NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CIVIL SECTION 22

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KENNETH JOHNSON .

V. . NO. 649587

STATE OF LOUISIANA, ET AL .

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MONDAY, MARCH 13, 2017

HEARING AND ORAL REASONS FOR JUDGMENT ON (1) MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF DEFENDANT TOM SCHEDLER, AND (2) MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF PLAINTIFF

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THE HONORABLE TIMOTHY KELLEY, JUDGE PRESIDING

APPEARANCES	FOR
WILLIAM QUIGLEY	PLAINTIFF
LANI DURIO	LA SECRETARY OF STATE TOM SCHEDLER

REPORTED AND TRANSCRIBED BY KRISTINE M. FERACHI, CCR #87173

MONDAY, MARCH 13, 2017

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THE COURT: 649587, JOHNSON VERSUS STATE OF LOUISIANA. IT IS COMPETING MOTIONS FOR SUMMARY JUDGMENT BY BOTH PARTIES. I MIGHT ADD, WELL BRIEFED BY THE PARTIES. COUNSEL, MAKE APPEARANCES, PLEASE.

MR. QUIGLEY: THANK YOU, YOUR HONOR. YOUR HONOR, FOR THE PLAINTIFFS, WILLIAM QUIGLEY, RON WILSON, ANNA LELLELID AND ILONA PRIETO.

THE COURT: THANK YOU.

MS. DURIO: LANI DURIO ON BEHALF OF THE SECRETARY OF STATE, TOM SCHEDLER.

THE COURT: THANK YOU.

ALL RIGHT. I GUESS WE CAN TAKE THIS IN EITHER ORDER. THE FIRST FILED I THINK WAS THE SECRETARY OF STATE'S, SO WE WILL TAKE THAT UP. AND ACTUALLY, WHILE I WILL TAKE HER ARGUMENT FIRST, WE WILL DO THEM BOTH TOGETHER BECAUSE IT IS THE SAME ISSUE, SO IT MIGHT GIVE A LITTLE LEEWAY ON REBUTTALS BACK AND FORTH, OKAY. MA'AM.

MS. DURIO: THANK YOU, YOUR HONOR.

WITHOUT GOING INTO THE STANDARD OF A MOTION FOR SUMMARY JUDGMENT, JUST CUTTING RIGHT TO IT, THE BOTTOM LINE IS, THE PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN OF PROOF. 4(A), CONSTITUTIONAL INTERPRETATION ISSUE, WHICH THIS IS, THE PLAINTIFFS HAVE TO SHOW THAT THE PLAIN MEANING OF THE CONSTITUTIONAL ARTICLE IS VALID ON ITS FACE, AND THEY HAVE NOT DONE THAT. THE PLAIN MEANING DEFINITION THAT THEY OFFER FOR

"UNDER AN ORDER OF IMPRISONMENT," MEANING ONLY IMPRISONMENT, IT WOULD LEAD TO ABSURD RESULTS, BECAUSE IT IS -- I AM SORRY. EVEN IF THEIR INTERPRETATION IS REASONABLE, THERE IS ANOTHER REASONABLE INTERPRETATION, AND THAT IS THE ONE THAT HAS BEEN USED BY THE STATE FOR THE PAST 40 YEARS, AND THE FACT THAT THEY ARE CLAIMING THAT -- I AM SORRY, I AM FORGETTING WHERE I AM.

THE COURT: THAT IS OKAY. TAKE YOUR TIME.

MS. DURIO: OH, RIGHT. I AM SORRY.

THEY CLAIM THAT PROFESSOR HARGRAVE'S LAW REVIEW ARTICLE IS THE BASIS OF THEIR RATIONALE.

THE COURT: NOW, BEFORE YOU SPEAK, BE CAREFUL. I KNEW WILLIE LEE, OR LEE WILLIE HARGRAVE, AND HE WAS A PRETTY BRIGHT MAN.

MS. DURIO: I AM NOT SAYING ANYTHING NEGATIVE ABOUT PROFESSOR HARGRAVE. HE IS A VERY ESTEEMED --

THE COURT: OKAY. I DO KNOW YOU DISAGREE WITH HIS POSITION ON THIS THOUGH.

