

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. 64,9587
Honorable Judge Timothy Kelley, Presiding
CIVIL PROCEEDING

**BRIEF OF HISTORIANS WALTER C. STERN, *ET AL.*
AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i
TABLE OF AUTHORITIES ii
IDENTITY AND INTEREST OF AMICI1
SUMMARY OF THE ARGUMENT3
ARGUMENT6
 I. The Constitution of 1974 was a turning point in the protection of
 individual rights within the state.6
 II. Louisiana voters and constitutional convention delegates understood the
 Constitution of 1974 through the lens of expanded individual rights.11
 III. Louisiana voters intended Section 10(A) to guarantee convicted felons
 their affirmative right to vote provided they were not in prison.18
Conclusion26
APPENDIX.....27

TABLE OF AUTHORITIES

Cases

<i>Guinn v. United States</i> , 238 U.S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1915).....	8
<i>Morrissey v. Brewer</i> , 408 U.S. 471, 478, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).....	4
<i>Procunier v. Martinez</i> , 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974).....	10
<i>Smith v. Allwright</i> , 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944).....	8-9
<i>State v. Drane</i> , 36,230 (La. App. 2 Cir. 09/18/2002), 828 So.2d 107.....	4
<i>State v. Draughter</i> , 2013-0914 (La. 12/10/13), 130 So.3d 855.....	4
<i>State v. Hamilton</i> , 2002-1344 (La. App. 1 Cir. 2003), 845 So.2d 383.....	4
<i>State v. Jones</i> , 2012-0438 (La. App. 4 Cir. 03/13/2013), 119 So.3d 9.....	4
<i>State v. Jones</i> , 2001-0908 (La. App. 1 Cir. 11/08/2002), 835 So.2d 703.....	4
<i>State v. Malone</i> , 403 So.2d 1234 (La. 09/18/1981).....	4
<i>Wolf v. McDonnell</i> , 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).....	10

Constitutional Provisions, Statutes, and Rules

U.S. Const. amend XIX.....9

U.S. Const. amend XXVI.....10

Civil Rights Act of 1964.....9

Voting Rights Act of 1965.....8

Ill. Const. Art. III, §§1, 2 (1970).....13

La. Const. art. I, § 10(A).....*passim*

La. Const. art. I, § 20.....*passim*

La. Const. of 1868.....9

La. Const. of 1879.....9

La. Const. of 1898.....7

La. Const. of 1921.....7-8

La. R.S. 15:574.4.2(A)..... 4

La.C.Cr.P. art. 895(A).....4

Montana Const. Art. IV, §1 (1972).....13

Articles, Books, and Other Secondary Authorities

Thomas Aiello,
*Jim Crow’s Last Stand: Nonunanimous Criminal Jury Verdicts
in Louisiana* (Baton Rouge: Louisiana State University Press,
2015).....7, 8

Barry R. Bell, <i>Prisoners' Rights, Institutional Needs, and the Burger Court</i> , 72 Virginia L. Rev. 161-193 (1986).....	10
Thomas G. Blomberg & Karol Lucken, <i>American Penology: A History of Control</i> (New York: Aldine De Gruyter, 2000).....	10
Mark T. Carleton, <i>Elitism Sustained: The Louisiana Constitution of 1974</i> , 54 Tulane L. Rev. 566 (April 1980).....	3
Adam Fairclough, <i>Race and Democracy: The Civil Rights Struggle in Louisiana</i> (Athens: University of Georgia Press, 2d ed. 2008).....	7, 9
<i>Freedom Shrine is Dedicated</i> , New Orleans <i>Times-Picayune</i> , November 26, 1975.....	10
Steven H. Gifis, <i>Dictionary of Legal Terms: Definitions and Explanations for Non-lawyers</i> , (Hauppauge, NY: Barron's Educational Series, 5th ed. 2016).....	17
Van Gosse, <i>Rethinking the New Left: An Interpretive History</i> (New York: Palgrave Macmillan, 2005).....	11
Edward D. Grant, III, <i>Institutionalization and Rational Decision-Making: The Louisiana Constitutional Convention of 1973</i> (Ph.D. diss., Tulane University, 1981).....	3
William Ivy Hair, <i>The Kingfish and His Realm: The Life and Times of Huey P. Long</i> (Baton Rouge: Louisiana State University Press, 1991).....	8
Joseph Logsdon & Caryn Cossé Bell, <i>The Americanization of Black New Orleans, 1850–1900</i> , in Arnold R. Hirsch & Joseph Logsdon, eds., <i>Creole New</i>	

