

NO. 19-60662

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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DENNIS HOPKINS, individually and on behalf of a class of all others similarly situated; HERMAN PARKER, JR., individually and on behalf of a class of all others similarly situated; WALTER WAYNE KUHN, JR., individually and on behalf of a class of all others similarly situated; BYRON DEMOND COLEMAN, individually and on behalf of a class of all others similarly situated; JON O'NEAL, individually and on behalf of a class of all others similarly situated; EARNEST WILLHITE, individually and on behalf of a class of all others similarly situated,

*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE MICHAEL WATSON, in his official capacity,

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Southern District of Mississippi, Northern Division  
District Court Case No. 3:18-CV-188-DPJ-FKB

**BRIEF OF *AMICI CURIAE* THE AMERICAN PROBATION AND PAROLE  
ASSOCIATION, JAMES HAYWOOD, CHOKWE ANTAR LUMUMBA ,  
JODY E. OWENS II, RONALD SAMPSON, AND JOSEPH WADE IN  
SUPPORT OF PLAINTIFFS-APPELLEES AND REVERSAL**

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DENNIS HOPKINS, individually and on behalf of a class of all others similarly situated; HERMAN PARKER, JR., individually and on behalf of a class of all others similarly situated; WALTER WAYNE KUHN, JR.; individually and on behalf of a class of all others similarly situated; JON O'NEAL, individually and on behalf of a class of all others similarly situated; EARNEST WILLHITE, individually and on behalf of a class of all others similarly situated; BYRON DEMOND COLEMAN, individually and on behalf of a class of all others similarly situated,

*Plaintiffs-Appellees Cross-Appellants*

V.

SECRETARY OF STATE MICHAEL WATSON, in his official capacity,

*Defendant-Appellant Cross-Appellee*

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**CERTIFICATE OF INTERESTED PARTIES**  
**AND CORPORATE DISCLOSURE STATEMENT**

In accordance with Federal Rule of Appellate Procedure 29 and 5th Cir. R. 29.2, the undersigned hereby certifies that, in addition to the Certificate of Interested Persons and Corporate Disclosure Statements submitted by Plaintiffs-Appellees and Defendant-Appellant, the following persons or entities have an interest in the outcome of this case:

American Probation and Parole Association, *Amicus Curiae*

James Haywood, *Amicus Curiae*

Chokwe Antar Lumumba, *Amicus Curiae*

Jody E. Owens II, *Amicus Curiae*

Ronald Sampson, *Amicus Curiae*

Joseph Wade, *Amicus Curiae*

Petrich, Louis, *Attorney for Amici Curiae*

**A. Corporate Disclosure Statement**

Pursuant to Fed. R. App. P. 29(4)(A), *Amicus Curiae* American Probation and Parole Association states that it is not a corporation, and that it has no separate parent organization and no stockholders.

Undersigned counsel of record certifies that the American Probation and Parole Association, James Haywood, Chokwe Antar Lumumba, Jody E. Owens II, Ronald Sampson, and Joseph Wade are the only entity/persons that have an interest in this *amicus* brief, which is filed in support of the Plaintiffs-Appellees. No counsel

for any party authored any portion of this brief. No party, and no person other than counsel for *Amici Curiae* American Probation and Parole Association, James Haywood, Chokwe Antar Lumumba, Jody E. Owens II, Ronald Sampson, and Joseph Wade, contributed monetarily to the preparation of this *amicus* brief.

These representations are made in order that the judges of this Court may evaluate their possible recusal or disqualification as provided by Fifth Circuit Rules 29.2 and 28.2.1.

SO CERTIFIED, this the 6th day of December, 2023.

/s/ Louis P. Petrich  
\_\_\_\_\_  
Counsel for *Amici Curiae*

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**IDENTITY AND INTERESTS OF AMICI CURIAE**  
**AND BASIS FOR FILING**

The American Probation and Parole Association (“APPA”), James Haywood, Chokwe Antar Lumumba, Jody E. Owens II, Ronald Sampson, and Joseph Wade respectfully submit this brief as amici curiae in support of Plaintiffs-Appellees. Counsel for Plaintiffs-Appellees and Defendant-Appellant have consented to the filing of this brief. Fed. R. App. P. 29(a)(2).

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 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 offenders 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.”<sup>1</sup> In addition, the Executive Director of the APPA has testified before Congress on the importance of restoring voting rights.<sup>2</sup> 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.<sup>3</sup>

James Haywood is Sheriff of Sunflower County and has served in that role since being elected in 2003. Prior to that, he was a veteran Mississippi State Trooper

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<sup>1</sup> 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](https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e) .

