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

MOTION FOR LEAVE TO FILE AMICUS BRIEF IN IN SUPPORT OF PLAINTIFFS-APPELLANTS

IRA M. FEINBERG*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
(212) 918-3000
ira.feinberg@hoganlovells.com

MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004
(202) 637-5600
madeleine.gitomer@hoganlovells.com

DAVIDA FINGER (LSBA No. 30889)
LOYOLA UNIVERSITY NEW ORLEANS
COLLEGE OF LAW, LAW CLINIC
7214 St. Charles Avenue
Campus Box 902
New Orleans, LA 70118
(504) 861-5596
dfinger@loyno.edu

**Pro hac vice* admission pending

Counsel for Amicus Curiae

The American Probation and Parole Association ("APPA") respectfully moves the Court, pursuant to Uniform Court of Appeal Rule 2-12.11, for leave to file a brief as *amicus curiae* in the above-captioned appeal in support of Plaintiffs-Appellants Voice of the Ex-Offender, *et al*. A copy of the APPA's proposed *amicus* brief is attached to this motion as Exhibit A.

In support of this motion, the APPA states as follows:

1. The APPA is the national association of professionals who work in probation, parole, and community-based corrections. The APPA is a non-profit organization based in Lexington, Kentucky. The APPA's membership includes more than 1,700 individual probation or parole officers, and more than 200 state and local probation and parole agencies, who together employ more than 25,000 probation and parole professionals nationwide. All told, the APPA represents the interests of the probation and parole officers who supervise and support more than five million individuals on probation and parole.

2. In Louisiana, the APPA's members include the Louisiana Department of Public Safety and Corrections and the Caddo Parish Juvenile Services, whose workforces together include more than 700 probation and parole officers.

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

conducts two major conferences each year which provide training and education opportunities; publishes a quarterly journal, *Perspectives*, dedicated to issues of concern to the probation and parole community; and conducts both on-site and on-line training programs for its members on a year-round basis.

4. As part of its work, the APPA has focused on ways in which the parole and probation systems can be improved to better reintegrate offenders back into society. The APPA has found that restoring the right to vote to ex-offenders who have been released from incarceration is of critical importance to that mission. As detailed in its proposed brief, providing released offenders with the right to vote gives them an important stake in the community, allows them to reintegrate as full-fledged members of the community rather than second-class citizens, allows them to teach their children the importance of voting, and provides many other community benefits.

5. Accordingly, in 2007, the APPA adopted a formal resolution advocating for the full "restoration of voting rights upon completion of an offender's prison sentence," and for "no loss of voting rights while on community supervision."[1] In addition, the Executive Director of the APPA has testified before Congress on the importance of restoring voting rights to citizens on probation or

[1] Am. Probation & Parole Ass'n, *Resolution: Restoration of Voting Rights* (Sept. 2007), http://www.appa-net.org.

parole.[2] The APPA has also filed an amicus brief in at least one other case in support of restoring voting rights to those on probation and parole.[3]

6. The APPA thus has deep knowledge of the parole and probation systems in Louisiana and elsewhere around the country, and a strong commitment to the importance of voting rights to the reintegration of ex-offenders into the community. In this light, the APPA's proposed brief emphasizes the importance of restoring the right to vote to individuals upon their release from prison, explains how disenfranchising citizens on probation or parole does not serve – and in fact undermines – the interests asserted by the State in this case, and demonstrates that this disenfranchisement is not required by – and is in fact, inconsistent with – the Louisiana Constitution and governing Louisiana law.

7. In accordance with Uniform Court of Appeal Rule 2-12.11, the APPA affirms that it has reviewed the briefs of the parties in this case.

8. The APPA respectfully submits that its proposed brief would be helpful to the Court in deciding this case. The APPA's proposed *amicus* brief provides the Court with a unique perspective on the legal issues before the Court, a perspective that none of the parties shares. The APPA presents the perspective of the probation and parole officers who are most responsible for reintegrating

---

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

[3] *See Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

offenders released from prison back into society and understands, in a way that the parties do not, the importance of permitting released offenders to vote as an important means of helping them reintegrate back into society. The APPA believes that the Constitution adopted by the State in 1974 recognized these important interests and was intended to allow offenders released from custody to vote, and that the challenged provisions of the Revised Louisiana Statutes are inconsistent with the language and purpose of the Constitution. The APPA can also persuasively explain that the policies cited by the Secretary of State in support of the challenged statutes do not in fact provide support in the real world for disenfranchising ex-offenders.

9. The APPA's proposed amicus brief also specifically addresses two of the assignments of error raised by Plaintiffs-Appellants: (1) whether the suspension of the right to vote provided by Article 10, Section A of the Louisiana Constitution applies only while a person serves time in prison for a felony conviction; and (2) whether the statutes at issue, Sections 18:2(8) and 18:102(A)(1) of the Louisiana Revised Statutes, are unconstitutional under the Louisiana Constitution.