MS. DURIO: WE DO, DEFINITELY, BECAUSE HIS REASONING THAT THE CONSTITUTIONAL CONVENTION WOULD WORD "UNDER AN ORDER OF IMPRISONMENT" TO MEAN ACTUAL IMPRISONMENT, BUT TO -- IT IS WORDED IN SUCH A WAY THAT IT IS TRYING TO CAPTURE ESCAPEES UNDER THE WORDS "UNDER AN ORDER OF IMPRISONMENT." IT DOES NOT MAKE SENSE, BECAUSE NOT ONLY ARE THEY TRYING TO SAY THAT IT IS ONLY IF YOU ARE CONFINED IN ANGOLA, BUT THEN THEY ARE ALSO TRYING TO SAY, WELL, IT DOES APPLY TO SOMEBODY THAT IS NOT ACTUALLY CONFINED TO ANGOLA. THEY ARE ADMITTING THAT

THERE ARE OTHER CIRCUMSTANCES IN WHICH UNDER AN ORDER OF IMPRISONMENT CAN APPLY TO MORE THAN JUST SOMEONE UNDER -- PHYSICALLY CONFINED IN ANGOLA.

THE COURT: YOUR ARGUMENT IS BASICALLY THAT THE CONSTITUTIONAL PROVISION ARTICLE 1, SECTION 10 IN SAYING "UNDER ORDER OF IMPRISONMENT" IS MORE EXPANSIVE AND MEANT TO MEAN ANYONE WHO HAS A SENTENCE UNDER WHICH THEY HAVE BEEN PAROLED OR UNDER WHICH THEY ARE ON PROBATION, RIGHT? THEY ARE STILL UNDER AN ORDER OF IMPRISONMENT, BECAUSE IF THEY FAIL ON THEIR PROBATION OR PAROLE, THEY HAVE TO SERVE THE TERM THAT WAS IMPOSED, THE ORDER OF IMPRISONMENT THAT WAS IMPOSED, RIGHT? AND THEN IF THE FRAMERS OF THE CONSTITUTION HAD MEANT IT TO MEAN JUST IMPRISONMENT, THEY WOULD HAVE SAID, OR ONE WHO IS IMPRISONED, BECAUSE THAT WOULD BE THE CLEAR LANGUAGE.

MS. DURIO: CORRECT.

THE COURT: SO, CLEARLY BY SAYING "UNDER AN ORDER OF IMPRISONMENT," THEY MEAN MORE THAN JUST ACTUAL IMPRISONMENT. THAT IS BASICALLY YOUR ARGUMENT, AND IT IS AN ATTACK NOT ON THE STATUTES THEMSELVES, BUT ON LOOKING -- NOT AN ATTACK, BUT IT IS A DIRECTION TO THE COURT TO LOOK TO THE CONSTITUTION, IS THE LANGUAGE PLAIN AND UNAMBIGUOUS, AND IF IT IS, APPLY IT AS SO. AND ALL THE STATUTES DO DEFINE IT, RIGHT? AND YOU THINK THE DEFINITION FALLS WITHIN THE AMBIENT OF WHAT THE CONSTITUTION SAYS.

FURTHER, YOU ARE WORRIED ABOUT WHETHER OR

NOT I HAVE TO LOOK AT THE STATUTES. YOU SAY, NO, BECAUSE WHAT IS REALLY UNDER ATTACK IS THE MEANING OF THE LANGUAGE OF THE CONSTITUTION. HOWEVER, IF YOU LOOK TO THE STATUTES, THEY ARGUE IT SHOULD BE UNDER A STRICT SCRUTINY. YOU ARGUE THAT, NO, IT SHOULD NOT BE STRICT SCRUTINY, AND YOU CITE A LOT OF FEDERAL LAW THAT SAYS THAT ONE WHO HAS BEEN CONVICTED OF A FELONY OR OTHERWISE IS NOT ONE WHO QUALIFIES TO VOTE. THEY ARE NO LONGER QUALIFIED TO VOTE; THEREFORE, THEY DO NOT FALL WITHIN THE STRICT SCRUTINY STANDARD. BUT EVEN IF THEY DO NOT FALL, BUT IF THEY DID, YOU STILL MEET THE STRICT SCRUTINY STANDARDS BECAUSE -- I AM ARGUING FOR YOU, CAN YOU TELL?

MS. DURIO: YOU CAN KEEP GOING.

THE COURT: I WANT TO MAKE SURE --

MS. DURIO: YOU ARE OFF TO A BETTER START THAN I AM.

