COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA
DOCKET NO. 2017-CA-1141

VOICE OF THE EX-OFFENDER, ET AL.,

Plaintiffs-Appellants,

versus

STATE OF LOUISIANA, ET AL.,

Defendants-Appellees

On Appeal from the 19th Judicial Circuit,
Parish of East Baton Rouge, Section 22, State of Louisiana
Docket No. 649587
Honorable Judge Timothy Kelley, Presiding

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment in a civil case. On March 13, 2017, following a hearing before the Nineteenth Judicial District, East Baton Rouge Parish, the court, in an oral ruling from the bench, granted Defendant's motion for summary judgment. On March 28, 2017, the Honorable Judge Timothy Kelley signed a written judgment to that effect pursuant to La. C.C.P. art. 1911. The clerk mailed notice of final judgment on April 12, 2017, pursuant to La. C.C.P. art. 1313 and 1913. Judge Kelley entered an Amended Judgment on August 23, 2017. Appellants filed a timely Motion for Appeal on June 13, 2017. The judgment is appealable under La. C.C.P. art. 2083(A), and the Order of Appeal was timely obtained under La. C.C.P. art. 2123(A)(2). The Court granted the Order of Appeal pursuant to La. C.C.P. art. 2121. Thus, this Court has jurisdiction here.

STATEMENT OF THE CASE

This appeal challenges the constitutionality of Louisiana's dis-enfranchisement of citizens who are on probation and parole following a felony conviction. This case concerns the fundamental right of probationers and parolees who live in the community to participate in its political life.

Louisiana's guarantee of political participation – its affirmative right to vote – is enshrined in Section 10(A) of the Declaration of Rights of the Louisiana Constitution of 1974, which provides:

> (A) Right to Vote. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, *except that this right may be suspended while a person* is interdicted and judicially declared mentally incompetent or *is under an order of imprisonment for conviction of a felony*.

La. Const. art. I, § 10(A) ("Section 10(A)") (emphasis added). The Louisiana Constitution more strongly protects the right to vote than its federal counterpart, guaranteeing that "every citizen" "shall" have the right to vote, with limited exceptions. *See id.* The right "may" be suspended – not revoked – during two specific time periods, one of which is at issue in this case: "while a person . . . is under an order of imprisonment for conviction of a felony." *See id.*

This case turns on the interpretation of this constitutional provision. At issue is whether the time period spent "under an order of imprisonment" includes time spent on probation or parole. Appellants contend that it does not, and urge this Court to recognize that Section 10(A)'s suspension of the right to vote applies only to the time period a person is imprisoned following conviction for a felony.

Voice of the Experienced ("VOTE") is a non-profit organization by, of, and for formerly incarcerated individuals and their families who are deeply impacted by this misinterpretation of the Constitution. R. 6-7. After being deprived of their fundamental right to vote, on July 16, 2016, VOTE and eight of its individual members brought this action for declaratory and injunctive relief on behalf of themselves and those similarly situated to assert their fundamental right to vote

guaranteed by Section 10(A). R. 5. Following oral argument, the court granted summary judgment for the Secretary in an oral ruling from the bench, R. 320-336, followed by a signed final judgment without written opinion. R. 310. This judgment was amended to include decretal language. This appeal followed. R. 312.

During the hearing on summary judgment, the trial court rejected VOTE's reading of Section 10(A), concluding that probationers and parolees were properly considered "under an order of imprisonment," and thus within the window allowed by its temporary suspension of the right to vote. The trial court stated: "An order of imprisonment does not mean actually incarcerated. It just does not. The plain words, plus the constitutional framer's history shows it does not, and so, I have to unfortunately deny your motion for summary judgment . . . ." R. 335. Lamenting that his ruling "does not seem fair," the court further stated:

> 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 don't see how you can get around that.

R. 332-334. The trial judge also referenced floor debates among delegates during the 1974 Constitutional Convention ("CC73") concluding "it was explained to them *just before* the vote that this includes people under probation and parole." R. 334 (emphasis added). The trial court did not address the intent or understanding of the voters who ratified the provision, nor did the court appear to consider materials

generated by the Committee on the Bill of Rights and Elections ("CBRE"), the CC73 committee responsible for drafting Section 10(A). R. 320-336. The court also discussed but did not address whether it should review statutory limitations on the right to vote under strict scrutiny. R. 329-332.

With respect to class certification, on September 29, 2016, VOTE moved for certification of the class of Louisiana citizens on probation or parole following conviction of a felony. R. 85. On October 13, 2016, the trial court denied class certification. R. 222. VOTE timely moved for reconsideration, which the trial court denied without written opinion on November 15, 2016. R. 224, 227.

ASSIGNMENT OF ERRORS

1. The trial court erred by failing to accord the plain meaning to the language of Section 10(A), by failing to give effect to the intent of voters who understood that plain meaning, and by failing to harmonize the more specific provision of Section 10(A) with Article I, Section 20's more general provision expressly referencing parolees and probationers. *See* La. Const. art. I, § 20 ("Section 20"). The trial court's decision effectively rendered Section 10(A)'s unique language superfluous, in error.

2. The trial court erred in failing to find that La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) are unconstitutional because they fail strict scrutiny and infringe on the Constitution's right to vote. The court erred in failing to narrowly

construe the scope of the Constitution's limitations on the right to vote and allowing the Legislature to add language expanding the scope of the constitutional limitation.

3. The trial court erred in failing to certify the class or hear evidence in support of class certification in this matter.

ISSUES PRESENTED FOR REVIEW

1. Did the court below err in interpreting Article I, Section 10(A)'s "while … under an order of imprisonment" to include parolees and probationers?

2. Did the court below err in failing find that La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) do not survive strict scrutiny and infringe the right to vote?

3. Did the court below err in failing to certify the class and consider evidence supporting class certification in this matter?

STATEMENT OF FACTS

On April 20, 1974, Louisiana voters ushered in a new era of expanded voting rights by ratifying a new Constitution including an explicit right to vote in Section 10(A). *See* R.112. Gone at last were the anti-democratic provisions of the past.[1] As part of this expansion, Louisiana voters established the right to vote upon

[1] The 1921 Constitution barred all those with felony convictions from voting. La. Const. art. VIII, § 6 (1921). The precedent for felon disenfranchisement in Louisiana begins prior to the Civil War, when white men were barred from voting due to four distinct felonies, all of which have a rational relationship to the

release from prison. The 1921 Constitution permanently disenfranchised individuals with felony convictions unless they received a pardon with express restoration of voting rights. La. Const. art. VIII, § 6 (1921). The new Section 10(A)[2] permitted only temporary suspension of the right to vote for those "under an order of imprisonment." La. Const. art. I, § 10(A). In 1974, Professor Lee Hargrave, the preeminent constitutional scholar and expert on the 1974 Constitutional Convention, specifically discussed in his seminal 1974 law review article on the new Declaration of Rights that the expansive nature of Section 10(A) did not include parolees and probationers. *See infra*, pp. 20-21. The earliest Attorney General opinion to analyze Section 10(A) also found its suspension of voting rights did not extend to parolees and probationers. *See* La. Att'y Gen. Op. No. 75-131 (Mar. 7, 1975) (parolees and probationers may vote), recalled by La. Att'y Gen. Op. No. 75-131 (May 2, 1975) (probationers may vote).