<sup>2</sup> *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).

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

and investigator who had served nearly 25 years in law enforcement. Sheriff Haywood believes that restoring the right to vote to people who have completed their sentences is good for public safety because giving re-entering citizens a real second chance gives harmed families and communities a real second chance, too. The more re-entering citizens succeed at becoming civically engaged and civic-minded—and having the ability to vote is key to that—the more whole, stable, and safe their families and communities become. The fact is that people who commit crimes and serve their time return home, and as the top public safety officer in Sunflower County, Sheriff Haywood believes their best chance at being safe—and making their communities safer—is having a real second chance, which includes being able to vote, for example, for who is on the School Board where their children attend school and where their tax dollars are being spent. It makes good moral sense and good public safety sense to restore the right to vote to people who have served their time.

Chokwe Antar Lumumba is the mayor of the City of Jackson, elected in 2017. As the capital city and the most populous city in Mississippi, Jackson has been and remains at the heart of the civil rights movement in the United States. That movement—for equality for Black Americans in the eyes of the law—is core to the culture of Jackson, which has a higher proportion (over 80%) of Black American residents than any other capital or large city in America. As a city committed to increasing public safety through investment in data-driven programs and by proven

means, the City of Jackson understands that restoring the right to vote to people who have served their time decreases the likelihood of recidivism because it increases the depth and breadth of community-level re-integration—and civic responsibility—that they can take part in. The City of Jackson of today has a soul forged in the civil rights movement, and it will continue, today and beyond, to fight the vestiges of enslavement that still overburden our Black American residents, while celebrating the contributions of all of its citizens. Mayor Lumumba is the recipient of the National Black Caucus of State Legislators 2017 Nation Builder Award and the Frederick Douglass 200 Award, among others. He earned his law degree from Thurgood Marshall School of Law.

Jody E. Owens II has served as the District Attorney of Hinds County—the state’s most populous county and home to the City of Jackson—since 2019. D.A. Owens also proudly serves as an officer in the United States Navy. Previously, D.A. Owens represented the Plaintiffs as the Managing Attorney and Chief Policy Counsel for the Southern Poverty Law Center, and he filed this lawsuit on their behalf in 2018. A native Mississippian and believer in putting public safety first when considering any criminal justice system reform, D.A. Owens has been an outspoken critic of the state’s disenfranchisement scheme. In July 2023, he announced that the D.A.’s office in Hinds County would seek to avoid charging arrestees with disenfranchising felonies if there were a parallel charge that would

not result in a loss of the right to vote. In 2022, his office launched the Hinds County D.A.'s Reentry Program, which focuses on successfully integrating formerly incarcerated residents back into society. D.A. Owens has received two gubernatorial appointments by Mississippi governors in recognition of his expertise in criminal justice. He is a recipient of the Presidential Award for Distinguished Contributions to Justice from the American Society of Criminology and is a recipient of the Gutsy Advocate for Youth award by the National Justice Network.

Ronald Sampson is the Chief of Police in the City of Indianola and has served in that position since 2022. Prior to that, he was Chief of Police in Yazoo City from 2017 to 2020. His law enforcement career began in 1985 with the Jackson Police Department. Chief Sampson believes that public safety is best achieved by providing people who have successfully served their time with an honest chance at success after they re-enter society—after all, most people who go to prison will return to the community they came from. They are mothers, fathers, sisters, and brothers—and they and their families and loved ones benefit most if each re-entering citizen gets a true second chance after paying their debt to society. Giving people a real second chance is not only the right thing to do—it's the best approach to increasing public safety. Successfully re-integrated people are safer people, and they have wisdom as current community members and potential voters that matters, so Chief Sampson



supports the right of Mississippians who have completed their sentences to have their voting rights restored.

Joseph Wade is the Chief of the City of Jackson Police Department, and he has decades of law enforcement experience. In 1995, Chief Wade graduated as a recruit, and since then led law enforcement work as a Sergeant, Lieutenant, Commander, Deputy Chief, Assistant Chief, Interim Chief, and now Chief of Police. Chief Wade's expertise extends to operations of Patrol Division, Investigations Division, Standards and Training, Administration, and the Chief's office. Chief Wade graduated from Hinds Community College's Criminal Justice Program, FBI Command College, and the DEA Commander's Academy. Chief Wade has spent his career in public safety and believes that giving people who have served their sentences a fighting second chance to be productive members of the community is the best approach to building strong families, strong communities, and the best approach to increasing public safety. Chief Wade believes that putting public safety first means putting civic and community engagement first, and that is why he implemented the Youth Citizens' Police Academy, Police Athletic League (PAL), and Explorers' Program—youth programs which service over 200 youth annually in the City of Jackson. Chief Wade believes that restoring the right to vote to people returning home after serving their time is critical for building safe and strong communities.