THE COURT: THEY FALL WITHIN STRICT SCRUTINY BECAUSE THE FEDERAL COURTS AND STATE SUPREME COURT HAVE SAID THERE IS A COMPELLING STATE INTEREST WITH REGARD TO THE SAFETY OF OUR PEOPLE, AND THAT ONE WHO HAS BEEN CONVICTED OF A FELONY OR OTHERWISE SENTENCED TO IMPRISONMENT CREATES A POTENTIAL HAZARD TO THE COMMUNITY. SO, THERE IS A COMPELLING STATE INTEREST, AND IT MEETS STRICT SCRUTINY.

THAT IS BASICALLY YOUR ARGUMENT, RIGHT?

MS. DURIO: YES, YOUR HONOR, BUT THAT IS NOT THE ISSUE.

THE COURT: WELL, I KNOW THAT IS NOT --

YOU ARE SAYING THAT IS NOT THE ISSUE, BUT EVEN IF THE STATUTES THEMSELVES WERE THE ISSUE, WHICH IS WHAT THEY ARE ATTACKING, I KNOW YOUR ARGUMENT IS, THE SOLE ISSUE IS, WHAT DOES THE CONSTITUTION SAY, BUT EVEN IF IT IS NOT WHAT THE CONSTITUTION SAYS, WHAT DOES THE STATUTE SAY, YOU THINK YOU SURVIVE ANYWAY, RIGHT?

MS. DURIO: YES, YOUR HONOR.

THE COURT: WELL ARGUED. SIR.

MR. QUIGLEY: YOUR HONOR, BILL QUIGLEY FOR THE EIGHT INDIVIDUALS WHICH I WOULD LIKE TO START WITH, I THINK THE EIGHT INDIVIDUALS SORT OF HELP EXPLAIN OUR POSITION IN THIS CASE.

THESE INDIVIDUALS --

THE COURT: YOU HAVE GOT ONE FELLOW, I THINK IT IS MR. JOHNSON WHO IS OUT ON PAROLE WHO CANNOT VOTE UNTIL, WHAT, 2056 OR SOMETHING LIKE THAT, AND HECK, HE DRIVES HIS WIFE TO THE POLLS AND HE CANNOT GO IN. IT DOES NOT MAKE A LOT OF SENSE. HE IS ACTING AS A GOOD CITIZEN. IT MAKES NO SENSE, DOES IT?

MR. QUIGLEY: IT IS HARD TO MAKE SENSE OF IT. IT REALLY IS.

SO, WE HAVE PASTORS, WE HAVE A LAWYER, WE HAVE GOT BUSINESS PEOPLE, ALL OF WHOM ARE WORKING, PAYING TAXES, AND ALTHOUGH YOU DID NOT CERTIFY THE CLASS, THE LATEST STATISTICS FROM THE STATE SHOW THE CLASS HAS GROWN BY 2,000 PEOPLE SINCE WE FILED THIS ON THE JULY 4TH WEEKEND. SO, THERE IS 7,1000 PEOPLE WHO ARE PROHIBITED FROM VOTING BECAUSE OF THE ACTIONS OF THE DEFENDANTS.

WE WOULD SAY, GOING BACK TO YOUR HONOR'S FIRST POINT, IS THAT THE CONSTITUTION SAYS, UNDER ORDER OF IMPRISONMENT. WE HAVE A NUMBER OF PEOPLE IN THE COURTROOM HERE TODAY WHO ARE IN THIS CLASS.

THE COURT: RIGHT.

MR. QUIGLEY: AND IF THEY WERE ORDERED TO PRISON, THEY WOULD NOT BE IN THE COURTROOM TODAY. THE SUPREME COURT, THE LOUISIANA SUPREME COURT IN THE **OCEAN ENERGY CASE**, WHICH WE RELY ON EXPLICITLY, SAYS THAT IT IS NOT FOR THIS COURT TO CONSTRUCT, TO ENGAGE IN JUDICIAL CONSTRUCTION OF THE WORDS OF THE CONSTITUTION, BUT IF, IN FACT, THE CONSTITUTION DOES NOT DEFINE "UNDER ORDER OF IMPRISONMENT," WHICH IT DOES NOT, THEN THERE IS A FEW STEPS THAT OUGHT TO BE TAKEN, AND THE FIRST STEP STARTS WITH VERY EXPLICITLY THE DICTIONARY, AND WE CITED THREE DICTIONARIES, BLACK'S LAW DICTIONARY, MERRIAM WEBSTER DICTIONARY AND WEBSTER'S INTERNATIONAL. THE GOVERNMENT ACCUSES US OF CHERRYPICKING DICTIONARY DEFINITIONS OF WHAT "ORDER OF IMPRISONMENT MEANS," BUT THEY HAVE NOT OFFERED ANY DICTIONARIES TO BACK UP THEIR POSITION.