Two years later, in the first case addressing the new provision, the Second

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integrity of elections. Under the 1868 Constitution, disenfranchisement was extended to people who commit any felony. *See* La. Const. art. VI, § 4 (1812).

[2] VOTE's usage of "Section 10(A)" encompasses references to "Section 10" and recognizes that the Constitution did not contain an Article I, Section 10(B) until 1998, and the Louisiana Supreme Court recently invalidated Section 10(B) in *Shepherd v. Schedler*, 2015-1750, (La. 01/27/16); 209 So. 3d 752, 757. The now-defunct Section 10(B) addressed the qualifications for seeking office for people with felony convictions. It contained language closely tracking Section 10(A)'s "under an order of imprisonment." *See infra*, Section II. It also results in an asymmetry: a parolee or probationer can run for public office in Louisiana, but cannot vote for oneself in the election.

Circuit Court of Appeal likewise read Section 10(A) expansively, concluding that it guaranteed the right to vote to all citizens, including those with felony convictions whose right to vote could not be "automatically forfeited" because suspension is "is permissive" under the Louisiana Constitution. *Fox v. Mun. Democratic Exec. Comm*., 328 So.2d 171, 174 (La. App. 2 Cir. 1976).[3]

Starting in 1976, two years after voters ratified the Constitution and despite the expansive interpretations of Section 10(A), the Legislature contracted this right to vote by: (1) defining "under order of imprisonment" in the Louisiana Election Code as "a sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled." La. R.S. 18:2(8), and (2) barring those who fell under this definition from voting. La. R.S. 18:102(A)(1).

Today, more than 71,000 parolees and probationers are denied the ballot. The impact is profound: Louisiana disenfranchises more than three percent of its citizens, or one out of every thirty-three adults, due to a felony conviction. Sixty-four percent of this impacted population are not in prison but living in the community, a rate almost three times the national average.[4] African Americans are

[3] The court in *Fox*, however, gave no instruction regarding implementation. "It is unnecessary for us to find whether the implementation must be by legislative act or otherwise." 328 So.2d at 174.

[4] *Disenfranchisement of Individuals on Community Supervision in Louisiana*, VOTE, Sentencing Project, Louisiana League of Women Voters (Feb. 2017) at 1,

significantly disproportionately impacted.[5] People may remain ineligible to vote for years – some the rest of their lives – after they have served their time in prison. The representative plaintiffs reflect a diverse group of citizens living, working, and contributing to their communities – some of whom completed their terms of imprisonment decades ago – including several who work with non-profits, a Vietnam veteran, a construction worker, a college student, and a minister. R. 7-10.

SUMMARY OF THE ARGUMENT

The plain and unambiguous reading of Section 10(A) limits the voting rights suspension to the time period a person spends in prison. This plain reading reflects the layperson's understanding, which should be given effect. Even if this Court were to find the language ambiguous, Section 10(A) must be construed "as a whole and in context" with Section 20's express reference to parolees and probationers. Section 10(A) (with no reference to parolees or probationers) is the more specific rule, which controls. Moreover, VOTE's reading is workable within Louisiana's criminal justice system; an "order of imprisonment" need not equate with a

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http:www.vote-nola.org/uploads/6/4/9/8/64988423/disenfranchisement_on_community_supervision_in_la.pdf (last visited Sept. 26, 2017).

[5] *Demographic Profiles of the Adult Probation and Parole Population,* Louisiana Department of Public Safety and Corrections (March 31, 2016), http://www.doc.la.gov/media/1/Briefing%20Book/APR%202016/4a.u.-.p.p-apr.16.pdf(last visited Sept. 26, 2017).

defendant's "principal" or "original" sentence but can be more narrowly interpreted as a "custodial sentence" or a "custodial term" in a "split sentence."

If this Court finds that the phrase "while . . . under order of imprisonment" is ambiguous, it must look to the intent behind the provision, and where there is any doubt, the intent of the voters controls. Here, the historical context of Section 10(A)'s ratification supports the plain meaning of the language voters adopted, and supports an inference that voters intended to suspend the right to vote only while a person was imprisoned. The court below failed to give effect to this intent.

Moreover, La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) unconstitutionally infringe on the fundamental right to vote and its limited suspension, failing strict scrutiny. The right to vote is fundamental in Louisiana, and any statutory limitations on the right are subject to strict scrutiny. The court below erred in failing to apply the appropriate standard of review and the Secretary has not met his burden of demonstrating that the law is narrowly tailored to advance a compelling state interest. Because the right to vote is fundamental, any question of whether La. R.S. 18:2(8) and La. R.S. 18:102 (A)(1) go beyond Section 10(A)'s constitutional limitation must tip in favor of the right to vote. The Legislature exceeded its authority in making the suspension more expansive.

Finally, the court below erred in denying class certification. Plaintiffs averred the statutory requirements for certification. Class certification is favored,

with any doubts resolved in favor of certification. The law favors allowing evidence in support of certification, and the trial court's rejection was in error.

STANDARD OF REVIEW

The assignments of error include questions of constitutional interpretation, which are questions of law. "Questions of law, including issues of constitutionality, are reviewed *de novo*." *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 2013-2011 (La. 05/07/14); 145 So. 3d 320, 327 (citations omitted). "A *de novo* review means the court will render judgment after its consideration of the legislative provision at issue, the law and the record, without deference to the legal conclusions of the tribunals below." *Specialized Loan Servicing, L.L.C. v. January*, 12-2668 (La. 06/28/13); 119 So. 3d 582, 584. An appellate court's "review of a grant or denial of a motion for summary judgment" is also *de novo*. *Jones v. Estate of Santiago*, 03-1424 (La. 04/14/04); 870 So. 2d 1002, 1006 (citation omitted).

ARGUMENT

I. SECTION 10(A)'S SUSPENSION OF THE RIGHT TO VOTE APPLIES ONLY WHILE A PERSON SERVES TIME IN PRISON FOR A FELONY CONVICTION

Constitutional interpretation begins with "the language of the constitution itself." *Ocean Energy, Inc. v. Plaquemines Par. Gov't*, 04-0066 (La. 07/06/04); 880 So.2d 1, 7 (citations omitted). "Unequivocal constitutional provisions are not

subject to judicial construction and should be applied by giving words their generally understood meaning." *Id.* (citations omitted). Additionally, provisions should be read in context and as a whole, "with full meaning given to the express language throughout the Constitution." *Chehardy v. Democratic Exec. Comm.*, 259 La. 45, 48, 249 So.2d 196, 198 (1971).

If the language is ambiguous, "determination of the intent of the provision becomes necessary." *In re Office of Chief Justice*, 2012-1342 (La. 10/16/12); 101 So.3d 9, 15. In Louisiana, the intent of the voters who adopted the constitutional language is paramount. *See Ocean Energy, Inc.*, 880 So.2d at 7 ("[A] court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls." (citation omitted)). Courts also "may consider the object sought to be accomplished by the adoption, and the evils sought to be prevented or remedied, in light of the history of the times and the conditions and circumstances under which the provision was framed." *Id.* (citation omitted).

Here, the generally understood meaning of Section 10(A) *in pari materia* with other provisions, and longstanding principles of constitutional interpretation favoring the intent of the voters and framers if the text is ambiguous, demonstrates that Section 10(A) suspends the right to vote only while a person is in prison.