Accordingly, for the foregoing reasons, the APPA respectfully requests leave to file the proposed brief attached as Exhibit A as *amicus curiae* in support of Plaintiffs-Appellants.

Dated: January 12, 2018

Respectfully submitted,

IRA M. FEINBERG*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
(212) 918-3000
ira.feinberg@hoganlovells.com

MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004
(202) 637-5600
madeline.gitomer@hoganlovells.com

DAVIDA FINGER (LSBA No. 30889)
LOYOLA UNIVERSITY NEW ORLEANS
COLLEGE OF LAW, LAW CLINIC
7214 St. Charles Avenue
Campus Box 902
New Orleans, LA 70118
(504) 861-5596
dfinger@loyno.edu

**Pro hac vice* admission pending

Counsel for amicus curiae

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record, indicated below, via electronic mail this **12th day of January, 2018**.

Counsel for Plaintiffs-Appellants

William P. Quigley (#7769)
Loyola University New Orleans
College of Law
7214 St. Charles Ave.
New Orleans, LA 70118
quigley77@gmail.com

Ronald Wilson (#13575)
701 Poydras St., Suite 4100
New Orleans, LA 70139
cabral2@aol.com

Anna Lellelid (#35204)
Louisiana Community Law Office
2415 Bienville St.
New Orleans, LA 70119
alellelid.law@gmail.com

Ilona Marie Prieto (#29729)
Voice of the Ex-Offender
2022 St. Bernard Ave. New
Orleans, LA 70116
ilona@vote-nola.org

Denise D. Lieberman*
Donita Judge*
Jennifer Lai-Peterson*
Andrew R. Hairston (#37151)
Advancement Project
1220 L St., NW, Suite 850
Washington, D.C. 20005
**appearing pro hac vice*
dlieberman@advancementproject.org
djudge@advancementproject.org
jlai-peterson@advancementproject.org
ahairston@advancementproject.org

Counsel for Defendants-Appellees

Lani B. Durio (#31631)
Merietta Spencer Norton (#20990)
Counsel for Tom Schedler, Secretary of State
8585 Archives Ave.
Baton Rouge, LA 70809
lani.durio@sos.la.gov

Counsel for Amicus Curiae in Support of Appellees, Attorney General Jeff Landry

Jeffrey M. Wale (#36070)
Assistant Attorney General
Louisiana Department of Justice
Civil Division
P.O. Box 94005
Baton Rouge, LA 70804-
9005 walej@ag.louisiana.gov

s/ Ira M. Feinberg
Ira M. Feinberg*

**Pro hac vice* admission pending

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

[PROPOSED] ORDER

Considering the Motion of the American Probation and Parole Association for Leave to File an Amicus Curiae Brief in Support of Plaintiffs-Appellants in the above-captioned matter,

IT IS ORDERED that the Motion of the American Probation and Parole Association for Leave to File an Amicus Curiae Brief is hereby **GRANTED**.

Signed at Baton Rouge, Louisiana, this ___ day of_____, 2018.

_____

JUDGE, COURT OF APPEAL,
FIRST CIRCUIT, STATE OF LOUISIANA

EXHIBIT A

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

BRIEF OF THE AMERICAN PROBATION AND PAROLE ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS

IRA M. FEINBERG*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
(212) 918-3000
ira.feinberg@hoganlovells.com

MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004
(202) 637-5600
madeline.gitomer@hoganlovells.com

DAVIDA FINGER (LSBA No. 30889)
LOYOLA UNIVERSITY NEW ORLEANS
COLLEGE OF LAW, LAW CLINIC
7214 St. Charles Avenue
Campus Box 902
New Orleans, LA 70118
(504) 861-5596
dfinger@loyno.edu

**Pro hac vice* admission pending

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES:

STATUTES:

TABLE OF AUTHORITIES—Continued

Page

CONSTITUTIONAL PROVISIONS:

RULES:

OTHER AUTHORITIES:

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

INTEREST OF *AMICUS CURIAE*[1]

The American Probation and Parole Association ("APPA") respectfully seeks leave to file this brief as *amicus curiae* in support of Plaintiffs-Appellants. The APPA is the national association of professionals who work in probation, parole, and community-based corrections. The APPA is a non-profit organization founded in Houston, Texas in 1974 and now based in Lexington, Kentucky. The APPA's membership includes more than 1,700 individual probation or parole officers, and more than 200 state and local probation and parole agencies, who together employ more than 25,000 probation and parole professionals. All told, the APPA represents the interests of the probation and parole officers who supervise and support more than five million individuals on probation and parole.

In Louisiana, the APPA's members include the Louisiana Department of Public Safety and Corrections and the Caddo Parish Juvenile Services, whose workforces together include more than 700 probation and parole officers.

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

[1] In accordance with Uniform Court of Appeal Rule 2-12.11, the APPA affirms that it has reviewed the briefs of the parties in this case. The APPA offers the Court a unique perspective on the issues raised that is not offered in the parties' briefs and that the APPA believes will be helpful to the Court.