IN SUPPORT OF WHAT THOSE WORDS MEAN, PLAIN MEANING, PROFESSOR HARGRAVE, WHO WAS THE LEGAL RESEARCHER, HEAD OF LEGAL RESEARCH FOR THE CONSTITUTIONAL CONVENTION, AND A CONTEMPORANEOUS INTERPRETATION AND THE AUTHORITATIVE SCHOLARLY INTERPRETATION OF WHAT THE BILL OF RIGHTS MEANS IN THE LOUISIANA

CONSTITUTION, SAID THAT IT MEANS THAT PEOPLE ON PROBATION AND PAROLE ARE ALLOWED TO VOTE, AND THAT IS WHAT THE LAWYERS WHO ARE INVOLVED WITH IT, THAT IS WHAT THE SCHOLARSHIP SAYS, THAT THEY ARE UNDER AN ALTERNATIVE, THESE GENTLEMEN AND WOMEN THAT ARE PART OF THIS GROUP ARE ORDERED UNDER AN ORDER OF PROBATION, UNDER AN ORDER OF PAROLE. IF THEY DO NOT COMPLY WITH THOSE ORDERS, THEN IN THE ALTERNATIVE, THERE IS A POSSIBILITY OF IMPRISONMENT.

OCEAN ENERGY SAYS YOU START WITH THE DICTIONARY. YOU START WITH THE PLAIN MEANINGS OF THE WORDS. WE HAVE AN L.S.U. LAW PROFESSOR THAT PARTICIPATED IN THIS. HE SAYS, THE PLAIN MEANING IS THAT PEOPLE ON PROBATION AND PAROLE CAN VOTE. THE SECOND THING THE SUPREME COURT SAYS, BUT IF YOU STILL HAVE PROBLEMS WITH THE PLAIN MEANING, THEN YOU LOOK TO THE QUESTION OF THE FRAMERS AND PUBLIC, AND IF THERE IS A TIE, OR EVIDENCE ON BOTH SIDES, THEN THE PUBLIC, THE PUBLIC MEANING OF THE WORDS ARE THE WORDS THAT TRUMP WHATEVER THE FRAMERS HAD IN MIND.

THE GOVERNMENT SUGGESTS THE COMMENTS OF ONE PERSON MAKES A DIFFERENCE. I WOULD SAY AGAINST THAT, WOULD THE PUBLIC UNDERSTAND IT THIS WAY IF, IN FACT, THE RESEARCHER, PROFESSOR HARGRAVE, WHO WAS THERE, WHO PARTICIPATED, AND WHO WROTE AN ARTICLE ABOUT THIS, THE DEFINITIVE ARTICLE CITED NUMEROUS TIMES BY THE STATE SUPREME COURT, HE IS A MEMBER OF THE PUBLIC, HIS UNDERSTANDING OF IT I THINK, NOT THAT THE LAW REVIEW ARTICLE ITSELF IS DEFINITIVE AND

MAKES THE DECISION, BUT IT HELPS THIS COURT, HELPS THE OTHER COURTS THAT WILL LOOK AT IT THAT THIS --

THE COURT: WHEN YOU LOOK AT THE LEGISLATIVE RECORD ON THIS, AND WE DO NOT NEED TO GET TO THE LEGISLATIVE RECORD ON THIS, OR IN THIS CASE, THE CONSTITUTIONAL CONVENTION AND WHAT OCCURRED THERE, THE PLAIN WORDS SAY WHAT THEY SAY AND I SHOULD TAKE THEM AT THEIR FACE, BUT IF THERE IS ANY AMBIGUITY, SHOULDN'T I LOOK AT WHAT HAPPENED AT THE CONSTITUTIONAL CONVENTION, WHAT WAS DISCUSSED? AND IF I DO, PRIOR TO PASSING THE TEXT OF ARTICLE 1, SECTION 10, THE FRAMERS WERE INFORMED BY MEMBERS OF THE COMMITTEE OF THE CRAFT THAT THE TEXT, THE INTENT OF THE PHRASE WAS TO INCLUDE PERSONS ON PROBATION AND PAROLE, AND WHEN DELEGATE WILLIS QUESTIONED THE WORDING OR THE PHRASE, HE GOT AN EXPLANATION THAT SAID THEY WERE INCLUDED WITHIN THAT INTENT OF IT, AND HE NEVER ATTEMPTED TO AMEND TO CHANGE IT TO SAY THAT THEY FELL OUTSIDE OF THE PROHIBITION. SO, HOW CAN I GO AGAINST THAT?