*Amici* have deep knowledge of the parole and probation systems in Mississippi and elsewhere around the country, and a strong belief in the importance of voting rights to the reintegration of people who have committed offenses into the community. *Amici* respectfully submit 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.

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## **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, lowers community participation in the political process, and hinders effective policing.

## 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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> ROA 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.

<sup>5</sup> *Id.* at ¶ 17.

purpose, depriving Black people of voting rights at a rate more than twice that of white residents.

## **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."<sup>6</sup> 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

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<sup>6</sup> 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/>.

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.”).

Equally important, Mississippi’s disenfranchisement laws discourage civic engagement, which studies have proven is critical for the successful transformation from prisoner to citizen.<sup>7</sup> 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.”<sup>8</sup> One study found that the “desire to ‘be productive and give something back to society’” was vital to full reintegration.<sup>9</sup> 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

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<sup>7</sup> Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 299 Ann. Rev. Soc. 89, 97 (2003).

<sup>8</sup> Holona Leanne Ochs, “Colorblind” Policy in *Black and White: Racial Consequence of Disenfranchisement Policy*, 34 Pol’y Stud. J. 81, 89 (2006).

<sup>9</sup> 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)).

them know they belong, and gives them a positive mechanism for bringing the resources they need to live happy, healthy lives[.]”<sup>10</sup>

By contrast, disenfranchisement denies them “the recognition of their peers as re-integrated stakeholders in society.”<sup>11</sup> 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.<sup>12</sup> Indeed, “exclusion from the ballot box hinders reintegration and presents an ongoing stigma.”<sup>13</sup>

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

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<sup>10</sup> 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 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”).

<sup>11</sup> Neel U. Sukhatme, Alexander Billy & Gaurav Bagwe, *Felony Financial Disenfranchisement*, 76 Vand. L. Rev. 143, 209 (2022).

<sup>12</sup> 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 at 30 (arguing that “[s]ection 241 implements a judgment that those convicted of listed felonies lack the character appropriate for exercising the franchise.”).

<sup>13</sup> 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).

citizens between 2013 and 2018.<sup>14</sup> 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. 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.”<sup>15</sup> 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.”<sup>16</sup> Muhamad As-saddigue 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.”<sup>17</sup> Mississippi’s continuing enforcement of Section 241 denies ex-offenders this opportunity to engage in the democratic process.

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<sup>14</sup> Laura Vozzella, *Va. Gov. McAuliffe Says He Has Broken U.S. Record for Restoring Voting Rights*, Wash. Post, Apr. 27, 2017, [goo.gl/XAP5uL](https://goo.gl/XAP5uL); Vann R. Newkirk II, *How Letting Felons Vote is Changing Virginia*, The Atlantic, Jan. 8, 2018, <https://bit.ly/2CTIpVO>.

<sup>15</sup> 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](https://www.huffpost.com/entry/virginia-restoration-of-voting-rights_n_5a026556e4b092053058cd0e).

<sup>16</sup> Moriah Balingit, *“It’s been beautiful”: With rights restored, 79-year-old felon votes again after 40 years*, Wash. Post (Nov. 8, 2016), [https://www.washingtonpost.com/local/virginia-politics/its-been-beautiful-with-rights-restored-79-year-old-felon-votes-again-after-40-years/2016/11/08/08c31d28-a5f7-11e6-8042-f4d111c862d1\\_story.html](https://www.washingtonpost.com/local/virginia-politics/its-been-beautiful-with-rights-restored-79-year-old-felon-votes-again-after-40-years/2016/11/08/08c31d28-a5f7-11e6-8042-f4d111c862d1_story.html).

<sup>17</sup> 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>



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.

**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.<sup>18</sup> “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.”<sup>19</sup> 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

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<sup>18</sup> Erika Wood, *Restoring the Right to Vote*, Brennan Ctr. For Justice, at 13 (2009), <https://goo.gl/Gr5pMG>.