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

As part of its work, the APPA has focused on ways in which the parole and probation systems can be improved to better reintegrate offenders back into society. The APPA has found that restoring the right to vote to ex-offenders who have been released from incarceration is of critical importance to that mission. As detailed below, providing released offenders with the right to vote gives them an important stake in the community, allows them to reintegrate as full-fledged members of the community rather than second-class citizens, allows them to teach their children the importance of voting, and provides many other community benefits. Accordingly, in 2007, the APPA adopted a formal resolution advocating for the full "restoration of voting rights upon completion of an offender's prison sentence," and for "no loss of voting rights while on community supervision."[2] In addition, the Executive Director of the APPA has testified before Congress on the importance of restoring voting rights to citizens on probation or parole.[3] The

[2] Am. Probation & Parole Ass'n, *Resolution: Restoration of Voting Rights* (Sept. 2007), http://www.appa-net.org.

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

APPA has also filed an *amicus* brief in at least one other case in support of restoring voting rights to those on probation and parole.[4]

The APPA thus has deep knowledge of the parole and probation systems in Louisiana and elsewhere around the country, and a strong commitment to the importance of voting rights to the reintegration of ex-offenders into the community. In this light, the APPA respectfully submits this brief to emphasize the importance of restoring the right to vote to individuals upon their release from prison, to explain how disenfranchising citizens on probation or parole does not serve – and in fact undermines – the interests asserted by the State, and to demonstrate that this disenfranchisement is not required by – and is in fact, inconsistent with – the Louisiana Constitution and governing Louisiana law.

SUMMARY OF ARGUMENT

The right to vote is one of the most fundamental rights of American citizenship. When the Louisiana Constitutional Convention met in 1973, it was faced with the harsh provisions of the 1921 Constitution, which stripped people convicted of a felony of their right to vote for the rest of their lives. The 1974 Constitution was intended to reject this harsh, unfair and counterproductive result, and to *restore* voting rights to felons when they finished their term of incarceration. That is why the language of Article I, Section 10(A) guarantees the

[4] *See Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

right to vote for *all* citizens of the State, and only allows this right to be "suspended" while felons are "under order of imprisonment." Contemporary observers – including the State Attorney General at the time – understood that this language was intended to deny the right to vote only to persons actually in prison. This is the only interpretation that the lay voters of the State could have had when they approved the Constitution, not the legalistic interpretation now advanced by the Secretary of State, that "order of imprisonment" was intended to refer to the fiction of "legal custody." And this is the only interpretation that explains the fact that the language of Section 10(A) does not contain the specific reference to "termination of state . . . supervision following conviction" that is found in Article I, Section 20.

In this light, the provisions of Sections 18:2(8) and 18:102(A)(1) of the Louisiana Revised Statutes are unconstitutional. These provisions are squarely in conflict with Article I, Section 10(A) because they deny the right to vote to felons who have been released from incarceration but are under parole or probation supervision. Moreover, these provisions are profoundly counterproductive, actually interfere with the goal of rehabilitation and reintegration of offenders into society, and serve no legitimate – let alone compelling – state interest.

This brief will focus on the devastating practical impact of the Louisiana statutes at issue, the lack of any rational basis for them, and how they are

inconsistent with the purpose of the 1974 Constitution to restore voting rights to former felons. As we show below, the disenfranchisement of ex-felons released from incarceration undermines their successful reintegration into the community, and harms them, their families, their children and their communities. The exercise of the right to vote entails far more than the simple act of casting a ballot. Voting is one of the basic foundations of citizenship and provides a tangible pathway to responsible civic engagement for ex-felons and their families. Denying released offenders of this basic right takes away their full dignity as citizens, separates them from the rest of their community, and reduces them to second-class citizens. It makes their reintegration into society more difficult, increases recidivism and social ostracism, lowers community participation in the political process, and hinders effective policing.

Moreover, disenfranchising citizens on parole or probation furthers no legitimate state interest. Contrary to the State's arguments, disenfranchising these citizens does nothing to protect the integrity of the electoral system, and bears no rational relationship to the State's interest in regulating individuals still under the State's supervision. There is no support for any claim that disenfranchising released offenders has anything to do with voter fraud. Nor is there any reason to believe that ex-offenders will vote in a way that erodes public safety or order – on

the contrary, studies show that ex-offenders support the existence of the laws that they have broken.

Judge Kelley in the court below recognized the gross unfairness of disenfranchising ex-offenders who have been released on probation or parole. As he noted at oral argument, these laws "make[ ] no sense." R. 325.[5] "These people are living as good citizens following all the rules, they ought to have the entitlements that any citizen has." R. 334. "Someone who has lived the straight and narrow for ten, fifteen years, they ought to be able to vote." R. 335.

Judge Kelley thought that he was powerless to do anything to remedy this injustice, but in that respect, he was wrong. The Louisiana statutes at issue are in direct conflict with Article I, Section 10(A) of the Louisiana Constitution, and should be struck down.