MR. QUIGLEY: WELL, I THINK AS YOU SAID, YOU DO NOT HAVE TO GET TO THAT, BUT IF YOU DO GET TO THAT, IF YOU JUMP OVER THE DICTIONARIES AND PROFESSOR TO GET TO THAT, I THINK THAT YOU HAVE TO LOOK AT THAT IN THE CONTEXT THAT WE SET OUT IN YOUR BRIEF SHOWING THE OTHER CONVERSATIONS THAT WERE HAPPENING, THE ACTION AND INACTIONS AS A RESULT OF THAT, AND IN PARTICULARLY, THE DECISION OF THAT SUBCOMMITTEE

ON CONSTITUTIONAL AND CIVIL RIGHTS WHICH HAD THIS EXPLICITLY PRESENTED TO THEM AND WAS VOTED DOWN. THE PHRASING WAS TO SPECIFICALLY INCLUDE PEOPLE ON PROBATION AND PAROLE AS PART OF THOSE WHO WERE EXCLUDED, AND THAT WAS VOTED DOWN. THAT IS PART OF THE RECORD AS WELL, AND BECAUSE OF THAT, I THINK LOOKING AT THE INTENT OF THE FRAMERS, YOU HAVE THE TESTIMONY OF ONE FRAMER, YOU HAVE THE RECORD OF THE COMMITTEE THAT BROUGHT IT, THAT ACTUALLY GENERATED THE WORDS THEMSELVES. I DO NOT THINK THAT THAT IN AND OF ITSELF IS PERSUASIVE PARTICULARLY WHEN LOOKED AT, WHAT WOULD THE GENERAL PUBLIC WHO VOTED ON THIS THINK? WERE THERE AS MANY PEOPLE AS WERE IN THE CONVENTION? THERE MAY HAVE BEEN THAT MANY OPINIONS ABOUT WHAT ACTUALLY HAPPENED, OR WHAT THEY THOUGHT HAPPENED, AND I THINK THAT IS WHY, IN FACT, ONCE IT CAME OUT ALLOWING PEOPLE ON PROBATION AND PAROLE TO VOTE, THAT THE LEGISLATURE DECIDED TO TAKE ACTION TWO YEARS LATER AND SAY, WAIT, WAIT, WAIT A SECOND. THAT IS NOT WHAT WE THOUGHT WAS INVOLVED, AND SO THAT --

THE COURT: YES. THE CONSTITUTION WAS 1974, AND THE STATUTE IS 1976, SO TWO YEARS LATER, RIGHT.

MR. QUIGLEY: AT THAT POINT THEY SAID, NO, NO, WAIT A SECOND. WHAT WE MEAN IS THAT "UNDER ORDER OF IMPRISONMENT" MEANS PROBATION AND PAROLE AS WELL, BUT IT IS VERY CLEAR I THINK, SAYING VERY CLEAR PROBABLY OVERSTATES IT, BUT THAT VOTING AS A FUNDAMENTAL RIGHT, THESE

STATUTES ARE NOT ENTITLED TO THE PRESUMPTION OF CONSTITUTIONALITY THAT OTHER STATUTES ABOUT HIGHWAYS AND OTHER THINGS LIKE THAT ARE ENTITLED BECAUSE IT INFRINGES UPON THE FUNDAMENTAL RIGHT OF VOTING, WHICH IS -- I MEAN, VOTING IS OUR KEYSTONE RIGHT IN A DEMOCRACY. IT IS, YOU CANNOT HAVE A DEMOCRACY WITHOUT VOTING. YOU CANNOT HAVE THE COUNTRY THAT WE HAVE WITHOUT VOTING. IT IS A FUNDAMENTAL RIGHT, AND AS A FUNDAMENTAL RIGHT, THEN THOSE STATUTES ARE THEN SUBJECTED, AS THE SUPREME COURT RECENTLY SAID IN THE **DRAUGHTER CASE**, TO STRICT SCRUTINY WHICH MEANS THAT THE STATE HAS TO COME FORWARD WITH A COMPELLING STATE INTEREST THAT IS NARROWLY TAILORED TO FULFILL THAT COMPELLING STATE INTEREST.