<i>Orleans: Race and Americanization 251-61</i> (Baton Rouge: Louisiana State University Press, 1992).....	9
Cecil Morgan, <i>A New Constitution for Louisiana</i> , 63 <i>National Civic Rev.</i> 345 (July 1974).....	3
Stella Pitts, <i>Devoted Sisters Served City, Fought for Women’s Suffrage</i> , <i>New Orleans Times-Picayune</i> , February 22, 1976, Sec. 2, p. 4.....	10
Christina Rivers, <i>A Brief History of Felon Disfranchisement Laws and Prison Gerrymanders</i> , <i>The American Historian</i> , November 2017.....	8
John L. Rury, <i>Education and Social Change: Contours in the History of American Schooling</i> (New York: Routledge, 4th ed. 2013).....	10
Walter C. Stern, <i>Race and Education in New Orleans: Creating the Segregated City, 1764-1960</i> (Baton Rouge: Louisiana State University Press, 2018).....	1
Michael Waldman, <i>The Fight to Vote</i> (New York: Simon and Schuster, 2017).....	8
 Historical Materials	
<i>Booklet is Given</i> , <i>New Orleans Times Picayune</i> , August 2, 1973, sec. 3, p. 10.....	16
<i>Constitution Given Backing</i> , <i>New Orleans Times-Picayune</i> , March 15, 1974, p. 8.....	18
<i>Constitution of the State of Louisiana, Adopted in Convention at the City of New Orleans, the Twenty-Third Day of July, A.D. 1879</i> (New Orleans: J. H. Cosgrove, 1879).....	9

<i>Constitutional Convention, 1973 – A Preview</i> (Baton Rouge: Public Affairs Research Council of Louisiana, 1973).....	12
Council for a New State Constitution Resolution, [n.d.], Folder 18, Box 6, Community Relations Council of Greater New Orleans Records, 1965-1982, Amistad Research Center.....	15
<i>The Council for a New State Constitution: Proposals to the Convention (1973), “Constitutional Convention 1973”</i> Ephemera Folder, LARC.....	15
<i>Decision ’74... A Study of the Proposed Constitution, January, 1974</i> (Shreveport: Louisiana League of Women Voters, 1974).....	21
Dennis G. Driscoll, Gideon Stanton, and Citizens for Democratic Action to Composite Committee and the Bill of Rights and Elections Committee of the Louisiana Constitutional Convention, [n.d.], Folder 5, Box 2, Series 9, League of Women Voters Collection, LaRC.....	16-17
Lois Ennis, Letter to the Editor, <i>Shreveport Times</i> , 20 March 1974, Folder 23, Box 25, Series II, Osborne Papers, ULL.....	20
James H. Gillis, <i>Orleans Area Put Constitution Over</i> , <i>New Orleans Times-Picayune</i> , April 22, 1974, p. 1.....	25
Barbara Herman to Members of the Greater New Orleans Section of the National Council of Jewish Women, March 29, 1974, Folder 1, Box 99, National Council of Jewish Women, LaRC.....	15, 21
Errol Laborde, Felicia Kahn, and Joel Myers to “Mr. Perez and Committee Members of the Local and Parochial Committee,” September 4, 1973, Folder 5, Box 2, Series 9, League of Women Voters of New Orleans Records, LaRC.....	14
<i>Lancaster Reports CC 73</i> (Baton Rouge: Capital City Press, 1973), in Constitutional Convention of 1973 folder, Ephemera Collection, LaRC.....	12