<sup>19</sup> Marc Mauer, *Voting Behind Bars: An Argument for Voting by Prisoners*, 54 How. L.J. 549, 561 (2011).

of civic engagement. Research confirms that “[a] parent’s electoral participation plays a significant role in determining whether his child will become civically engaged.”<sup>20</sup> 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.<sup>21</sup>

Moreover, the effects of disenfranchisement extend beyond an individual’s household to other members of the community.<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup>

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<sup>20</sup> *Id.*; see also Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 Am. Pol. Sci. Rev. 41, 43 (2002), [goo.gl/tN2QzY](http://goo.gl/tN2QzY); 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).

<sup>21</sup> Plutzer, *supra* note 20, at 48.

<sup>22</sup> See Wood, *supra* note 18 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”).

<sup>23</sup> Marc Mauer, *Disenfranchising Felons Hurts Entire Communities*, Joint Ctr. For Pol. & Econ. Stud., (May/June 2004), at 5, [goo.gl/zY6w5f](http://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).

<sup>24</sup> McLeod, *supra* note 23, at 77.

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.”<sup>25</sup> Thus, the harmful effects of disenfranchisement laws are amplified in communities with a significant number of formerly incarcerated residents.

**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.<sup>26</sup> Even Mississippi state legislators have introduced bills to restore voting rights for ex-felons who were convicted of

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<sup>25</sup> Bowers & Preuhs, *supra* note 20, 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).

<sup>26</sup> 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/>.

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 bill to restore the voting rights of Steven Gunn, who had been convicted of aggravated assault.<sup>27</sup> 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.<sup>28</sup> 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.”<sup>29</sup> 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.”<sup>30</sup>

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.

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<sup>27</sup> See <http://billstatus.ls.state.ms.us/documents/2016/pdf/SB/2900-2999/SB2950IN.pdf> .

<sup>28</sup> See <https://billstatus.ls.state.ms.us/documents/2017/pdf/HB/1400-1499/HB1474IN.pdf> .

<sup>29</sup> Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 Fla. L. Rev. 287, 314 (2023).

<sup>30</sup> *Id.* at 314-315.

### **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 safety.<sup>31</sup> Research suggests that there are “consistent differences between voters and non-voters in rates of subsequent arrests, incarceration, and self-reported criminal behavior.”<sup>32</sup> One study found that former offenders who voted were half as likely to be re-arrested as those who did not.<sup>33</sup> Another study found that states that permanently disenfranchise people with criminal records experience significantly higher rates of repeat offenses than states that do not.<sup>34</sup> 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.”<sup>35</sup> Indeed, disenfranchisement creates a “perpetual criminal underclass unable to fully rejoin society after their sentence is served,” which only increases the potential for an increase in criminal activity.<sup>36</sup>

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<sup>31</sup> 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).

<sup>32</sup> Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004).

<sup>33</sup> *Id.* at 205.

<sup>34</sup> 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>.

<sup>35</sup> 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).

<sup>36</sup> *The Ballot as Bulwark*, *supra* note 34, at 21.

#### **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.<sup>37</sup>

The APPA passed a resolution in support of restoring voting rights in 2007, finding that “disenfranchisement laws work against the successful reentry of offenders.”<sup>38</sup> The National Black Police Association and the Association of Paroling Authorities International, among others, have passed similar resolutions.<sup>39</sup> In addition, the American Correctional Association stated that continuing to disenfranchise people after they have completed their sentence works against the

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<sup>37</sup> See *Hearing on the Democracy Restoration Act of 2009*, *supra* note 2, at 60.

<sup>38</sup> 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](https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e).

<sup>39</sup> 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)).

successful reentry of offenders as responsible, productive citizens into the community.”<sup>40</sup>

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.<sup>41</sup> The former President of the Police Executive Research Forum explains that it is “better to remove any obstacles that stand in the way of offenders resuming a full, healthy productive life.”<sup>42</sup> And the former President of the Police Foundation argues 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.”<sup>43</sup>

## **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

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<sup>40</sup> <https://www.brennancenter.org/sites/default/files/analysis/IA%203%20ACA.pdf> (November 11, 2020 letter from James A. Gondles, Jr., executive director of the American Correctional Association, to Iowa Governor-Elect Terry Branstad).

<sup>41</sup> R. David Stengel, *Let's Simplify the Process for Disenfranchised Voters*, Cent. Ky. News-J. (Jan. 28, 2007), <https://bit.ly/2Kia8Ea>.

<sup>42</sup> See *Restoring the Right to Vote*, *supra* note 18, at 10.