A. The plain meaning of "while . . . under an order of imprisonment" excludes people on probation or parole.

The Constitution does not explicitly define "under an order of imprisonment" in Section 10(A). Courts then "generally look first to the dictionary definition" in order to ascertain the "ordinary, usual, and commonly understood meaning" of undefined constitutional text. *Caddo-Shreveport Sales v. Office of Motor Vehicles ex rel. The Dep't of Pub. Safety & Corr.*, 97-2233 (La. 04/14/98); 710 So.2d 776, 780 (relying on "the most common dictionary meaning" to determine "the layman's understanding" of the term "collect"). This lay understanding of constitutional text controls. *Ocean Energy, Inc.,* 880 So.2d at 11 (citation omitted).

To a layperson, an "order" is "a specific rule, regulation, or authoritative direction," Merriam-Webster's Online Dictionary (2017), http://www.merriam-webster.com/. It also could mean "a command of a court or judge." Dictionary.com (2017), http://www.dictionary.com. "Suspend" is "to set aside or make temporarily inoperative." *Id.* "Imprisonment" is "the act of imprisoning or the *state of being* imprisoned: Confinement. Restraint." Webster's Third New International Dictionary of the English Language (1986) (emphasis added).

Taken together, a layperson would likely understand the relevant portions of Section 10(A) to mean: every citizen of the state, upon reaching eighteen years of

age, shall have the right to register and vote, except that this right may be temporarily lost while a person is ordered to serve time in prison for a felony.

Instead of examining any lay understanding, the trial court reasoned that equating "order of imprisonment" with "actual incarceration" would leave judges without a legal mechanism to re-incarcerate those who violate the terms of their probation or parole. R. 333-34. It rejected VOTE's reading as unworkable. R. 334.

First, the trial court's understanding of "an order of imprisonment" may resonate in "legally trained minds," particularly those familiar with Louisiana's criminal procedure, but likely not in the minds of laypeople. *See Carpenter v. Dep't of Health & Hosps.*, 2005-1904 (La. App. 1 Cir. 09/20/06); 944 So. 2d 604, 611. A layperson likely would not associate Section 10(A)'s language with "probation" or "parole," which are not in the text. Nor would the layperson likely ponder the legal consequences of probation or parole violations in light of the language. Rather, the layperson likely would associate "under an order of imprisonment" only with those physically behind bars. Given the presumption favoring general interpretations of the constitutional language, the trial court's failure to consider any lay perspective is in error. *See, e.g., Ocean Energy, Inc.,* 880 So.2d at 14 (interpreting "motor fuel" in "ordinary terms" and in accordance with "the layman's understanding"); *New Orleans v. Scramuzza*, 507 So.2d 215, 218 (La. 1987) (favoring the "natural" and "popular" meaning for the term "income tax").

Second, the trial court's rejection of VOTE's reading as unworkable is misplaced. VOTE's reading does not necessitate a disregard for "the whole system of criminal justice." R. 334. An "order of imprisonment" can be understood in at least two ways under Louisiana's criminal laws and rules of criminal procedure. One is the trial court's broad reading in which the "order of imprisonment" is equated with a criminal defendant's "principal" or "final" or "original" sentence. *See State v. Dixon*, 2002-1265 (La. App. 3 Cir. 03/05/03); 839 So. 2d 1141, 1144 (using the term "principal sentence"); *see also* La. C. Cr. P. art. 871(A); La. R.S. § 15:824 (B)(1)(a) (using the term "final sentence").

The second – narrower and more reasonable – reading would equate "while . . . under an order of imprisonment" as the time period during which a person is in the physical custody of the Department of Public Safety and Corrections ("DOC") pursuant to a "custodial sentence" or "custodial term" in a "split sentence."

"Imprisonment" in Louisiana equates with an individual's commitment to the DOC's physical custody. *See* La. R.S. § 15:824 (C)(1) ("only individuals actually sentenced to death or confinement at hard labor shall be committed to the DOC"); La. R.S. § 15:824 (A); *see also State v. Sylvester*, 94-2343 (La. App. 4 Cir. 12/15/94); 648 So.2d 31, 33. In Louisiana, this imprisonment period is specified in either an individual's "custodial sentence" or if the sentencing court has imposed a "split sentence" containing both a "custodial term" and a "probationary term," then

in the "custodial term" of the "split sentence." *See State ex rel. Talbert v. State*, 1999-2899 (La. App. 1 Cir. 06/23/00); 814 So.2d 2, 4 (referencing "the statutory relationship between custodial sentences, probationary sentences, and those which include both custodial and probationary terms" discussed in *State v. Bradley*, 99-364 (La. App. 3 Cir. 11/3/99); 746 So.2d 263, 267)); *see also State v. Dixon,* 2002-1265 (La. App. 3 Cir. 03/05/03); 839 So.2d 1141, 1144. VOTE does not contest that the right to vote is suspended during this period of imprisonment.

After completion of this "custodial sentence" or the "custodial term" in a "split sentence," however, an individual is no longer committed to the DOC's physical custody, and hence, the suspension of voting rights should be lifted. Parolees and probationers would remain under their "original" sentences, but they would no longer be "under an order of imprisonment" for Section 10(A)'s purposes. *See State ex rel. Talbert,* 814 So.2d at 4.

This reading of "under of an order of imprisonment" fully comports with Louisiana's criminal laws and sentencing rules. The trial court erred in finding VOTE's reading to be impracticable and unworkable in the criminal justice system.[6] Importantly, argued in full below, this narrower reading also better

[6] As a practical matter, there may be a narrow category of persons with felony convictions who are not under a "sentence of confinement" as defined by even the Legislature. This is where, pursuant to La. C. Cr. P. art. 893, a trial court exercises its discretion to suspend the imposition of a sentence altogether and places the defendant on probation. If this probation is later revoked, the trial court is

comports with requirements that this Court strictly construe any limitations on the scope of access to a fundamental right. *See infra*, Section II.

B. When read *in pari materia* with Section 20, Section 10(A) is the more specific rule governing the right to vote.

VOTE's reading is further supported by examining the provision as a whole and in context with other like constitutional provisions. *See Chehardy,* 249 So.2d at 198 ("Constitutional interpretation . . . is to be made from a reading of the provisions in the context that each is a part of the Constitution as a whole body of law, with full meaning given to the express language throughout the Constitution."); *see also City of New Rds. v. Pointe Coupee Par. Police Jury*, 2014-0179 (La. App. 1 Cir. 04/24/15); 167 So.3d 1038, 1043 (contrasting language with other similar provisions in plain meaning analysis); *Matassa v. Jasmine*, 2010-1298 (La. App. 1 Cir. 07/22/10); 42 So.3d 1157, 1160 (constitutional provisions cannot be "read in isolation"); *Succession of Lauga*, 624 So.2d 1156, 1166 (La. 1993).