“LEA Executive Council Endorses Constitution,” <i>Louisiana Weekly</i> , 13 April 1974, p. 1, 3.....	23
League of Woman Voters, “A Look at CC-73,” <i>The Daily Review</i> (Morgan City), 19 December 1973, section 2, p. 10, in folder 27, box 19, Osborne Papers, ULL.....	23
Metropolitan Crime Commission of New Orleans, Inc., <i>An Analysis of the Proposed 1974 Louisiana Constitution as it adversely relates to Crime Control, Criminal Justice, Integrity in Government</i> , March 1974, p. 2, in Crime, Metropolitan Crime Commission folder, Ephemera Collection, LaRC.....	22
Ernest Morial, “Constitutional Government and Confrontation Politics: A Humanistic Evaluation of what they Say to Each Other,” in <i>A New Constitution for Louisiana’s People: A Summary</i> (Baton Rouge: Seminar for Constitutional Convention Delegates and Academic Humanists, 1973), 8, in Folder 1, Box 100, Series 1, National Council of Jewish Women Records, LaRC.....	12
“9 th Ward Voters League Endorses New Constitution,” <i>Louisiana Weekly</i> , 20 April 1974, p. 2.....	24
<i>Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana</i> (New Orleans: R. J. Hearsey, 1898).....	7
<i>Philosophies in the Proposed Constitution</i> (Baton Rouge: Public Affairs Research Council of Louisiana, 1974), 1, in Folder 3, Box 14, Cecil Morgan Collection, Rare and Special Collections, Tulane Law Library.....	20
“Proposed Constitution of Louisiana, Proposal of the Committee on Bill of Rights and Elections with respect to the ‘Preamble’ and ‘Declaration of Rights,’” p. 13, Folder 14, Box 23, Series II, Ollie T. Osborne Papers (Collection 93), Special Collections, ULL.....	13-14

Public Affairs Research Council of Louisiana, <i>PAR Analysis: Special Election on the Constitution,</i> <i>April 20, 1974</i>	3, 9, 25
Bill Shearman, <i>Attorney Tells Document Needs</i> , New Orleans <i>Times-Picayune</i> , March 10, 1973, sec. 3, p. 7.....	16
Jean Smientana to [Convention Delegate], [1974], Folder 5, Box 2, Series 9, League of Women Voters Collection, LaRC.....	15, 18
“Voters Face Task of Learning What Constitution is About,” <i>The Sunday Advertiser</i> 24 February 1974, p. 38, in Folder 22, Box 25, Series II, Osborne Papers, ULL.....	20
Jack Wardlaw, “Bishops Hail CC-73 Work, Bill of Rights,” <i>States-Item</i> , 7 February 1974, in folder 22, box 25, Series II, Osborne Papers, ULL.....	23

IDENTITY AND INTEREST OF AMICI

This brief is filed by historians with extensive experience and expertise on issues relating to Louisiana and its constitutional history. The brief is based primarily on the original research of Professor Walter C. Stern, a professional historian who earned his Ph.D. in History from Tulane University, and who currently is Assistant Professor of Educational Policy Studies at the University of Wisconsin-Madison. Professor Stern is a Louisiana native who has received multiple awards for his research and writing on Louisiana history. His book *Race and Education in New Orleans: Creating the Segregated City, 1764-1960*, is scheduled for publication by Louisiana State University Press in 2018.

This brief is based on Professor Stern's independent research, which was not financed by any party to this action. No party to this action, and no lawyer for any party to this action, wrote any portion of this brief, which was prepared by counsel for amici working on a pro bono basis in close collaboration with Professor Stern. No one other than amici and their counsel has contributed to the expenses of producing and filing this brief.

Professor Stern is joined on the brief by the following historians (whose academic affiliations are included for purposes of identification only):

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The foregoing historians, whose qualifications are summarized in the Appendix to this brief, all have an interest in ensuring that the Court of Appeal act with an accurate understanding of Louisiana's constitutional history as it relates to the issues presented by this appeal. Amici and their counsel in preparing this brief have reviewed the briefs of both parties in this case to ensure that their brief makes a meaningful contribution to understanding the issues presented.