<sup>43</sup> *Id.*

restoration of his or her rights: a gubernatorial pardon or a “suffrage bill” passed by a two-thirds majority of the state Legislature. Section 253 of the Constitution sets forth the latter option, which has only restored the rights of approximately 60 people – less than a third of those on whose behalf a bill was introduced – in the last 15 years.

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.<sup>44</sup> 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 5 days.

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<sup>44</sup> Miss. Const. Ann. Art. 12, § 253.



In the last 15 years, from 2009 through 2023, fewer than one-third of suffrage bills introduced in the Legislature were passed into law (60 out of 187).<sup>45</sup> In four of those years – 2009, 2012, 2016, and 2023 – every bill failed.<sup>46</sup> Even if they had all passed, those whose rights were restored would comprise a tiny fraction of the state’s vast population of disenfranchised residents.

## **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.<sup>47</sup> The convention’s stated purpose, according to Mississippi senator James Z. George, was to ensure ““a home government, under the control of the white people of the State.””<sup>48</sup> 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

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<sup>45</sup> Mississippi Legislative Bill Status System, <http://billstatus.ls.state.ms.us/sessions.htm> .

<sup>46</sup> Out of 20, 10, 2 and 12 bills, respectively. *Id.*

<sup>47</sup> *En Banc* Brief for Plaintiffs-Appellees-Cross-Appellants, at 58.

<sup>48</sup> ROA 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 (quoting October 1889 speech by George, a former Confederate Army colonel who is widely credited as a key architect of the 1890 Constitution’s disenfranchisement provisions).

object” – white political control.<sup>49</sup> 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.””<sup>50</sup> 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.”<sup>51</sup> Such sentiments were echoed repeatedly in published statements of other delegates at the convention.<sup>52</sup> “We are embarked in the same ship of white supremacy, and it is freighted with all our hopes,” remarked T.P. Bell, delegate from Kemper County.<sup>53</sup>

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.<sup>54</sup> 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

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<sup>49</sup> *Id.* at ¶ 25; see also Ronald G. Shafer, *The ‘Mississippi Plan’ to keep Blacks from voting in 1890: ‘We came here to exclude the Negro’*, May 1, 2021, <https://www.washingtonpost.com/history/2021/05/01/mississippi-constitution-voting-rights-jim-crow/> (“The ‘Mississippi Plan’ became the model throughout the South, part of a raft of racially oppressive Jim Crow laws that ended Reconstruction.”).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at ¶ 26.

<sup>52</sup> *Id.* at ¶ 27.

<sup>53</sup> 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).

<sup>54</sup> ROA 19-60662.1806-08 (Pratt, *supra* note 48), at ¶¶ 35-36, 38.

money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy,” crimes which were more often prosecuted against black men than white men.<sup>55</sup> 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.”<sup>56</sup> 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 approval by both houses of the Legislature.<sup>57</sup> 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 T.P. 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.”<sup>58</sup>

The state Legislature has amended the list only twice since its adoption. In 1950, the Legislature removed burglary,<sup>59</sup> and in 1968 added rape and murder.<sup>60</sup> Neither amendment did anything to address the law’s original race-based motivation. Section 241 has remained largely unchanged to the present day, and

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<sup>55</sup> *Id.* at ¶¶ 38, 51.

<sup>56</sup> *Ratliff v. Beale*, 20 So. 863, 868 (Miss. 1896).

<sup>57</sup> ROA 19-60662.1816-17 (Pratt, *supra* note 48), at ¶¶ 52, 54.

<sup>58</sup> *Supra* note 53.

<sup>59</sup> Miss. Laws 1950, ch. 569.

<sup>60</sup> Miss. Laws 1968, ch. 614.

Mississippi is now one of only eleven states that imposes a permanent voting ban for a non-election-related felony.<sup>61</sup>

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.<sup>62</sup> By contrast, white voter registration remained relatively unchanged at 55-56.5%.<sup>63</sup> Decades later, in 1964, 73.2% of adult white Mississippians were registered to vote, while only 5.4% of adult black Mississippians were registered.<sup>64</sup>

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.<sup>65</sup> From 1994 through 2017, black voting-age Mississippians have been disenfranchised at over twice the rate of white voting-age Mississippians.<sup>66</sup> One and three-tenths of a percent (1.3%) of white

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<sup>61</sup> *Hopkins v. Hosemann*, 76 F.4th 378, 412 (Appendix) (5th Cir. 2023).

<sup>62</sup> ROA 19-60662.1827 (Pratt, *supra* note 48), at ¶ 74.

