African Americans from voting. The objective of a post-Civil War Mississippi to

⁶⁵ Mississippi Freedom Democratic Party, *Statistics of Negro and White Voter Registration in the Five Congressional Districts of Mississippi* (1964), https://www.crmvet.org/docs/641000_mfdp_statistics.pdf.

⁶⁶ Leah Sakala, Prison Policy Initiative, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity* (May 28, 2014), <https://www.prisonpolicy.org/reports/rates.html>.

⁶⁷ Record 19-60662.1768-70 (Rothman report, *supra* note 5), ¶¶ 14-15.

⁶⁸ *Id.*

⁶⁹ Record 19-60662.1767 (Rothman report), ¶ 10.

divest African Americans of a say in their communities continues to be carried out today as long as the felon disenfranchisement law remains in force.

VII. A GROWING NUMBER OF STATES HAVE ABANDONED OR LIMITED THE SCOPE OF THEIR DISENFRANCHISEMENT LAWS

Mississippi is one of only eleven states that impose permanent disenfranchisement for specified non-election related offenses. Pet.App.66a-67a. In recent decades, numerous states have enacted measures restoring the franchise to those with felony convictions,⁷⁰ demonstrating that excessively punitive disenfranchisement laws such as Mississippi's run counter to society's evolving standards of decency:

In 2024: Oklahoma, which had already restored voting rights to persons who completed their sentences, passed a law clarifying that rights were restored upon completion, discharge, commutation of sentence, or receipt of a pardon.⁷¹ Nebraska, which had already restored voting rights after a person's completion of

⁷⁰ See also Margaret Love & David Schlusell, *Pathways to Reintegration: Criminal Record Reforms in 2019*, Collateral Consequences Resource Center, 1 (Feb. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872864 ("In 2019, 43 states, the District of Columbia, and the federal government enacted an extraordinary 153 laws aimed at reducing barriers faced by people with criminal records in the workplace, at the ballot box, and in many other areas of daily life.").

⁷¹ *Can People Convicted of a Felony Vote?*, Brennan Center for Justice (Oct. 16, 2024), <https://www.brennancenter.org/our-work/research-reports/can-people-convicted-felony-vote>.

sentence plus a two-year waiting period, passed a law restoring rights upon completion of sentence.⁷²

In 2023: New Mexico and Minnesota passed laws restoring voting rights to citizens on parole.⁷³

In 2021: Connecticut, New York and Washington passed laws restoring voting rights to citizens on parole.⁷⁴

In 2020: California voters passed Proposition 17 restoring voting rights to citizens on parole. Iowa's governor issued an executive order restoring the voting rights of felons who have served their sentences, with the exception of certain felonies. New Jersey restored voting rights to felons upon release from prison, allowing people on parole or probation to vote.⁷⁵

In 2019: Kentucky's governor signed an executive order to automatically restore the right to vote to felons who completed their sentences, excluding those convicted of certain categories of felonies. Nevada passed a law restoring voting rights to felons upon release from prison. Colorado passed a law giving voting rights to individuals on parole.⁷⁶

In 2018: Florida voters approved a constitutional amendment to automatically restore voting rights to

⁷² *Felon Voting Rights*, National Conference of State Legislatures (October 18, 2024), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* However, those convicted of election-related crimes who lost the right to vote while incarcerated are permanently disenfranchised unless pardoned “or restored by law to the right of suffrage.” N.J. Stat. 19:4-1(6)-(7).

⁷⁶ *Id.*

felons, except those convicted of murder or a felony sexual offense, after completion of their sentences.⁷⁷

In 2017: Wyoming passed a law automatically restoring voting rights for nonviolent felons.⁷⁸

In 2016: Maryland passed a law automatically restoring voting rights to felons after the completion of the term of incarceration.⁷⁹

In 2013: Delaware eliminated the five-year waiting period before voting rights are restored.⁸⁰

Finally, the National Conference of State Legislatures reports that between 1996 and 2008, seven states repealed lifetime voting bans, at least for some ex-offenders.⁸¹

Thus, most jurisdictions in the U.S. have concluded that post-sentence-completion voting bans do not comport with a fair and effective system of criminal justice. Indeed, in his 2004 State of the Union address, President George W. Bush declared that “America is the land of second chances, and when the gates of the

⁷⁷ In 2019, a bill was signed into law which defined “completion of sentence” to include release from imprisonment, termination of any ordered probation, fulfillment of any terms ordered by courts, termination of any ordered supervision, full payment of any ordered restitution and full payment of any ordered fines, fees or costs. *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* Those convicted of buying or selling votes are permanently disenfranchised unless they obtain a governor’s pardon and expungement of the conviction. *Guide to State Voting Rules That Apply After a Criminal Conviction*, U.S. Department of Justice, Civil Rights Division, 14 (September 2024), <https://www.justice.gov/crt/media/1332106/dl?inline=>.

⁸⁰ *Felon Voting Rights*, *supra* note 72.

⁸¹ *Id.*

prison open, the path ahead should lead to a better life.”⁸² The experiences of probation and parole officials, who are deeply involved in ensuring that the State’s interests are enforced, show the importance of granting voting rights to people with criminal records and the ineffectiveness of disenfranchising them.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

LOUIS P. PETRICH
Counsel of Record
BALLARD SPAHR LLP
2029 Century Park East
Suite 1400
Los Angeles, CA 90067-2915
(424) 204-4400
petrichl@ballardspahr.com
Counsel for Amicus Curiae

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⁸² President George W. Bush, *State of the Union Address*, White House Archives (Jan. 20, 2004), https://www.washingtonpost.com/wp-srv/politics/transcripts/200bbushtext_012004.html.