ARGUMENT

I. DISENFRANCHISEMENT OF CITIZENS ON PROBATION OR PAROLE IS INCONSISTENT WITH THE STATE CONSTITUTION, UNDERMINES THEIR SUCCESSFUL REINTEGRATION, AND HARMS THEIR COMMUNITIES.

A. The Impact of Louisiana's Disenfranchisement Statutes.

The impact of Sections 18:2(8) and 18:102(A)(1) of the Revised Statutes is devastating to an enormous number of Louisiana citizens. According to a recent

[5] Citations to R. ___ are references to the Record on file on this appeal.

report, there are more than 71,000 people on probation or parole in the State,[6] which represents approximately two percent of the State's voting age population.[7] Louisiana has been described as "the most imprisoned state in the country,"[8] yet the number of citizens who are on probation or parole is roughly *twice* as many as the 35,600 Louisianans in prison.[9] In addition, many of these released ex-offenders are facing long terms of post-release supervision, in some cases for life.

It is hard to overstate the impact – on both an individual and societal level – of stripping thousands of Louisianans of the right to vote based on crimes for which they have long-since served their time. For example, Plaintiff Kenneth Johnston is a 67 year-old Vietnam veteran who has been out of prison for 23 years after serving time for a non-violent crime. R. 244. He will be on parole for the rest of his life. *Id*. Despite serving his country in war, starting his own paralegal agency, and staying out of prison for 23 years, *id*., under the Louisiana statutes at issue, Mr. Johnston will never again have the opportunity to vote.

Similarly, Plaintiff Ashanti Witherspoon, released from prison 17 years ago, is a pastor and motivational speaker, and holds a Doctorate in Theology. R. 246.

---

[6] La. Justice Reinvestment Task Force, *Report and Recommendations* 9 (Mar. 16, 2017), https://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf.

[7] *Id.*; *see also* Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement* (2016), at 15-16, goo.gl/mGjppi.

[8] La. Justice Reinvestment Task Force, *Final Package Summary* 1 (June 7, 2017), http://gov.louisiana.gov/assets/docs/LA_FinalPackageSummary_2017-6-7_FINAL.pdf.

[9] *See 6 Million Lost Voters*, *supra* note 7, at 15-16.

In May 2016, Pastor Witherspoon was unanimously approved to be released from parole, but the Governor has not yet signed this order. *Id.* Thus, Pastor Witherspoon dutifully drives his wife to her polling location for each election, *id.*, but he himself cannot cast a ballot.[10]

These individuals, and many others on parole or probation, struggle with not being able to vote and see it as a barrier to re-integration into their communities.

B. Disenfranchising Citizens on Probation and Parole Is Inconsistent with the Language and Intent of the Louisiana Constitution.

This disenfranchisement of Louisiana citizens on probation or parole is inconsistent with the purpose and language of the Constitution adopted in 1974. The prior 1921 Constitution had explicitly barred anyone convicted of a felony from ever voting again, unless they were pardoned and their rights specifically restored by the Governor.[11] The intent of the 1974 Constitution was to grant relief from this harsh result, and to create a right to vote rather than viewing voting as a privilege. *See* R. 68 (explaining that Convention's intent was to make the right to vote "not a privilege anymore").[12] The Constitutional Convention of 1973 took place at a time when the Nation as a whole was going through an historic period of restoring voting rights; between 1960 and 1976, the number of disenfranchised

---

[10] Joe Gyan, Jr., *Baton Rouge Judge Upholds Louisiana Law Barring Some Felons From Voting*, THE ADVOCATE (Mar. 13, 2017), goo.gl/KktxfY.

[11] La. Const. of 1921 art. VIII, § 6 (1921).

[12] *See also* Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 La. L. Rev. 1, 3 (1974).

citizens across the country decreased by 600,000.[13] Louisiana's 1974 Constitution was consistent with that nationwide trend.

Against this historical background, the Constitutional Convention paid specific attention to easing the voting restrictions of the 1921 Constitution.[14] The provision of Section 10(A) that suspends the right to vote only for citizens "under an order of imprisonment" was intended to preclude voting only by individuals who were actually incarcerated. As Appellants make clear (at 23-27), this is what the drafters of this provision intended, and how the provision was understood during Convention deliberations. Professor Lee Hargrave, who was deeply involved in drafting the text, explains that the phrase "order of imprisonment" was used rather than "imprisoned" to preclude voting from an inmate who had escaped.[15] The view that "under an order of imprisonment" applies only to people in prison is also the obvious interpretation that lay observers would have – not the legalistic view that this refers to someone who is not in prison but is otherwise subject to the supervision of the state – and the lay understanding of the voters is the governing test. *Ocean Energy, Inc. v. Plaquemines Par. Gov't*, 880 So. 2d 1

[13] *6 Million Lost Voters*, *supra* note 7, at 9.
[14] Hargrave, *supra* note 12, at 31.
[15] *Id.* at 34. The briefs filed by the Secretary of State and the Attorney General dismiss the importance of Professor Hargrave's views, calling him merely a "law professor," AG Amicus Br. 4, 9, and asserting that he was merely stating "his opinion," SOS Br. 13. In fact, however, Professor Hargrave was the Coordinator of Legal Research for the Constitutional Convention, and particularly focused on research for the Committee on the Bill of Rights and Elections, which drafted the text of Section 10(A). Hargrave, *supra* note 12, at *.