Here, the trial court's failure to harmonize Section 10(A) with Section 20, a like provision with explicit reference to parolees and probationers – is a critical

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authorized to impose a sentence at the revocation hearing. *See* La. C. Cr. P. art. 900; *see also* La. Att'y. Gen. Op. No. 1989-456 (Mar. 8, 1990). As such, the trial court's finding that "that order of imprisonment is always there," R. 333-34, may also be in error.

omission constituting reversible error. Section 20 provides: "Full rights of citizenship shall be restored ***upon termination of state and federal supervision following conviction for any offense***." La. Const. art. I, § 20 (double emphasis added). Section 20 explicitly references the very people whose voting rights are at issue in this case: people who are living in the community under state and federal supervision. The Constitution's framers knew how to identify such persons and did so explicitly in Section 20.

Strikingly, Section 20's express identification of parolees and probationers does *not* appear in Section 10(A). Instead, Section 10(A) omits Section 20's language and uses an entirely different phrase: "under an order of imprisonment for conviction of a felony." Had the framers intended to permit the suspension of voting rights in Section 10(A) for those under "state and federal supervision," they could have easily done so by deploying the very words they used in Section 20.

Under well-settled principles of constitutional interpretation, this stark difference in language between Section 10(A) and Section 20 suggests that Section 10(A) has a different meaning than Section 20. *See, e.g., Cohort Energy Co. v. Caddo-Bossier Pars. Port Comm'n,* 37449 (La. App. 2 Cir. 08/20/03); 852 So.2d 1174, 1184 ("the expression of one thing necessarily excludes the other things not expressed"); *Anderson v. Ochsner Health Sys.*, 2013-2970 (La. 07/01/14); 172 So.3d 579, 583; *Serv. Steel Warehouse Co., L.P. v. McDonnel Grp., LLC*, 2016

U.S. Dist. LEXIS 3032, at *15 (E.D. La. Jan. 11, 2016) ("describing the canon of consistent usage and its converse, the canon of meaningful variation") (citation omitted)). This difference in meaning is clear and unequivocal: A person who is "under an order of imprisonment for conviction of a felony" does not have to wait until "termination of federal and state supervision" (language that is not included in Section 10(A)) before regaining his or her voting rights.

It could be argued (erroneously) that both Section 10(A) and Section 20 address the right to vote on grounds that the right to vote is one of the rights contemplated by Section 20's "full rights of citizenship."[7] One might argue that Section 20 could thus be read as restoring the right to vote following "termination of state and federal supervision." But such a reading would be in error.

It is well-established in Louisiana law that "[w]here one provision of a constitution or statute deals with a subject in general terms, and another deals with the same subject in a more detailed way, the two should be harmonized if possible,

[7] In *State v. Adams,* 355 So.2d 917, 922 (La. 1978), the Louisiana Supreme Court referenced the right to vote in *dicta*, listing it among the "full rights of citizenship" under Section 20. *See also Shepherd,* 209 So.3d at 763 (recognizing the "right to participate in the political process through candidacy and vote" as a "legally protectable interest" under Section 20). The Court in both *Adams* and *Shepherd* did not address Section 10(A) much less whether Section 10(A)'s permissive suspension applies to people who are on probation or parole. VOTE does not take issue with the general proposition that the right to vote is a right of citizenship. Indeed, the right to vote has long been recognized as an individual fundamental right under Louisiana law, and as such, its exceptions must be narrowly construed by this Court to maximize access to the franchise. *See infra,* Section II.

but if there is any conflict, the latter will prevail." *Arata v. La. Stadium & Exposition Dist.*, 254 La. 579, 608-09, 225 So.2d 362, 372 (1969) (citation omitted); *Perschall v. State*, 96-0322 (La. 7/1/97); 697 So.2d 240, 255.

Here, Section 20 is the broad provision that addresses the various rights of citizenship of those convicted of *any* offense, whereas Section 10(A) is the narrower provision that deals with a particular right (the right to vote) in a "more detailed way" (the suspension of the right for those convicted of a specific type of offense, a felony). Harmonizing the two provisions is straightforward: Under Section 20, various rights of citizenship are restored after completion of supervision. But under the specific rule of 10(A), the right to vote is not "restored;" indeed, it is never lost. Rather, it may be temporarily suspended. These provisions are further distinguished in practice. Section 20 has no bearing on management of the voting rolls and elections.[8]

Despite significantly different language between Section 20 and Section 10(A), the trial court failed to acknowledge, address or harmonize the disparities, and in doing so, rendered Section 10(A)'s unique phrase "under an order of imprisonment" impermissibly superfluous. *Lauga*, 624 So.2d at 1166 ("[E]very

[8] *See, e.g.,* La. R.S. 18:177 ("reinstatement of registration after suspension" referencing "order of imprisonment" and not "completion of federal or state supervision"); La. R.S. 18:177.1 (mandating that DOC provide "each person who completes all orders of imprisonment applicable to him for felony convictions" a voter registration form and other voting materials).

clause in a written constitution is presumed to have been inserted for some useful purpose, and courts should avoid a construction which would render any portion of the constitution meaningless." (citations omitted)); *see also Chehardy*, 249 So.2d at 198; *Matassa*, 42 So.3d at 1160. The trial court's reading creates a conflict between the two provisions, and under Louisiana's established principles of interpretation, Section 10(A) – the more specific provision – controls. *See, e.g., Ocean Energy, Inc.*, 880 So.2d at 7; *Arata*, 225 So.2d at 372.

As Professor Hargrave explained in his seminal 1974 law review article on Louisiana's new Declaration of Rights:

> The word choice, 'under an order of imprisonment,' may seem unusual; 'imprisoned' would be simpler and more direct. The reason for the choice was to overcome an objection that an escapee would not be 'imprisoned' and thus not within the exception. That choice of words does not prevent a person on probation or parole from voting since such a person is not under an order of imprisonment. The language contrasts with *Section 20's deliberate use of 'termination of state and federal supervision following conviction for any offense,'* where it was intended that completion of probation or parole requirements be met before full rights of citizenship are restored. Though the general expression used in Section 20, 'full rights of citizenship,' normally encompasses voting rights, the more specific provision in this article providing for return of the right to vote when one is no longer under an order of imprisonment will prevail.

Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 25 La. L. R. 1, 34-35 (1974) (emphasis added). The court below erred by failing to harmonize these provisions, warranting reversal.

Accordingly, the "only reasonable interpretation" of Section 10(A), when read *in pari materia*, is that "under an order of imprisonment for conviction of a felony" is a unique phrase that applies only in the voting rights context. *See Concerned Classified City Employees. Inc. v. Civil Serv. Comm'n*, 2015-0654 (La. App. 4 Cir. 01/06/16); 184 So.3d 824, 833. It appears only twice in the text, both times in the right to vote provision, Article I, Section 10. It cannot be equated with "principal" or "original" sentence of confinement. Instead, it describes a specific time period during which the government is narrowly permitted to suspend the explicit grant of the fundamental right to vote of a person with a felony conviction.

C. The intent of the voters – and the "natural and popular" understanding of Section 10(A) – is paramount.

VOTE has demonstrated that the plain language of Section 10(A) is clear and supports reversal of the decision below. However, if this Court determines that the language of Section 10(A) is ambiguous, then this Court is permitted to examine the intent of the provision. As set forth previously the intent of the voters who adopted the provision controls. *Lauga*, 624 So.2d at 1164-65. ("The political act that made the constitution of 1974 binding was the vote of the people; it is the understanding that can be reasonably ascribed to that voting population as a whole that controls."); *Ocean Energy, Inc,* 880 So.2d at 7; *Arata*, 225 So.2d at 372-73. Technical definitions are eschewed. *Ocean Energy, Inc.,* 880 So.2d 1 at 7. Instead,

Louisiana courts consider what "the average person, upon reading the proposed amendment, had in mind." *La. Pub. Facilities Auth. v. All Taxpayers*, 2003-2738 (La. App. 1 Cir. 12/23/03); 868 So.2d 124, 136.