SUMMARY OF THE ARGUMENT

On April 20, 1974, Louisiana voters approved a new state constitution by a margin of 360,980 votes to 262,676.¹ Delegates from across the state drafted the constitution through a convention that lasted from January 5, 1973, to January 19, 1974, and only one convention delegate voted against putting the proposed constitution before voters.² While that near unanimity masked disagreements about the meaning of some constitutional provisions, the intention of voters was clear in relation to Section 10(A) of the Declaration of Rights. That section states:

(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)”).

This is a far narrower provision than Article I, § 20, which broadly provides: “No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or

¹ Public Affairs Research Council of Louisiana, *PAR Analysis: Special Election on the Constitution, April 20, 1974*, April 1974, p. 4.

² On the composition and chronology of the constitutional convention, see Edward D. Grant, III, *Institutionalization and Rational Decision-Making: The Louisiana Constitutional Convention of 1973* (Ph.D. diss., Tulane University, 1981), 100–102, 107–121, 268; Mark T. Carleton, *Elitism Sustained: The Louisiana Constitution of 1974*, 54 *Tulane L. Rev.* 566 (April 1980). On uncertainty regarding the meaning of particular constitutional provisions, see, for example, Cecil Morgan, *A New Constitution for Louisiana*, 63 *National Civic Rev.*, 345–346, 354–355 (July 1974).

unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.” La. Const. art. I, § 20. Probationers and parolees while “under state supervision are,” the Louisiana Supreme Court has observed, “required as conditions of probation and parole . . . to forego the full exercise of a variety of constitutional rights, including their right to privacy, to travel freely, to free association, to possess firearms, and to be free of searches except upon probable cause.”³ Section 20 thus addresses the many rights of citizenship that may be suspended or limited in order to ensure that

³ *State v. Draughter*, 2013-0914, p. 16 n.13 (La. 12/10/13), 130 So.3d 855, 867 n.13 (citing, e.g., La.C.Cr.P. art. 895(A)(6), (8), (9), and (13)(a); La. R.S. 15:574.4.2(A)(1), (2)(b), (d), (i) and (j)). Many decisions recognize that given their reduced expectation of privacy and the State’s need to provide them rehabilitative supervision, parolees and probationers may be required to submit to warrantless searches while still under supervision. *State v. Malone*, 403 So.2d 1234, 1238-40 (La. 09/18/1981) (sustaining warrantless search of probationer’s home); *State v. Jones*, 2001-0908, p. 5 (La. App. 1 Cir. 11/08/2002), 835 So.2d 703, 707; *State v. Hamilton*, 2002-1344, p.4 (La. App. 1 Cir. 2003), 845 So.2d 383, 387 (“A parolee has a reduced expectation of privacy, subjecting him to reasonable warrantless searches of his person and residence by his parole officer.”); *State v. Jones*, 2012-0438, p.8 (La. App. 4 Cir. 03/13/2013), 119 So.3d 9, 15 (“probationers and parolees have a reduced expectation of privacy which allows reasonable warrantless searches, of their persons and residences by their probation or parole officer, even though less than probable cause may be shown”); *State v. Drane*, 36,230, p.3, (La. App. 2 Cir. 09/18/2002), 828 So.2d 107, 111 (““A probationer’s or parolee’s reduced expectation of privacy occurs as a result of his prior conviction and the circumstance of his agreement to allow a probation or parol[e] officer to investigate his activities in order to confirm compliance with the conditions of his probation or parole.”); see also *Morrissey v. Brewer*, 408 U.S. 471, 478, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (“To accomplish the purpose of parole, those who are allowed to leave prison early are subjected to specified conditions for the duration of their terms.”).

a parolee or probationer is successfully reintegrated into society and that under §20 are fully “restored upon termination of state and federal supervision following conviction for any offense.”