(La. 2004). And this is how the Louisiana Attorney General interpreted Section 10(A) when the issue first came up in 1975, La. Att'y Gen. Op. No. 75-131 (Mar. 7, 1975) (recalled), even though that opinion was later recalled.

Moreover, another provision in the Constitution demonstrates that the language of Section 10(A) does not restrict voting for citizens on probation or parole. Article 1, Section 20 – which provides that "[f]ull rights of citizenship shall be restored upon termination of state and federal supervision following conviction" – specifically references termination of supervision on parole and probation, and uses dramatically different language than the "order of imprisonment" used in Section 10(A). The Constitution plainly intended different meanings to be ascribed to these very different terms. *Cohort Energy Co. v. Caddo-Bossier Pars. Port Comm'n*, 852 So. 2d 1174, 1184 (La. Ct. App. 2003). And Section 10(A) is obviously the more specific provision, focused exclusively on voting rights, that governs here, *Arata v. La. Stadium & Exposition Dist.*, 225 So. 2d 362, 372 (La. 1969); in contrast, Section 20's reference to rights being restored after termination of supervision applies to a far broader range of rights, including such things as the right to hold office and the right to be employed by the State. *See* R. 64 (specifically enumerating these rights as among the broader range of rights covered by Section 20).

In light of all this, Judge Kelley erred in placing reliance on a discussion that took place during the floor debates in the Legislature, in which Delegate Roy took the position – in response to Delegate Willis' suggestion that the language of Sections 10(A) and 20 should be harmonized – that the language of Section 10(A) precluded voting by people on probation or parole. R. 328. The colloquy on the Convention floor was brief and inconclusive, and no action was ever taken to clarify the meaning of these provisions. There is no reason to believe that other members of the Convention shared the view of Delegate Roy, or the position of Delegate Willis that the language of Section 10(A) should be amended to adopt the language of Section 20. Rather, the important point is that the language of Section 10(A) was *not* amended, despite Delegate Willis' position, and the better conclusion is that this was because the Convention as a whole *wanted* these two provisions to have different language and different meanings. In any event, it is well settled that floor debates are "of little value as expressions of the view of the convention as a whole," *Succession of Lauga,* 624 So. 2d 1156, 1168 (La. 1993), and Judge Kelley erred in relying on them.[16]

[16] Judge Kelley also placed great weight on his view that unless "order of imprisonment" were interpreted to include probation and parole, there would be no legal basis to re-incarcerate an offender who violated the terms of his release, R. 333-34, and that this would call into question "the whole system of criminal justice that we have." R. 334. This concern was misplaced. A decision that "order of imprisonment" in Section 10(A) refers to people actually incarcerated (or in escape status) for purposes of determining their right to vote would have no bearing whatsoever on the State's system of criminal justice. The term "order of imprisonment" has not

C. Disenfranchising Citizens on Probation and Parole Prevents Released Prisoners from Fully Rejoining Society.

There are also compelling state interests that underlie the Constitutional Convention's decision to extend voting rights to offenders on probation and parole. It is well-documented that civic engagement plays a vital role in the successful transformation from prisoner to citizen.[17] When an individual identifies as a responsible citizen, including participation in volunteer work, community involvement and voting, it benefits his or her transition back into the community. "People who are a part of the decision making process not only have a greater investment in the decisions, but a greater investment in society as well. . . . Those who participate in the democratic process have a greater investment in the resulting decisions, and more importantly, an investment in preserving that process."[18] One study found that the "desire to 'be productive and give something back to society'" was critical to full reintegration into the community.[19] The restoration of voting rights for citizens on probation or parole sends a message that they have repaid

---

been used in the criminal context in over 100 years, and there is nothing in the court ruling sought here that would preclude State authorities from enforcing the terms of a prisoner's release.

[17] Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 97 (2003).

[18] Holona Leanne Ochs, *"Colorblind" Policy in Black and White: Racial Consequences of Disenfrancisement Policy*, 34 POL'Y STUD. J., 81, 89 (2006), goo.gl/eQDNgf.

[19] Christopher Uggen, Jeff Manza, & Angela Behrens, *'Less Than the Average Citizen': Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, in *After Crime and Punishment: Pathways to Offender Reintegration* 263 (Shadd Maruna & Russ Immarigeon eds., 2004), goo.gl/etuPH4 (quoting Shadd Maruna, *Making Good: How Ex-convicts Reform and Rebuild Their Lives* (2001)).

their debt to society and are being welcomed back as valuable members of their communities.