1. Louisiana voters intended to provide the right to vote upon release from prison.

Like the layperson, the average voter in 1974 would have read the proposed Section 10(A) ballot language and understood it as "while a person is ordered to a prison." The average voter would not have associated it, as the trial court did, with a defendant's "principal" sentence. As set forth previously, this latter reading is not the "natural and popular meaning[] in which words are usually understood by the people who adopt them." *Ocean Energy, Inc.,* 880 So.2d at 7 (citation omitted).

This "natural and popular meaning" is further reflected in open letters before committees of the 1973 Constitutional Convention. For example, Raymond Nance, a community leader, made this proposal to the Judiciary Committee on May 25, 1973 for the right to vote upon release from prison:

> As citizens of the city of New Orleans, the members of the New Orleans Chapter of Community Action for Corrections propose the following actions by the Judiciary Committee of the Constitutional Convention. It is our feeling that the criminal justice system . . . must be responsive to the needs of the citizens of this state and to the needs of those most directly affected by it; namely, those arrested for a criminal act . . . . *The actions we propose are as follows*: . . . 5. *That the constitutional rights of persons* arrested for crimes *be guaranteed* except in cases where those rights are inherently inconsistent with the operation of an institution, such as a penitentiary, *and furthermore that those rights be restored when a person is released from prison. Specifically, we refer to the right to vote*.

Records of the Louisiana Constitutional Convention of 1973 ("CC73 Records"): Committee Documents, Vol. XI, p. 313 (emphasis added).[9]

2. The Committee on the Bill of Rights and Elections intended to suspend voting rights only while a person was "under sentence" or confined to a prison.

The CBRE, which drafted Section 10(A), reflected this sentiment. Louisiana courts have long evaluated CC73 committee materials when ascertaining the intent of an ambiguous constitutional provision. *State v. Reeves*, 427 So.2d 403, 412 (La. 1983) (analyzing original CBRE proposals and testimony); *Ocean Energy, Inc.*, 880 So.2d at 10 (analyzing Committee on Revenue and Finance documents); *see also Chehardy*, 249 So.2d at 198.

These materials demonstrate that the CBRE did not intend Section 10(A) to disenfranchise parolees and probationers. The earliest known draft of Section 10(A) is based on language from Illinois, a state that only disenfranchises people in prison. CC73 Records: Committee Documents, Vol. X, pp. 88-89. On March 28, 1973, the CC73 Research Staff, which included Professor Hargrave, issued a memorandum in response to a delegate's request for information on a possible

[9] This overall sentiment received support from other community and civic leaders. Mrs. Stephen Lichtblau of the League of Women Voters of Louisiana "urged a liberal provision on the Right to Vote." CC73 Records: Committee Documents, Vol. X, p. 14. Mrs. David Brown, also of the League, "said that the right to vote belongs in the Bill of Rights." *Id.*, p. 16.

"provision for automatically restoring political rights for one who has committed a felony after he has completed his sentence." *Id.* It set forth two "representative provisions providing for automatic restoration of political rights:"

> Illinois, Art. III, § 2: A person convicted of a felony, or otherwise *under sentence* in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon *completion of his sentence*.
>
> Montana, Art. I, § 28: Rights of the Convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by *termination of state supervision* for any offense against the state.

Id. (emphasis added). The memorandum then noted the key difference between the two: "The Illinois provision would restore political rights as soon as the convicted person is released from confinement, while the Montana provision would wait until his supervised parole is terminated, which may be much later." *Id.* It then proposed a right to vote provision with language far more similar to the Illinois Constitution, explaining:

> From a technical standpoint, a general section on the right to vote could be included with provision for its temporary suspension for persons *under sentence*. Such temporary suspension could also be extended to persons judged to be of unsound mind. Such a section in the Constitution might read as follows:
>
> Article I, § __. <u>Right to Vote</u>
>
> Every citizen who is at least eighteen years old . . . shall have the right to vote. This right may be suspended temporarily only while a person is under an order of imprisonment for conviction of a felony.

Id. (emphasis added). This language was framed specifically to differentiate the new proposed suspension of voting rights in Louisiana from that of Montana, which extended the suspension of voting beyond incarceration. The CBRE subsequently incorporated this language into every proposal of Section 10(A). *Id*., pp. 55-56, 62-63.

Importantly, however, one of the proposals - Tentative Proposal Number 109 ("TP No. 109") – sought to *add* language specifically disenfranchising probationers and parolees, providing: "After the word 'imprisonment' add the words 'or is serving a probation sentence.'" *Id*., pp. 62-63. CBRE minutes from May 19, 1973 state that the "purpose" of TP No. 109 was "*to keep parolees from voting but this was rejected 3-5*." *Id.,* pp. 14-15 (emphasis added). That same day, the CBRE then tentatively adopted the language (without reference to parolees and probationers) that would become Section 10(A). *Id.*, pp. 14-15, 62-63.

Several months later, on July 12, 1973, CBRE began considering proposals for the Elections Article. *Id.*, p. 19. As part of that process, Delegate Vick introduced Tentative Proposal Number 188 ("TP No. 188"), which would delete a proposed section of the Elections Article because it duplicated the tentatively adopted Section 10(A). *Id.* Critically, TP No. 188 described Section 10(A) as disenfranchising only those "confined to any jail or prison." *Id*., p. 73. Excerpts of the proposal read as follows:

> Background: A motion to delete a section on the right to register and vote in the elections article proposed by Mr. Jenkins.
>
> Section __. Right to Register and Vote.
>
> . . . Every person who is a citizen . . . shall be entitled to register and vote if he is eighteen years of age . . . . *However, no person shall be permitted to exercise these rights while confined to any jail or prison* or while of unsound mind. . . .
>
> Disposition: *Motion carried unanimously and the section was deleted as being a repetition of the Right to Vote in the 'Declaration of Rights*.'

Id. (emphasis added). Indeed, the minutes confirm that the proposed section on the right to vote "be deleted as having already been covered by the declaration of rights." *Id.* at 19. This is strong indicia of the CBRE's intent.

Letters to the CBRE also uniformly supported the right to vote upon release from prison. Then Secretary of State Wade O. Martin proposed the following language: "No citizen of this state shall be denied the right to vote . . . unless such person is lawfully imprisoned . . . ." *Id*., pp. 15, 156-57. Mr. Gideon Standon and Mr. Dennis C. Driscoll, "both of whom work[ed] in the voter registration field," wrote in support of Secretary Martin's proposal, explaining:

> While the Secretary's draft still denies the right to vote to incarcerated persons and the interdicted, this is not unrealistic. The draft would seem, however, *not* to deprive a convicted felon of the right to vote *once he is released*. This would be a step forward.

Id., pp. 15, 157 (emphasis added).

Testimony before the CBRE also focused on the right to vote upon release from prison. For example, the CBRE heard testimony from Russell R. Gaspard, then Board of Registration Director, who incorporated this statement from the Registrars of Voters Association "Once a person has paid his debt to society and is *released*, if he can go to work, teach school, or be employed under Civil Service regulations, *then he is entitled to register*." *Id*., pp. 156-57 (emphasis added).