By placing the right to vote among the “full rights of citizenship” that are under § 20 are restored only “upon the termination of state and federal supervision,” however, the Secretary of State ignores the 1974 Constitution’s very structure and history. The State has no interest in supervising how a probationer or parolee exercises his or her right to vote – and Section 10(A) accordingly includes no provision suspending the right to vote while the former prisoner remains under supervision. Section 10(a) provides *this right* in particular may be suspended only “*while a person* is interdicted and judicially declared mentally incompetent or *is under an order of imprisonment.*” The history of Louisiana’s 1974 Constitution, set forth in this brief, underscores that voters who ratified the Constitution understood that Section 10(A) would restore the right to vote upon release.

As this brief will demonstrate, voters who supported the Louisiana Constitution of 1974 intended the document to expand individual rights in general and voting rights in particular. The voters who approved the constitution viewed Section 10(A) within this context and understood “under an order of imprisonment” to mean physically imprisoned. In short, Louisiana voters who approved the constitution intended Section 10(A) to guarantee ex-offenders their

affirmative right to vote provided they were not in prison. The evidence to support this conclusion comes from contemporary statements by the constitution's supporters, from the information about the proposed constitution that was publicly available to Louisiana voters prior to the ratification vote, and from precinct-level voter returns. This conclusion also conforms with the academic consensus regarding the history and historical significance of Louisiana Constitution of 1974.

ARGUMENT

I. The Constitution of 1974 was a turning point in the protection of individual rights within the state.

The Secretary of State contends that Louisiana voters in 1974 understood Section 10(A) within the context of the state's 1921 Constitution. But the Secretary's argument ignores the very history it professes to examine, most notably the sea change that transpired between 1921 and 1974 in the composition of Louisiana's electorate and in that electorate's understanding of civil and political rights. The Secretary contends:

The historical evolution of limitations on the right to vote in Louisiana gives insight on what the voters in 1974 – the people who ratified La. Const. Art. I §10 – understood the phrase “under an order of imprisonment” to mean. The 1921 Constitution permanently denied the right to vote to convicted felons, even if that person was no longer on probation or parole. Voting rights were only restored to convicted felons who received a pardon by the governor. So voters in 1974 understood the meaning of suspension of voting rights for persons “under an order of imprisonment for conviction of a felony” to mean that once all the terms of the sentence were complete, that

person was no longer “under an order of imprisonment” and his or her voting rights were no longer suspended.⁴

While we agree that “the historical evolution of limitations on the right to vote in Louisiana gives insight into what the voters in 1974 ... understood the phrase ‘under an order of imprisonment’ to mean,” the Secretary insufficiently examines the history of rights restrictions and protections in Louisiana. A more thorough examination of the history reveals that voters’ understanding of voting rights was demonstrably different in 1974 than in 1921.

The Louisiana Constitution of 1921 restricted the right to vote in order to maintain white supremacy and an exclusively white electorate. This extended restrictions on voting rights originally introduced through the Louisiana Constitution of 1898, which the State drafted in order to disfranchise black voters.⁵ While the 1921 Constitution granted the right to vote to women in accordance with the Nineteenth Amendment to the US Constitution, which was ratified in 1920, it refined the existing mechanisms for disfranchising African Americans. Specifically, the 1921 Constitution replaced the “grandfather clause” from the

⁴ Original Appellee Brief at 17.

⁵ *Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana* (New Orleans: R. J. Hearsey, 1898); Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana* 6 (Athens: University of Georgia Press, 2d ed. 2008); Thomas Aiello, *Jim Crow’s Last Stand: Nonunanimous Criminal Jury Verdicts in Louisiana* 22-23 (Baton Rouge: Louisiana State University Press, 2015).

1898 Constitution with an “understanding” and “good character and reputation” clause since the U.S. Supreme Court had declared grandfather clauses unconstitutional in 1915. (La. Const. art. VIII, § 1(C) (1921); *Guinn v. United States*, 238 U.S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1915)). This revision provided registrars with the discretionary means to prevent African Americans from voting while simultaneously ensuring that white voters who did not meet literacy requirements could continue to vote.⁶ The 1921 Constitution’s permanent disfranchisement of convicted felons who had not been pardoned (La. Const. art. VIII § 6) aided these Jim Crow measures, which proved remarkably effective.⁷ The number of registered black voters in Louisiana declined from 130,344 in 1897 to 5,320 in 1900 to 598 in 1922.⁸

By 1974, Louisiana voters no longer understood voting rights through the restrictive lens of the 1921 Constitution. That was because by 1974 the state’s voters had witnessed a revolution in conceptions of individual civil and political rights. Following *Smith v. Allwright*, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944), and then the Voting Rights Act of 1965, black voter registration in

⁶ William Ivy Hair, *The Kingfish and His Realm: The Life and Times of Huey P. Long* 113-14 (Baton Rouge: Louisiana State University Press, 1991).

