
**United States Court of Appeals
for the Fifth Circuit**

Case No. 19-60662

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; BRYON 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,

CONSOLIDATED WITH

Case No. 19-60678

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; BRYON 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.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION IN CASE NO. 3:18-CV-188-DPJ-FKB, HONORABLE DANIEL P. JORDAN, III, CHIEF JUDGE

OPPOSED MOTION TO FILE BRIEF OF PUBLIC INTEREST LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to the persons and entities already identified in briefs filed in this matter, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Public Interest Legal Foundation, Inc (*amicus curiae*)

Joseph M. Nixon (counsel for *amicus curiae*)

December 18, 2023

Respectfully submitted,

/s/ Joseph M. Nixon
Joseph M. Nixon

OPPOSED MOTION TO FILE BRIEF OF PUBLIC INTEREST LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

The Public Interest Legal Foundation, Inc. (“Foundation”) respectfully seeks leave to submit an *amicus curiae* brief in support of neither party. On December 15, 2023, counsel for the Foundation notified counsel of record for both parties that the Foundation sought to file this motion. Counsel for the Mississippi Secretary of State stated that the Foundation’s brief is untimely. As of the filing of this motion, the Foundation has not heard from counsel for the plaintiffs.

The Foundation recognizes that the ordinary time to file such a brief has passed but submits that there is good cause to allow the Foundation to now file a brief. Specifically, the Foundation seeks to file a concise brief solely aimed at informing the Court of an incorrect statement of law found in the Brief of Reason Foundation, American Civil Liberties Union Foundation, and ACLU of Mississippi as *Amici Curiae* in Support of Plaintiffs-Appellees (hereinafter, “Reason Foundation/ACLU Brief.”) The Reason Foundation/ACLU Brief was not filed until December 6, 2023. The proposed *amici*’s motion for leave was not filed until December 7, 2023, and remains pending. The Foundation believes it to be imperative that this Court have an accurate picture of the jurisprudence when deciding this matter.

The Foundation is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote

and preserving election integrity across the country. The Foundation has sought to advance the public's interest in having elections free from unconstitutional burdens and discrimination. At the state level, this is best done by ensuring that state laws enacted by each state's legislative branch are constitutional. The separation of powers is foundational to election systems that are fair and free from undue partisan manipulation.

For these reasons, this Foundation respectfully requests that its motion to file the attached brief (exhibit "A") be granted.

Dated: December 18, 2023.

Respectfully submitted,

For the Plaintiff Public Interest Legal Foundation:

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

/s/ Joseph M. Nixon
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CERTIFICATE OF COMPLIANCE

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Dated: December 18, 2023.

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Exhibit A

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NO. 3:18-CV-188-DPJ-FKB, HONORABLE DANIEL P. JORDAN, III, CHIEF JUDGE

**BRIEF OF PUBLIC INTEREST LEGAL FOUNDATION AS *AMICUS CURIAE*
IN SUPPORT OF NEITHER PARTY**

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Public Interest Legal Foundation, Inc (*amicus curiae*)

Joseph M. Nixon (counsel for *amicus curiae*)

December 18, 2023

Respectfully submitted,

/s/ Joseph M. Nixon
Joseph M. Nixon

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INTERESTS OF *AMICUS CURIAE*¹

The Public Interest Legal Foundation, Inc. (“Foundation”) is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote and preserving election integrity across the country. The Foundation has sought to advance the public’s interest in having elections free from unconstitutional burdens and discrimination. At the state level, this is best done by ensuring that state laws enacted by each state’s legislative branch are constitutional. The separation of powers is foundational to election systems that are fair and free from undue partisan manipulation.

INTRODUCTION

The Public Interest Legal Foundation seeks to inform the Court of a incorrect statement of law found in the Brief of Reason Foundation, American Civil Liberties Union Foundation, and ACLU of Mississippi as *Amici Curiae* in Support of Plaintiffs-Appellees, submitted in this case on December 6, 2023 (hereinafter, “Reason Foundation/ACLU Brief.”) The Foundation believes it to be imperative that this Court have an accurate picture of the jurisprudence when deciding this matter.

ARGUMENT

¹ No party’s counsel authored this brief in any part. No person—other than the *amicus curiae*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

The Reason Foundation/ACLU Brief incorrectly asserts that the Commonwealth of Virginia has permanently ended felony disenfranchisement. Specifically, the organizations stated as follows:

Mississippi's scheme is unusual in its severity. Until recently, only four other states—Florida, Iowa, Kentucky, and Virginia—still imposed lifetime disenfranchisement upon conviction of a single felony. All four states have since abolished permanent felony disenfranchisement, re-enfranchising more than two million previously disenfranchised individuals in the process and making Mississippi's scheme even more of an outlier.

Reason Foundation/ACLU Brief at 28.

This statement is not accurate. Felony disenfranchisement remains in the Commonwealth of Virginia's Constitution.

No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

Va. Const. art II, §1. The Virginia Constitution still bans felons from voting, unless the governor restores their rights. The governor of Virginia has discretion whether or not to restore felon civil rights.²

Some governors have restored the rights of thousands of felons, others have not. The Virginia Constitution requires that it be done individually if merited.

² See, Restoration of Rights Process, <https://www.restore.virginia.gov/restoration-of-rights-process/>.

Indeed, as the Virginia Supreme Court flat rejected automatic restoration of voting rights for felons by the Virginia governor. *Howell v. McAuliffe*, 788 S.E.2d 706 (Va. 2016). *Howell* overturned Governor McAuliffe's blanket restoration of rights to felons released from prison.

In Virginia today, Governor Youngkin is individually restoring the rights of some offenders, but most others remain permanently disenfranchised.

Some officeholders have sought to repeal Va. Const. art II, §1 in an effort to blanketly restore the franchise of voting to convicted felons but would require several years and passage in a referendum.

Accordingly, it is not correct to state the Commonwealth of Virginia has eliminated the voter disenfranchisement of convicted felons. Rather, it has provided a pathway for the Governor to restore the franchise to specific individuals, or no individuals depending on the discretion of the Governor. Some elected officials are considering a change to the Commonwealth's constitution to provide blanket restoration, but that is as far as the issue has traveled today.

CONCLUSION

For these reasons, this Court should consider these factual statements before adopting any arguments of *amici*.

Dated: December 18, 2023.

Respectfully submitted,

For the Plaintiff Public Interest Legal Foundation:

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Dated: December 18, 2023.

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