Finally, the CBRE's work on establishing the right to vote upon release from prison was well known by other drafting Committees. For example, in reference to a proposal to change to the disenfranchisement provision, a CC73 Research Staff Memorandum for the Subcommittee on Public Welfare, Committee on Welfare and Education, dated May 15, 1973, stated:

> Article VIII, Section 6. Disqualification from voting or holding office; employment. The Coordinating Committee did not take action on this section. The Committee on Bill of Rights and Elections is considering a proposal which would restore the *right to vote to a convict upon release from the penitentiary* and restore all rights of citizenship upon release from parole supervision.

CC73 Records: Committee Documents, Vol. XIII, p. 329 (emphasis added). This supports the inference that the specific right to vote was seen by delegates in a different vein than restoration of general rights of citizenship and this is reflected in the differing language that prevailed in Sections 20 compared to Section 10(A).

3. The floor debates are mixed and fail to demonstrate intent to extend suspension of voting beyond release from prison.

The trial court gave great weight to the statements made by Delegate Roy during the floor debate on Day 44. R. 328. Floor debates, however, "may be of little value as expressions of the view of the convention as a whole." *Lauga*, 624 So.2d at 1168. "***Frequently no one expresses the views of those by whose votes a measure of importance is passed***. Many delegates who vote for a provision may be satisfied to vote without discussion, but if one more does join in the debate, it does not follow that their interpretation or opinion expresses the view of the convention as a whole." *Id.* (double emphasis added). Notably, immediately before Delegate Roy made his statements, the delegates engaged in a contentious discussion about proposed Section 20 during which the right to vote of people with criminal records was mentioned. CC73 Records: Verbatim Transcripts, Vol. VII, pp. 1196-1199, 1201-1203. The discussion began when Delegate Jack voiced his strong opposition to Section 20, arguing such language would allow "penitentiary lawyers" to help people dodge the multiple offender law.[10] *Id*., p. 1196, 1199. Many delegates then rushed to defend Section 20, arguing that it had no impact on

[10] Delegate Jack's statements were full of vitriol and provocation. He stated that the only reason why "a three-time loser, let's say at Angola" would want citizenship back is "because it will wipe out the first, second, third, offense and he cannot later be prosecuted if he commits a crime under a special prosecution." *Id*., p. 1199.

the multiple offender law. *Id*., pp. 1197-1199, 1201-1203. Rather, Section 20 simply restored basic rights of citizenship such as the right to work, to hold political office, and to vote.[11]

Section 20 then passed. The delegates proceeded to Section 10(A). Delegate Roy made a lengthy presentation on Section 10(A). *Id.* at 1203. Delegate Willis was the only one who responded to Delegate Roy, pointedly asking why Section 10(A) and Section 20 contained different language if both were meant to address the rights of parolees and probationers. *Id.*, p. 1204. Delegate Roy sidestepped the question. Here is their exchange:

> Mr. Willis: Mr. Roy, I . . . we just left the last sentence in the previous [Section 20] and if you look at the last independent clause of the section under consideration, [Section 10(A)] don't you think that we should use similar language instead of 'under an order of imprisonment and conviction of a felony' for this reason? I don't understand if that last clause in the section under consideration means that as soon as he gets of Angola he can register to vote. In the previous section means when he gets out of Angola that doesn't end that he has to end his supervision. You see what I mean. Don't you think that something should be done to make those fit hand in glove?
>
> Mr. Roy: Well, if he is out of Angola and no longer . . .
>
> Mr. Willis: Well, he could be under probation . . .
>
> Mr. Roy: I don't know if I understand. Let me tell you what we have attempted to say. That while you are under an order of imprisonment even if

[11] As Delegate Willis explained: "[Section 20] does not give former criminals now citizens to be again a medal. It gives them back what is tantamount in parallel, corruption or blood." *Id.*, p. 1203. Mr. Gavel concurred: "It gives them a taint of respectability, you are right." *Id.*

> you are on probation or suspension for the conviction of a felony you may not vote, but once that probation and suspension ends, even though you were under an order of imprisonment at all times, then you are entitled to vote irrespective of whether you are . . .
>
> Mr. Willis: I believe that's what you wanted to say, but in the view of what we said in the last sentence of the previous article, I believe some adjustment should be made to make them coincide, don't you see?
>
> Mr. Roy: I don't see it, but . . .

Id. The delegates then moved to other topics, after which, at the end of Day 44, Section 10(A) passed 81-21 without further revision. *Id.* p. 1209.[12]

The trial court inferred that the absence of an amendment suggests the delegates were satisfied that two provisions of the Constitution meant exactly the same thing, even though they were worded very differently. R. 334. A valid competing inference is that Delegate Roy was speaking for himself, Delegate Willis was concerned about the fact that two provisions were worded differently, suggested that the language of Section 10(A) be edited if it were to meet Delegate Roy's understanding, but ultimately, the language was not altered, leaving others either confused or assuming CBRE's understanding still controlled.

After reviewing the history, the trial court agreed with the Secretary that "if they wanted it to mean 'imprisoned,' they should have used 'imprisoned.'" R. 323. VOTE contends that the better conclusion, given the CBRE history, the

[12] The trial court stated Section 10(A) was explained "just before the vote." R. 334. This may be inaccurate. It appears that the actual vote took place well after the Delegate Roy's explanation .

Convention history, and the longstanding principles of constitutional construction, is if they wanted to include probationers and parolees, they would have used the same language as Section 20. To give Section 10(A) the same meaning as Section 20 would be to render Section 10(A)'s unique language impermissibly superfluous. *Lauga*, 624 So.2d at 1166. The decision below is thus in error.

But if this Court decides that the framers' intent was indeed to disenfranchise parolees and probationers, then intent is in conflict with the understanding of the average voter; it is this average voter's understanding that controls. *Ocean Energy, Inc.,* 880 So.2d at 7. As set forth above, the average voter did not understand the language to include persons on probation or parole.

II. THE STATUTES UNCONSTITUTIONALLY INFRINGE ON THE FUNDAMENTAL RIGHT TO VOTE

It is well established in Louisiana law that fundamental constitutional rights are to be liberally construed, and any restrictions on such rights be narrowly construed. *See, e.g., Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984); *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979 (La. 7/1/97); 696 So.2d 562, 564 (requiring that a fundamental constitutional right "must be construed liberally in favor of free and unrestricted access"). Where a provision may be subject to more than one reasonable interpretation, it must be resolved in favor of the right. *First Commerce Title Co. v. Martin*, 38,903, 887

So.2d 716, 720 (La. App. 2 Cir. 2004), *writ denied*, 896 So.2d 66 (La. 2005) (acknowledging "any doubt being resolved in favor of the fundamental right"); *see also Block v. Fitts*, 250 So.2d 738 (La. 1971) ("[A] litigant's right to a jury trial is fundamental, and if doubt exist, it should be resolved against a loss of the right."); *In re Matter Under Investigation*, 2007-1853 (La. 07/01/09), 15 So.3d 972. As such, because the right to vote is fundamental, this Court is bound to construe Section 10(A) in favor of expansive access to the right of suffrage. *Adkins v. Huckabay*, 1999-3605, p. 7 (La. 2/25/00); 755 So.2d 206, 211 ("The right to vote is fundamental to Louisiana citizens."); *Denham Springs Econ. Dev. Dist. v. All Taxpayers, Prop. Owners,* 2004-1674, p. 14 (La. 2/4/05); 894 So.2d 325, 335.