⁷ On the racist application of felony disfranchisement laws during the Jim Crow era, see Michael Waldman, *The Fight to Vote* 176 (New York: Simon and Schuster, 2017); Christina Rivers, *A Brief History of Felon Disfranchisement Laws and Prison Gerrymanders*, *The American Historian*, November 2017, p. 9.

⁸ Aiello, *Jim Crow’s Last Stand*, *supra* note 5, at 23.

Louisiana soared as African Americans reclaimed the right that previous state constitutions had stripped from them. By March of 1974, 388,345 African Americans were registered to vote in Louisiana, comprising 22.6% of all registered voters.⁹

By 1974, the Civil Rights Act of 1964's restrictions on segregation and other forms of race- and gender-based discrimination had also codified an understanding of rights that Louisianans had not seen since the state's eleven years under the Louisiana Constitution of 1868.¹⁰ The Louisiana legislature embraced this spirit of change during the early 1970s by symbolically repealing eleven segregation laws that federal court rulings had already nullified.¹¹ August 1970 also marked the fiftieth anniversary of the ratification of the Nineteenth Amendment granting women the right to vote, inspiring numerous commemorations and reflections

⁹ Public Affairs Research Council of Louisiana, *PAR Analysis: Special Election on the Constitution*, April 20, 1974, April 1974, p. 5.

¹⁰ The Bill of Rights of the Louisiana Constitution of 1868 guaranteed equal "civil, political, and public rights" regardless of race. See La. Const. title I, art. 2. The Louisiana Constitution of 1879 eliminated that provision. See *Constitution of the State of Louisiana, Adopted in Convention at the City of New Orleans, the Twenty-Third Day of July, A. D. 1879* (New Orleans: J. H. Cosgrove, 1879); Joseph Logsdon & Caryn Cossé Bell, *The Americanization of Black New Orleans, 1850–1900*, in Arnold R. Hirsch & Joseph Logsdon, eds., *Creole New Orleans: Race and Americanization* 251-61 (Baton Rouge: Louisiana State University Press, 1992).

¹¹ Fairclough, *Race and Democracy*, *supra* note 5, at 465.

within Louisiana.¹² Additionally, in 1971, eighteen-year-olds gained the right to vote with the ratification of the Twenty-Sixth Amendment to the U.S. Constitution, and the following year Title IX of the Education Amendments of 1972 provided unprecedented protections for girls and women in educational institutions.¹³

The early 1970s was also a period of immense criminal-justice reform. Since the nineteenth-century, the “hands-off” doctrine, which held that prisoners forfeited all rights upon conviction and that the courts thus had no power to supervise prison life, dominated the courts thinking towards convicted offenders. Beginning in the 1960s, however, courts began ruling that the convicted retained *some* rights after conviction. This discernable shift culminated in 1974—the same year that Louisianans voted in support of the new constitution—with two U.S. Supreme Court decisions rulings formally rejecting the hands-off doctrine and determining that prisoners retained certain Constitutional rights.¹⁴ As historian Van

¹² See, for example, *Freedom Shrine is Dedicated*, New Orleans *Times-Picayune*, November 26, 1975, p. 13; Stella Pitts, *Devoted Sisters Served City, Fought for Women’s Suffrage*, New Orleans *Times-Picayune*, February 22, 1976, Sec. 2, p. 4.

¹³ John L. Rury, *Education and Social Change: Contours in the History of American Schooling* 176 (New York: Routledge, 4th ed. 2013).