IN SUPPORT OF THAT, THE STATE CITES SEVEN FEDERAL CASES IN TERMS OF THE FUNDAMENTAL RIGHTS AND THE STRICT SCRUTINY, IT CITES SEVEN FEDERAL CASES SAYING THAT THE LOUISIANA CONSTITUTION SHOULD NOT BE INTERPRETED IN A WAY THAT GIVES THE RIGHT TO VOTE TO THE 71,000 PEOPLE THAT WE ARE TALKING ABOUT. THOSE SEVEN FEDERAL -- ALL THOSE FEDERAL CASES CAN BE SET ASIDE BECAUSE WE ARE TALKING ABOUT THE LOUISIANA CONSTITUTION.

THE COURT: OKAY. THEN IF WE ARE, THEN LET'S TALK ABOUT THE TWO TIMES THAT THEY CITED THE LOUISIANA STATE SUPREME COURT THAT STATES IN **STATE VERSUS EVERHART**, IT SAYS THE STATE HAS A COMPELLING INTEREST IN REGULATING CONVICTED FELONS UNDER THE STATE'S SUPERVISION. IN **STATE**

VERSUS DRAUGHTER, FOR THESE PERSONS STILL UNDER STATE SUPERVISION, WE EASILY FIND THAT THEY WOULD BE A COMPELLING STATE INTEREST FOR THE STATE'S LIMITED INFRINGEMENT OF EVEN FUNDAMENTAL CONSTITUTIONAL RIGHTS. WHERE DO YOU GO THERE? HOW DO YOU GET BETTER THAN THAT?

MR. QUIGLEY: WELL, I THINK, YOUR HONOR, THERE IS A HUGE DIFFERENCE, HUGE DIFFERENCE BETWEEN **DRAUGHTER** WHERE THEY ARE SAYING THAT PEOPLE WHO ARE STILL UNDER THE JURISDICTION OF THE COURT BECAUSE OF FELONY CONVICTIONS CANNOT POSSESS A WEAPON IS QUITE A BIG DIFFERENCE IN TERMS OF THE PUBLIC PURPOSE, THE CONSTITUTIONAL IMPORTANCE OF THE ABILITY OF THE RIGHT TO VOTE.

FOR THEIR COMPELLING STATE INTEREST, THEY AGAIN CITE A FEDERAL CASE THAT SAYS, TO PROTECT THE INTEGRITY OF THE ROLES. THAT IS THE COMPELLING INTEREST THAT IS OFFERED BY THE STATE HERE TODAY, TOTAL, TO PROTECT THE INTEGRITY OF THE ROLES FOR 70,000 PEOPLE WHO ARE OUT OF PRISON, WHO ARE WORKING, WHO ARE PAYING TAXES. THAT IS NOT AN ARGUMENT THAT HAS BEEN ADVANCED UNTIL THE REPLY BRIEF, NUMBER 1, AND NUMBER 2 --

THE COURT: WELL, BECAUSE YOU DID NOT RAISE IT, THE ISSUE OF SCRUTINY ANALYSIS WAS NOT YOUR OPPOSITION TO THEIRS, SO IT WAS NOT AN ISSUE BEFORE THE COURT AT THAT TIME. SO, TO SAY IT JUST CAME UP IN THEIR REPLY BRIEF DOES NOT HELP ME MUCH. I MEAN, SURE, IF IT IS --

THE COURT: ARE THEY SUPPOSED TO ANTICIPATE WHAT MIGHT BE ARGUED? THEY ARGUED

IN THEIR MOTION THAT WHICH THEY KNEW WOULD BE AN ISSUE. WHEN THE STRICT SCRUTINY ANALYSIS BECAME AN ISSUE, THEY REPLIED TO IT.

MR. QUIGLEY: IF IT IS CORRECT, IT DOES NOT MAKE ANY DIFFERENCE THAT IT WAS JUST RAISED, I AGREE WITH THAT, BUT IN TERMS OF WHETHER IT IS CORRECT OR NOT, I THINK THE FACT THAT, AGAIN, THEY ARE CALLING ON THAT IS THEM CITING A FEDERAL CASE WHERE THE FEDERAL CASES, WE DO NOT HAVE THE RIGHT TO VOTE IN THE FEDERAL CONSTITUTION FOR PEOPLE WHO ARE UNDER -- EXCEPT FOR THOSE WHO ARE UNDER ORDER OF IMPRISONMENT.