A. The statutes conflict with the 1974 Constitution.

The Louisiana Supreme Court has explicitly held that the right to vote as conferred by Section 10(A) is fundamental. "The right of qualified citizens of Louisiana to vote and to have their votes counted, inherent in our republican form of government and the democratic process, is a fundamental and constitutionally protected right." *Adkins*, 755 So.2d at 11; *Denham Springs Econ. Dev. Dist.,* 894 So.2d at 335 ("[The right to vote] is paramount to our democratic process and attempts to circumvent that process must be curtailed."); *Fox*, 328 So.2d at 174 ("We do hold Article I, Section 10 of Louisiana Constitution of 1974 is one of the

fundamental bill of rights guaranteeing every citizen that he 'shall have the right to register and vote.'").

As set forth in detail above, the plain language of Section 10(A), as well as the intent of the framers and voters, makes clear that the Section 10(A)'s suspension of the right to vote "while … under an order of imprisonment" applies only to those who are ordered to prison or serving time following conviction of a felony. La. R.S. 18:2(8) and La. R.S. 102(A)(1), by expanding the scope of that suspension, conflicts with the plain language and intent of Section 10(A).

B. The statutes fail strict scrutiny.

Statutes are presumed constitutional "unless fundamental rights, privileges and immunities are involved." *World Trade Ctr. Taxing Dist. v. All Taxpayers, Prop. Owners*, 2005-0374 (La. 6/29/05); 908 So.2d 623, 632. Here, because a fundamental right is involved, the traditional presumption of statutory constitutionality does not apply.

Louisiana courts apply strict scrutiny to legislative enactments that encroach on the right to vote. *See Louisiana Voter Registration/Educ. Crusade, Inc. v. Officer of Registrar of Voters for Orleans Par.*, 511 So.2d 1190, 1191-92 (La. App. 4 Cir. 1987) (citing *Southland Corp. v. Corp. v. Collector of Rev. for Louisiana*, 321 So.2d 501 (La. 1975) (recognizing that restrictions on the right to vote receive strict scrutiny)); *State v. Webb*, 144 So.3d 971, 978 (La. 2014) ("Laws restricting

fundamental rights are subject to strict scrutiny because they are considered to be so essential to the structure of our society . . . .").

Because the Third Circuit failed to acknowledge the presumption to be applied to the fundamental right to vote, this court should not rely on the Third Circuit's decision in *Rosamond v. Alexander*, 2003-235 (La. App. 3 Cir. 02/28/03); 846 So.2d 829, 831. There, the court failed to give deference to the constitutional right, relying instead on the presumption of constitutionality afforded to general legislative enactments. *Id.*

Instead, this Court should apply the standard adopted in *State v. Draughter*, 2013-0914 (La. 12/10/13); 130 So.3d 855, where the Louisiana Supreme Court upheld a legislative restriction barring people convicted of felonies the right to bear arms. The legislative restriction on the constitutional right to vote was approved only upon the court's determination that the state had demonstrated a "compelling state interest" to limit access to the right, and that the law was "narrowly tailored to serve that compelling interest." *Id.* at 867. Unlike *Rosamond*, the court in *Draughter* appropriately placed the burden on the state to demonstrate that its restriction was narrowly tailored to a compelling state interest.

The Secretary has not met his burden of strict scrutiny here. Indeed, the Secretary has not advanced *any* interest for the laws' expansive suspension of the right to vote to probationers and parolees in La. R.S. 18:2(8) and La. R.S.

18:102(A)(1), nor has he demonstrated that they are narrowly tailored to meet a compelling state interest. Accordingly, he has failed to meet his burden, and the statutes are thereby unconstitutional.

The trial court below did not directly address the applicable standard of review, though there was discussion by the court during oral argument speculating about the nature of the Secretary's interest in limiting the right to vote of probationers and parolees. R. 329-331. But the court did not address the standard of review. Rather, the court noted that the question of the appropriate level of scrutiny had not been raised in the first instance (though the parties addressed the issue in reply briefs) and left it there. R.331. But constitutional interpretation cannot be waived. Where a court is interpreting whether a statute infringes on a fundamental right, as is the case here, the court must apply the proper standard of review. The trial court's failure to do so is reversible error.

C. The Legislature unconstitutionally limited the right to vote.

A legislature lacks authority to expand restrictions on a fundamental right beyond its constitutional limitations. The Louisiana Supreme Court abided by this principle in *Crothers v. Jones*, when examining the scope of a previous constitutional provision prohibiting voting by people with criminal convictions. 239 La. 800; 120 So.2d 248 (1960). The 1921 Constitution barred "[t]hose who have been convicted of any crime which may be punishable by imprisonment in

the penitentiary" from voting or holding office. La. Const. art. VIII, § 6 (1921). The 1921 Constitution was silent on whether the term "penitentiary" was limited only to those with convictions punishable by imprisonment in the *Louisiana* penitentiary or whether it included imprisonment in *any* state or federal prison. The Legislature's implementing legislation defined it as the latter, to include those convicted of crimes *"either in any of the court of Louisiana or in the any of the courts of the United States." Id.* at 822. The court rejected the Legislature's expansive definition in favor of the narrower construction, finding the legislature had exceeded its authority by adding language including *any* state or federal prison, and thereby expanding the class of people excluded from voting. "We do not believe that it was within the province of the Legislature to interpret Section 6 of Article VIII . . . by adding thereto the words 'either in any of the Courts of Louisiana or in any of the Courts of the United States' following the phrase 'convicted of any crime.'" *Id.* at 823.

There, as here, the Legislature impermissibly expanded upon the Constitution's limited suspension on the right to vote by adding new language that enlarged the pool of people excluded from voting. The statutes here do more than simply enact the constitutional suspension in Section 10(A). The Legislature has

altered the breadth of the constitutional right contained therein, which it cannot do. The Legislature thus exceeded its authority, constituting reversible error.[13]

III. CLASS CERTIFICATION SHOULD BE GRANTED

The trial court erred in denying class certification in this matter and in subsequently refusing reconsideration to hear evidence on the class requirements. Class certification is favored in Louisiana law, with any doubts to be resolved in favor of certification of the class, and, the court has wide latitude to modify or alter a prior decision on class certification. Accordingly, this court should reverse the ruling below or alternatively remand for an evidentiary hearing on this claim.

VOTE filed a motion to certify a class consisting of more than 71,000 Louisiana citizens currently serving probation or parole for a felony conviction and unable to vote under the statutory provisions at issue in this case. R.85. Their motion addressed each of the class certification requirements under La. C.C.P. art. 591. Prior to any discovery, the court held a hearing on October 31, 2016. R. 222. Ruling from the bench, the trial court denied the motion based on insufficient

[13] This again guides against reliance on *Rosamond*, which, by ignoring the fundamental nature of the right to vote, condoned the kind of legislative overreach the court found problematic in *Crothers.* In *Rosamond*, the court adopted the Legislature's definition of the phrase "under order of imprisonment" as contained in Section 10(B) finding it to be "reasonable." 846 So.2d at 830. There, the Third Circuit ceded to the Legislature's definition, effectively allowing the Legislature, rather than the court, to interpret the Constitution's language.

evidence. *Id.* The trial court then issued a judgment denying the motion, without written findings of fact or reasons for judgment. *Id.*

Plaintiffs filed a motion to reconsider, or alternatively, for a new trial and sought an evidentiary hearing, arguing that they did, in fact, have sufficient evidence to meet each of the statutory elements for class certification and requested an opportunity to present such evidence to the court. R. 224.