This has been evident recently in Virginia, where the Governor has restored the voting rights of more than 150,000 formerly incarcerated citizens since 2013.[20] Many of these individuals voted recently for the first time since their imprisonment, and their comments on that experience reflect the great personal and civic impact of their ability to participate in our democracy. LaVaughn Williams, who had not voted in decades, said, after voting, "I now felt like a citizen. I now felt like I will make a difference in some kind of way."[21] Muhamad As-saddique Abdul-Rahman voted for the first time in his life at age 53, having been imprisoned for a felony at age 16. Abdul-Rahman explained: "[H]aving my right to vote back has made me feel whole as a human being."[22]

D. Disenfranchising Citizens on Probation and Parole Harms Their Families and Communities.

Preventing individuals on probation or parole from voting also harms their families and their communities. Studies show that when heads of households are

[20] Laura Vozzella, *Va. Gov. McAuliffe Says He Has Broken U.S. Record for Restoring Voting Rights*, WASH. POST (Apr. 27, 2017), goo.gl/XAP5uL.
[21] Sam Levine, *In Virginia, Ex-Felons Voted for the First Time After Regaining Their Rights*, HUFFPOST (Nov. 8, 2017), goo.gl/RNGZ2T.
[22] Camila DeChalus, *In Virginia, Ex-Felons Find Empowerment in the Voting Booth*, CNN POLITICS (Nov. 5, 2016), goo.gl/78qr2E.

disenfranchised, the level of civic engagement for the entire family drops.[23] Voting is an experience, in many cases, passed on from parent to child. Parents often take their children into the voting booth at young ages, exposing the children to their first act of civic engagement. Research confirms that "[a] parent's electoral participation plays a significant role in determining whether his child will become civically engaged."[24] One study found that a parent's political participation had the greatest effect, more than any other factor, on a child's decision to vote when he or she becomes eligible.[25]

Moreover, the effect of disenfranchising individuals on parole or probation extends further than the parolee's or probationer's household; it affects other members of the community as well. Studies have found that where there are restrictions on the right to vote for some members of a community, overall voter participation drops, "even among people who are legally eligible to vote."[26] One study found that in the 1996 and 2000 presidential elections, there was lower voter

---

[23] Erika Wood, *Restoring the Right to Vote*, Brennan Ctr. for Justice 13 (2009), goo.gl/KpPnJT.
[24] *Id.*; *see also* Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 Am. Pol. Sci. Rev. 41, 43 (2002), goo.gl/tN2QzY.
[25] Plutzer, *supra* note 24, at 48.
[26] Marc Mauer, *Disenfranchising Felons Hurts Entire Communities* 5, JOINT CTR. FOR POL. & ECON. STUD. (2004), goo.gl/zY6w5f; *see also* Arman McLeod, et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 Va. J. Soc. Pol'y & L. 66, 80 (2003).

turnout in states with the most restrictive criminal disenfranchisement laws, and higher turnout in states with less restrictive criminal disenfranchisement.[27]

E. Granting Citizens on Probation or Parole the Right to Vote Enhances Public Safety.

Finally, in addition to helping individuals re-enter their communities, reinstating the right to vote is strongly tied to lower recidivism rates and increased public safety. Research suggests that there are "consistent differences between voters and non-voters in rates of subsequent arrests, incarceration, and self-reported criminal behavior."[28] One study found that former offenders who voted were half as likely to be re-arrested than those who did not,[29] and that states that permanently disenfranchise ex-felons experience significantly higher rates of repeat offenses than states that do not.[30] Voter disenfranchisement serves "only to further alienate and isolate a group of individuals at a time when they are trying to re-integrate into society."[31] Indeed, disenfranchisement creates a "perpetual

---

[27] McLeod, *supra* note 26, at 77.

[28] Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample,* 36 COLUM. HUM. RTS. L. REV. 193, 213 (2004).

[29] *Id.* at 205.

[30] Guy Padraic Hamilton-Smith & Matt Vogel, *The Ballot as Bulwark: The Impact of Felony Disenfranchisement on Recidivism* 1 (2011), goo.gl/NDedpB.

[31] Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism,* 22 BERKELEY LA RAZA L. J. 407, 413 (2012).

criminal underclass unable to fully rejoin society after their sentence is served," which only increases the potential for an increase in criminal activity.[32]

II. DISENFRANCHISEMENT OF CITIZENS ON PROBATION OR PAROLE DOES NOT SERVE ANY LEGITIMATE STATE INTEREST.

A. Disenfranchisement of Probationers and Parolees Does Not Further Any Legitimate State Purpose.

In his brief on appeal, the Secretary of State asserts that Louisiana's statutes disenfranchising citizens on probation or parole serve two state interests: "protecting the integrity of voter registration rolls," SOS Br. 6, and "regulating convicted felons still under the State's supervision," *id*. *See also id*. at 27 (repeating these arguments); AG Amicus Br. 13 (asserting compelling interest in "continuing supervision over punishments implemented by our judicial system"). But the Louisiana statutes that prohibit voting by citizens on probation or parole do nothing to further either of these asserted interests.