SO, IT IS REALLY NOT I DO NOT THINK PERSUASIVE FOR THIS COURT. I WOULD JUST END WHERE WE STARTED IN TERMS OF THE KEYSTONE NATURE OF THIS VOTE, THE RIGHT TO VOTE.

THE COURT: IT DOES NOT SEEM FAIR, DOES IT?

MR. QUIGLEY: IT DOES NOT SEEM FAIR.

THE COURT: OKAY. DO YOU AGREE THAT THE COURT HAS TO LOOK TO THE LANGUAGE OF THE CONSTITUTION?

MR. QUIGLEY: ABSOLUTELY.

THE COURT: AND YOUR ARGUMENT IS THE LANGUAGE OF THE CONSTITUTION MEANS IMPRISONMENT?

MR. QUIGLEY: IF IT SAYS UNDER ORDER OF IMPRISONMENT, YES, THAT IS WHAT IT MEANS.

THE COURT: AND YOUR ARGUMENT IS THAT ONE WHO IS ON PROBATION, OR ONE WHO IS ON PAROLE FOR A FELONY IS NOT UNDER AN ORDER OF IMPRISONMENT?

MR. QUIGLEY: THAT IS CORRECT, YOUR HONOR.

THE COURT: IF THE PAROLE OR PROBATION IS VIOLATED, WHAT OCCURS? THEY IMPLEMENT THE PENDING ORDER OF IMPRISONMENT. THEY DO NOT DO MORE THAN THAT. THEY DO NOT GIVE ADDITIONAL TIME FOR THE VIOLATION. WHAT THEY DO IS, THEY IMPLEMENT THE ORDER OF IMPRISONMENT THAT HAS BEEN IMPOSED. HOW DO YOU GET AROUND THAT? THAT IS HANGING OVER THEIR HEAD. THEY ARE UNDER AN ORDER OF IMPRISONMENT. THEY ARE RELIEVED FROM HAVING TO SERVE THE TIME BECAUSE THEY ARE ON PROBATION OR PAROLE. SO LONG AS THEY MEET THE REQUIREMENTS OF PROBATION AND PAROLE, THEY WILL NOT HAVE TO SERVE THE REST OF THE ORDER OF IMPRISONMENT UNDER WHICH THEY ARE CHARGED. THAT IS WHERE I HAVE THE BIGGEST PROBLEM, IS THAT IF THEY ARE NOT UNDER AN ORDER OF IMPRISONMENT, IS THERE A NEW SENTENCING WHERE A DIFFERENT ORDER OF IMPRISONMENT CAN BE UTILIZED? WELL, THAT WOULD NOT BE FAIR, WOULD IT? THEY GO SERVE THE ORDER OF IMPRISONMENT UPON WHICH THEY ARE CHARGED. IT IS ALWAYS, THAT ORDER OF IMPRISONMENT IS ALWAYS THERE. THEY ARE ALLOWED NOT TO BE INCARCERATED FOR A PERIOD OF TIME, FOR THE REST OF IT, OR ALL OF IT IN CASES OF PROBATION, SO LONG AS THEY ABIDE BY CERTAIN RULES, BUT BREAKING THE RULES, THE STATE ENFORCES THE PENDING ORDER OF IMPRISONMENT. THAT ORDER OF IMPRISONMENT IS ALWAYS THERE; OTHERWISE, IF THEY BREAK THEIR PROBATION OR PAROLE, THERE IS NOTHING TO PUT THEM IN JAIL UNDER. THERE IS NO ORDER UNDER

WHICH THEY CAN BE IMPRISONED. HOW DO YOU GET AROUND THAT? I DO NOT SEE HOW YOU CAN GET AROUND THAT.

MR. QUIGLEY: I THINK WE GET AROUND IT EXACTLY -- I DO NOT THINK WE -- I THINK WE ADOPT THE ANALYSIS OF THE HEAD OF RESEARCH FOR THE CONSTITUTIONAL CONVENTION, PROFESSOR HARGRAVE, WHO SAYS THAT THOSE WORDS DO NOT APPLY TO PEOPLE ON PROBATION AND PAROLE.

THE COURT: AND WILLIE LEE WILL BE THE FIRST ONE TO SAY, LOOK, I AM NOT ALWAYS RIGHT, THIS IS WHAT I BELIEVE, BUT I AM NOT ALWAYS RIGHT. HE USED TO SAY THAT ALL THE TIME. MAYBE IN THIS CASE HE WAS NOT ALWAYS RIGHT, BUT HE IS NOT THE FRAMER OF IT. THE FRAMERS STATED WHAT IT WAS. I READ WHAT THEY SAID, AND IT WAS EXPLAINED TO THEM JUST BEFORE THE VOTE THAT THIS INCLUDES PEOPLE UNDER PROBATION AND PAROLE.