<sup>63</sup> *Id.*

<sup>64</sup> Mississippi Freedom Democratic Party, *Statistics of Negro and White Voter Registration in the Five Congressional Districts of Mississippi* (1964), [https://www.crmvet.org/docs/6410\\_mfdp\\_regstats.pdf](https://www.crmvet.org/docs/6410_mfdp_regstats.pdf).

<sup>65</sup> 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>.

<sup>66</sup> ROA 19-60662.1768-70 (Rothman, *supra* note 4), ¶¶ 14-15.

citizens of voting age in Mississippi have been 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).<sup>67</sup> 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.

Enforcing the felon disenfranchisement law results in the continuation of voting restrictions that were explicitly enacted to prevent African Americans from voting. The motivations of a post-Civil War Mississippi to divest African Americans of a say in their own community survives today so long as this Court allows Mississippi's felon disenfranchisement law to remain 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.<sup>68</sup> In recent decades, numerous states have enacted measures restoring the franchise to those with felony

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<sup>67</sup> *Id.*

<sup>68</sup> *En Banc* Brief for Plaintiffs-Appellees-Cross-Appellants, at 43; *Hopkins*, 76 F.4th at 412 (Appendix). Two of those states, Kentucky and Iowa, have restored voting rights to some or all disenfranchised felons via executive order. *En Banc* Brief for Plaintiffs-Appellees-Cross-Appellants, at 44.

convictions,<sup>69</sup> demonstrating that excessively punitive disenfranchisement laws such as Mississippi's run counter to society's evolving standards of decency:

**In 2023:** New Mexico and Minnesota passed laws restoring voting rights to citizens on parole.<sup>70</sup>

**In 2021:** Connecticut, New York and Washington passed laws restoring voting rights to citizens on parole.<sup>71</sup>

**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.<sup>72</sup>

**In 2019:** Kentucky's governor signed an executive order to automatically restore the right to vote to felons who completed their sentences, excluding those

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<sup>69</sup> See also Margaret Love & David Schlüssel, *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](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.”).

<sup>70</sup> *Felon Voting Rights*, National Conference of State Legislatures (Apr. 6, 2023), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>.

<sup>71</sup> *Id.*

<sup>72</sup> *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).

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. Oklahoma passed a law clarifying that felons shall be eligible to register to vote when they complete their sentences.<sup>73</sup>

**In 2018:** Florida voters approved a constitutional amendment to automatically restore voting rights to felons, except those convicted of murder or a felony sexual offense, after completion of their sentences.<sup>74</sup>

**In 2017:** Wyoming passed a law automatically restoring voting rights for nonviolent felons.<sup>75</sup>

**In 2016:** Maryland passed a law automatically restoring voting rights to felons after the completion of the term of incarceration.<sup>76</sup>

**In 2013:** Delaware eliminated the five-year waiting period before voting rights are restored.<sup>77</sup>

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *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 (June 2022), [https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2022/05/19/voting\\_with\\_a\\_criminal\\_conviction.pdf](https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2022/05/19/voting_with_a_criminal_conviction.pdf).

<sup>77</sup> *Id.*

Finally, according to the National Conference of State Legislatures, between 1996 and 2008, seven states repealed lifetime voting bans, at least for some ex-offenders.<sup>78</sup>

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, then-President George W. Bush declared that “America is the land of second chances, and when the gates of the prison open, the path ahead should lead to a better life.”<sup>79</sup> 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 reverse the decision of the District Court.

Dated: December 6, 2023.

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<sup>78</sup> *Supra* note 70.

<sup>79</sup> President George W. Bush, *State of the Union Address*, White House Archives (Jan. 20, 2004), [https://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext\\_012004.html](https://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext_012004.html) .



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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be filed electronically with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on December 6, 2023.

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December 6, 2023

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**CERTIFICATE OF COMPLIANCE**

This brief complies with word limitations of Fed. R. App. P. 29(a)(5) and 5th Cir. R. 29.3 because, excluding the parts of the documents exempted by Fed. R. Appl. P. 32, it contains 6,466 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface, including serifs, using Word in Times New Roman 14 font, except for the footnotes, which are in proportionally-spaced typeface, including serifs, using Word in Times New Roman 12-point font.

Dated: December 6, 2023

/s/ Louis P. Petrich  
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**STATEMENT OF RELATED CASES**

*Amici Curiae* are not aware of any related cases pending before the Court.

Dated: December 6, 2023

/s/ Louis P. Petrich  
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