The Secretary of State devotes only one sentence to the claim that the statutes are supported by Louisiana's interest in protecting the integrity of the voter registration rolls. (SOS Br. 27). The Secretary of State does nothing to explain this bare assertion, and provides no evidence or argument as to why the disenfranchisement of individuals on probation or parole furthers this state interest.

[32] *The Ballot as Bulwark*, *supra* note 30, at 21.

In practice, depriving citizens on parole or probation of the right to vote furthers no regulatory purpose, and is purely punitive.

It is impossible to see how permitting parolees or probationers to vote would somehow jeopardize the integrity of the voter rolls. Although the Secretary of State has not asserted it, any concern about alleged voter fraud would be misguided. Studies have found no increase in instances of voter fraud among ex-felons as compared to the general population.[33] In addition, disenfranchisement of citizens on parole or probation is wholly unnecessary to deter fraud; Louisiana already has stringent voting fraud laws that have their own deterrent effect.[34]

Nor would there be any basis for a claim that citizens on probation or parole would impermissibly influence the electoral process by advocating for policies that erode law and order. In fact, the opposite is true; research suggests that these citizens are likely to "*support* the existence of the laws they've broken," and "accept them as desirable guides to life."[35] Far from diminishing the integrity of the vote, individuals on probation or parole are motivated to become active participants in the democratic process. When given the opportunity to vote,

---

[33] *See id.* at 7; *Restoring the Right to Vote*, *supra* note 23.
[34] *See* La. Stat. Ann. § 18:1461.2 (2016).
[35] *See* Alec C. Ewald, *"Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1100-01 (2002) (internal quotation marks omitted) ("[R]esearch shows that offenders are not out to wreck the criminal law.").

individuals "felt that their vote mattered" upon release from prison, and that "exercising their right to vote would be empowering."[36]

There is also no basis for the Secretary of State's claim that prohibiting citizens on probation or parole from voting is somehow relevant to the State's interest in regulating convicted felons still under the State's supervision. *See* SOS Br. 27. The Secretary of State relies on two recent decisions, *Louisiana v. Eberhardt*, 145 So. 3d 377 (La. 2014), and *Lousiana v. Draughter*, 130 So. 3d 855 (La. 2013), where the Supreme Court of Louisiana held that "the State has a compelling interest in regulating convicted felons still under the State's supervision," *Eberhardt*, 145 So. 3d at 382, and therefore upheld the constitutionality of state laws that prohibit citizens on probation or parole from possessing firearms, *Draughter*, 130 So. 3d at 867. These cases are completely distinguishable, and irrelevant here. The Supreme Court upheld these laws because of the compelling state interest in protecting public safety, *Eberhardt*, 145 So. 3d at 385, the Court concluding that the possession of firearms by people on

[36] Shadman Zaman, *Violence and Exclusion: Felon Disenfranchisement as a Badge of Slavery*, 46 COLUM. HUM. RTS. L. REV. 233, 238 (2015) (internal quotation marks omitted) (citing John E. Pinkard Sr., *African American Felon Disenfranchisement: Case Studies in Modern Racism and Political Exclusion* 164-68 (2013)). We should also note that any attempt to rely on an alleged concern about how citizens on probation or parole might vote would raise very substantial constitutional questions. *See Carrington v. Rash*, 380 U.S. 89, 94 (1965) ("The exercise of rights so vital to the maintenance of democratic institutions cannot constitutionally be obliterated because of a fear of the political views of a particular group." (alterations, internal quotation marks, and citation omitted)); *see also* Ewald, *supra* note 35, at 1100 & n.220 (citing Jonathan D. Casper, *American Criminal Justice: The Defendant's Perspective* 146 (1972)).

probation or parole would be "inconsistent with that status and would subject the individuals tasked with their supervision to an untenable safety risk," *Draughter*, 130 So. 3d at 867. But there is no interest in protecting public safety, or any other legitimate state interest, in preventing people on probation or parole from voting.

Finally, the alleged interests asserted by the Secretary of State are dramatically undercut by his admission that an individual who "is *only* placed on probation" and is not sentenced to any jail time, "*can* register and vote." SOS Br. 10 (emphasis in original). It is simply irrational for the State to claim that it has a compelling interest in preventing people on probation or parole from voting, but then permit people who were sentenced only to probation or a suspended sentence to vote. Whether they previously served jail time or not, both groups of people are in exactly the same situation: both are still under state supervision, and there is no basis for distinguishing between them because one group may have spent a month or a year in jail. The Secretary of State argues that the State can prevent post-prison parolees and probationers from voting because they remain in the "legal custody" of the State and are subject to "custodial supervision at any time," *id.*, but the same is true of people who are on probation without serving any jail time. In both situations, a violation of the conditions of their probation may lead to a period of imprisonment.