IT IS VERY DIFFICULT TO SEE -- LOOK, LET ME TELL YOU WHAT, I AM ALL IN FAVOR OF YOUR POSITION, A HUNDRED PERCENT IN FAVOR. THESE PEOPLE ARE LIVING AS GOOD CITIZENS FOLLOWING ALL THE RULES, THEY OUGHT TO HAVE THE ENTITLEMENTS THAT ANY CITIZEN HAS, BUT I AM CHARGED WITH FOLLOWING THE LAW. I TOOK AN OATH TO FOLLOW THE LAW, AND I AM JUST HAVING A GREAT BIT OF DIFFICULTY -- IF I TAKE YOUR POSITION, I AM BENDING THE LAW. THAT IS WHAT I AM DOING, I AM BENDING THE WORDS OF THE LAW. THE WHOLE SYSTEM OF CRIMINAL JUSTICE THAT WE HAVE I AM IGNORING TO ADOPT YOUR POSITION. I LIKE YOUR

POSITION. I WANT YOUR POSITION TO BE THE RIGHT THING. I AM TELLING YOU THE TRUTH HERE, I DO. I JUST DO NOT SEE HOW LEGALLY I CAN DO IT. THAT IS THE PROBLEM. I JUST DO NOT. AN ORDER OF IMPRISONMENT DOES NOT MEAN ACTUALLY INCARCERATED. IT JUST DOES NOT. THE PLAIN WORDS, PLUS THE CONSTITUTIONAL FRAMER'S HISTORY SHOWS THAT IT DOES NOT, AND SO, I HAVE TO UNFORTUNATELY DENY YOUR MOTION FOR SUMMARY JUDGMENT AT YOUR COST AND GRANT THE STATE'S MOTION FOR SUMMARY JUDGMENT AT YOUR COST.

THE REASONS FOR JUDGMENT WILL INCLUDE MY RESPONSES TO THE COLLOQUY BACK AND FORTH IN THIS. THE ENTIRE RECORD OF THIS WILL CONSTITUTE MY REASONS FOR JUDGMENT.

MA'AM, WOULD YOU DO ORDERS FOR ME, PLEASE?

MS. DURIO: YES, YOUR HONOR.

THE COURT: LOOK, I AM GOING TO TELL YOU WHAT, TWICE A YEAR I HAVE TO MAKE A RULING THAT I DO NOT LIKE. I DO NOT LIKE THIS RULING. I WILL TELL YOU STRAIGHT UP, I DO NOT LIKE IT. IT IS NOT FAIR. SOMEONE WHO HAS LIVED THE STRAIGHT AND NARROW FOR 10, 15 YEARS, THEY OUGHT TO BE ABLE TO VOTE. IT IS JUST NOT WHAT THE PLAIN LANGUAGE STATES UNFORTUNATELY, AND THAT WAS CONTEMPLATED BY THE FINAL VOTE OF THE COMMITTEE OF THE FRAMERS, AND I FIND THAT UNFORTUNATE, BUT I HAVE TO LIVE BY MY OATH TO FOLLOW THE LAW, AND THAT IS WHAT I BELIEVE THE LAW SAYS. THANK YOU, GUYS.

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C E R T I F I C A T E

I, KRISTINE M. FERACHI, CCR, OFFICIAL OR DEPUTY OFFICIAL COURT REPORTER IN AND FOR THE STATE OF LOUISIANA EMPLOYED AS AN OFFICIAL OR DEPUTY OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL DISTRICT COURT FOR THE STATE OF LOUISIANA AS THE OFFICER BEFORE WHOM THIS TESTIMONY WAS TAKEN DO HEREBY CERTIFY THAT THIS TESTIMONY WAS REPORTED BY ME IN THE STENOTYPE REPORTING METHOD, WAS PREPARED AND TRANSCRIBED BY ME OR UNDER MY DIRECTION AND SUPERVISION, AND IS A TRUE AND CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY AND UNDERSTANDING. THE TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT FORMAT GUIDELINES REQUIRED BY THE STATUTE OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR TO THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 13TH DAY OF MARCH, 2017.

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KRISTINE M. FERACHI
OFFICIAL COURT REPORTER
19TH JUDICIAL DISTRICT COURT
CCR #87173

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