In support of their argument, Appellants addressed, in detail, each statutory element under La. C.C.P. art. 591(A) and La. C.C.P. art. 592(B)(2), supported by affidavits. *Id*. VOTE urged the trial court to allow their additional submission of evidence. *Id.* The court denied this motion without explanation. R. 227.

A. Class certification may be revisited throughout the litigation.

In Louisiana, class certification is a "fluid process" where the court may "alter, amend, or recall its initial ruling on certification" throughout the litigation. La. C.C.P art. 592(A)(3)(d); *Price v. Martin*, 79 So.3d 960, 966 (La. 2011); *Rapp v. Iberia Par. Sch. Bd.*, 926 So.2d 30, 33 (La. App. 3 Cir. 2006) ("[t]rial courts also have the discretion to amend or reverse certification determinations at any time."); *Baker v. PHC-Minden, L.P.*, 2014-2243 (La. 5/15/15); 167 So.3d 528, 537-38 ("Any errors to be made in deciding class action issues should be in favor of and not against the maintenance of the class action, because a class certification order is ***always*** subject to modification or decertification.") (emphasis in original).

B. Class certification is favored.

Louisiana law explicitly favors class certification. It is well-settled that a trial court should generally favor class certification and resolve any doubts in favor of certification. *See Baker,* 167 So.3d at 537-38; *Price v. Martin*, 79 So.3d 960, 966 (La. 2011) (recognizing "prior language from this court indicating that errors in deciding class action issues should be in favor of and not against the maintenance of the class action"); *Robichaux v. State*, 2006-0437, 952 So.2d 27, 33 (La. App. 1 Cir. 2006); *Rapp*, 926 So.2d at 33 (citing *McCastle v. Rollins Envtl. Servs. of La., Inc.*, 456 So.2d 612 (La. 1984). Nevertheless, the trial court denied the motion to reconsider or for an evidentiary hearing without explanation. R. 227.

One reason the law favors ongoing reconsideration of class status is that errors concerning class certification may create irreparable harm. *See West v. G & H Seed Co.*, 2001-1453, 832 So.2d 274, 281 (La. App. 3 Cir. 2002); *Sutton Steel & Supply, Inc. v. BellSouth Mobility, Inc.*, 07-146, 971 So.2d 1257, 1262 (La. App. 3 Cir. 2007). As noted in *West*, errors concerning class certification cannot practically be corrected after a final ruling on the merits. *Id.* Here, the trial court denied VOTE the opportunity to present further evidence to substantiate their claim. Because individual plaintiff representatives of the putative class could be mooted out of the case as their status on parole or probation changes, VOTE would be irreparably harmed in its ability to bring these claims. The court below erred in

denying class certification and in rejecting an evidentiary hearing to hear evidence in support of class certification. Accordingly, this court should reverse the trial court's ruling, or alternatively remand for an evidentiary hearing on this claim.

CONCLUSION

WHEREFORE, for the foregoing reasons, appellants pray this court reverse the trial court's ruling below, declare La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) unconstitutional, enjoin the statutes, and remand for further proceedings as appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record via facsimile, electronic mail, and/or placing a copy of same in the U.S. Mail, postage prepaid and addressed this 27th day of September, 2017.

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Counsel for Tom Schedler, Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

APPENDIX

APPENDIX 1

VOICE OF THE EX-OFFENDER, KENNETH JOHNSON, ET AL.	**SUIT NO. 649,587 SECTION "22"**
VERSUS	**19th JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA, ET AL.	**PARISH OF EAST BATON ROUGE**
	STATE OF LOUISIANA

JUDGMENT

On March 13, 2017, this Honorable Court held a hearing in the above captioned matter on the parties' cross-motions for summary judgment. All parties were present or represented by counsel. This Honorable Court, having considered the pleadings filed and the arguments of counsel, and for the reasons orally assigned:

IT IS ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed on behalf of the Plaintiffs is hereby DENIED;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed on behalf of Secretary of State Tom Schedler is hereby GRANTED;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs of these proceedings are assessed against the Plaintiffs.

JUDGMENT READ AND SIGNED, Baton Rouge, Louisiana, this 28 day of March, 2017.

EBR4063463

HONORABLE TIMOTHY KELLEY
19th JUDICIAL DISTRICT COURT

COSTS DUE: $ 3,176.38

PARTY:	AMOUNT:
LA State	$ 1,598.43
LA State Governor	$ 997.48
LA Secretary of State	$ 580.47

☐ Are hereby assessed to Plaintiff
in the amount of $ _____
☐ Are hereby assessed to the party who incurred the costs.

JUDGE _____ Date: 28 MAR 17

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / ORDER / WAS MAILED BY ME, WITH SUFFICIENT POSTAGE AFFIXED TO

DONE AND SIGNED ON 4-13-17

DEPUTY CLERK OF COURT

REC'D C.P.
APR 12 2017

APPENDIX 2

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CIVIL SECTION 22

. . . . . .

KENNETH JOHNSON .

V. . NO. 649587

STATE OF LOUISIANA, ET AL .

. . . . . .

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

* * * * *

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

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MONDAY, MARCH 13, 2017

* * * * *

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.

_____

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

APPENDIX 3

VOICE OF THE EX-OFFENDER, KENNETH JOHNSON, ET AL.	**SUIT NO. 649,587 SECTION "22"**
VERSUS	**19th JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA, ET AL.	**PARISH OF EAST BATON ROUGE**
	STATE OF LOUISIANA

AMENDED JUDGMENT

On March 13, 2017, this Honorable Court held a hearing in the above captioned matter on the parties' cross-motions for summary judgment. All parties were present or represented by counsel. This Honorable Court, having considered the pleadings filed and the arguments of counsel, and for the reasons orally assigned, hereby renders judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed on behalf of the Plaintiffs is hereby DENIED;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed on behalf of Secretary of State Tom Schedler is hereby GRANTED;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' petition is hereby DISMISSED with prejudice, this amended order supplants any prior orders and constitutes the final order for purposes of appeal, and all costs of these proceedings are assessed against the Plaintiffs;

JUDGMENT READ AND SIGNED, Baton Rouge, Louisiana, this 23 day of Aug, 2017.

EPR4260019

HONORABLE TIMOTHY KELLEY
19th JUDICIAL DISTRICT COURT

FILED
2017 AUG 22 PM 1:11

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / JUDGMENT / ORDER / WAS MAILED BY ME, WITH SUFFICIENT POSTAGE AFFIXED TO: William Quigley, Ronald Wilson, Lance Duncan, Shannon Dieckhaus, Jeffrey Wolfe, Brian LeBlanc
DATE AND SIGNED ON 8-25-17
DEPUTY CLERK OF COURT