B. Other States Have Recently Recognized That No Legitimate State Interest is Served by Disenfranchising Probationers and Parolees.

Over the last twenty years, jurisdictions across the country have joined the APPA in recognizing that disenfranchising citizens on parole or probation does nothing to further their interest in regulating the voting process, or any other state interest.[37] Moreover, public opinion polls confirm that nearly two-thirds of Americans support voting rights for those on probation or parole.[38]

Several states have expanded access to the ballot to citizens on probation or parole in recent years. In 2016, Maryland passed SB 340/HB 980, which restored the right to vote to 40,000 felons on probation and parole.[39] In 2011, the California legislature passed a bill that restored voting rights to those on "community supervision."[40] The California Secretary of State at the time declined to enforce the new law, but after years of litigation, a new Secretary of State reversed the State's policy, and extended the franchise to 60,000 ex-felons.[41] Rhode Island, via a ballot referendum, restored the right to vote to citizens on probation and parole in

---

[37] *Criminal Disenfranchisement Laws Across the United States*, Brennan Ctr. for Justice (Oct. 6, 2016), goo.gl/bC2XZH.

[38] *Id.*; *see also* Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010*, Sentencing Project (2010), at 3, goo.gl/jEi3eR.

[39] MD. CODE ANN., ELEC. LAW § 3-102 (West 2016).

[40] Criminal Justice Realignment Act, AB 109, Reg. Sess. (2011).

[41] Edwin Rios, *California Just Restored Voting Rights to 60,000 Ex-Felons*, MotherJones.com (Aug. 7, 2015), goo.gl/2e2bAa.

2006, leading to an increase of more than 6,000 new registered voters casting ballots in the 2008 election.[42]

C. Probation and Parole Officers – Those Closest to Understanding the State's Regulatory Interests -- Advocate for Granting the Franchise to Offenders.

Probation and parole officers are the state officials most directly responsible for reintegrating offenders back into society after their term of imprisonment. Among these officers, there is a growing consensus that voting plays a primary role in the reintegration process.[43] In addition to the APPA, which passed its resolution in support of restoring voting rights in 2007, the National Black Police Association and the Association of Paroling Authorities International, among others, have passed similar resolutions.[44]

This position has been echoed and reinforced by prosecutors, police officers, and other officials intimately familiar with the parole and probation systems. "Annually, we spend millions to rehabilitate offenders and bring them back into society only to let an outdated system push them back with one hand while we pull

---

[42] Family Life Ctr., Research Br., *Voter Registration and Turnout Among Probationers and Parolees in Rhode Island*, goo.gl/rqWxV3.

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

[44] Nat'l Black Police Ass'n, *Resolution of Restoring Voting Rights*, Brennan Ctr. for Justice (2008), goo.gl/Z4uVPk; Ass'n of Paroling Auths. Int'l, *Resolution on Restoring Voting Rights* (Apr. 30, 2008), goo.gl/7uZLe3.

with the other," argues one former prosecutor from Kentucky.[45] The former President of the Police Executive Research Forum explains that it is "better to remove any obstacles that stand in the way of offenders resuming a full, healthy productive life."[46] And the former President of the Police Foundation argues that, rather than treating ex-felons as a "pariah class," "we need to bring people back as whole citizens" in order to have "effective policing."[47]

In his 2004 State of the Union address, former President George W. Bush declared that "America is the land of second chances, and when the gates of the prison open, the path ahead should lead to a better life."[48] The experiences of probation and parole officials, who are deeply involved in ensuring that the State's interests are enforced, show the importance of granting voting rights to citizens on parole or probation and the ineffectiveness of disenfranchising them. The Louisiana Constitution was intended to grant this right to Louisiana citizens after their release from custody, and we urge the Court to enforce its original intent.

---

[45] R. David Stengel, *Lets Simplify the Process for Disenfranchised Voters*, CENT. KY. NEWS-J. (Jan. 28, 2007), goo.gl/gXqPS8.

[46] *See Restoring the Right to Vote*, *supra* note 23, at 10.

[47] *Id.*

[48] President George W. Bush, State of the Union Address, White House Archives (Jan. 20, 2004), goo.gl/dhEiVR.

CONCLUSION

The Court should reverse the District Court and enter a judgment holding that Article I, Section 10(A) of the Louisiana Constitution guarantees the right to vote for citizens on parole or probation after conviction of a felony.

Dated: January 12, 2017

Respectfully submitted,

IRA M. FEINBERG*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
(212) 918-3000
ira.feinberg@hoganlovells.com

MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004
(202) 637-5600
madeline.gitomer@hoganlovells.com

DAVIDA FINGER (LSBA No. 30889)
LOYOLA UNIVERSITY NEW ORLEANS
COLLEGE OF LAW, LAW CLINIC
7214 St. Charles Avenue
Campus Box 902
New Orleans, LA 70118
(504) 861-5596
dfinger@loyno.edu

**Pro hac vice* admission pending

Counsel for amicus curiae