¹⁴ *Procunier v. Martinez*, 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974); *Wolf v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); Barry R. Bell, *Prisoners’ Rights, Institutional Needs, and the Burger Court*, 72 Virginia L. Rev. 161-193 (1986); Thomas G. Blomberg & Karol Lucken, *American Penology: A History of Control* 141 (New York: Aldine De Gruyter, 2000).

Gosse explains, the 1960s and early 1970s ushered in a “*New Democratic Order*” premised upon the forceful assertion of “the presence of rights of whole classes of [previously] excluded people, who together comprised the majority of American society.”¹⁵ The Louisiana Constitution of 1974 both responded and contributed to this broadened understanding of individual rights in general and voting rights in particular.

II. Louisiana voters and constitutional convention delegates understood the Constitution of 1974 through the lens of expanded individual rights.

In 1973, Louisianians arguing for the writing of a new state constitution suggested that such a step was necessary in part to bring Louisiana into alignment with this national trend towards maximum voter access. As judge (and future New Orleans mayor) Ernest “Dutch” Morial explained in a 1973 pamphlet outlining the need for a new constitution:

People is what the new government of the Seventies must be about; individual citizens can give a meaningful role in the decision-making process. We hear a lot of talk these days about ‘participatory democracy.’ That’s a redundancy if ever I’ve heard one. **Democracy is supposed to be participatory. That’s what it’s all about...** the first step must be to return power to the people through a reorganization of bureaucratic and governmental structures. The

¹⁵ Van Gosse, *Rethinking the New Left: An Interpretive History* 208 (New York: Palgrave Macmillan, 2005).

exercise of power gives people a sense of shared purpose. It's that sense of direction—of purpose—that has been lacking.¹⁶

In a similar guide to the constitutional process produced by the Baton Rouge *State-Times Morning Advocate*, Mary Day, legislative action director for the Louisiana League of Women Voters, explained that the League believed that a new state constitution was needed to bring Louisiana in line with the shifting understanding of the vote:

We [of The League of Women Voters] are not entirely satisfied with Louisiana's laws as they are now as far as the right to vote is concerned. I think that there needs to be quite a few changes.¹⁷

Likewise, a widely distributed pamphlet from the Public Affairs Research Council of Louisiana informed Louisianans that the Constitution would capture the zeitgeist of the age: "The traditional guarantees of personal and political freedoms [will be] included as well as some that have emerged more recently."¹⁸

¹⁶ Emphases in original. Ernest Morial, "Constitutional Government and Confrontation Politics: A Humanistic Evaluation of what they Say to Each Other," in *A New Constitution for Louisiana's People: A Summary* (Baton Rouge: Seminar for Constitutional Convention Delegates and Academic Humanists, 1973), 8, in Folder 1, Box 100, Series 1, National Council of Jewish Women Records, Louisiana Research Center, Tulane University (hereinafter cited as LaRC).

¹⁷ *Lancaster Reports CC 73* (Baton Rouge: Capital City Press, 1973), in Constitutional Convention of 1973 folder, Ephemera Collection, LaRC.

¹⁸ *Constitutional Convention, 1973 – A Preview* (Baton Rouge: Public Affairs Research Council of Louisiana, 1973), 13.

This spirit of expanding voting rights was also evident during the constitutional convention, particularly within the Committee on the Bill of Rights and Elections (CBRE) that drafted Section 10(A). An annotated draft of the constitution’s Declaration of Rights from July 1973, for instance, included a voting rights provision whose language closely mirrored that of the final document. The draft provision reads:

Section 19. No person eighteen years of age or older who is a resident or domiciliary of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is judicially committed and institutionalized, or *under an order of imprisonment for conviction of a felony*.¹⁹

While this annotated draft noted that this language was new for Louisiana’s constitution, the “source” section for this provision states, “See, however, Ill. Const. Art. III, §§1, 2 (1970); Montana Const. Art. IV, §1 (1972).” The “comment” section for the provision further states:

¹⁹ “Proposed Constitution of Louisiana, Proposal of the Committee on Bill of Rights and Elections with respect to the ‘Preamble’ and ‘Declaration of Rights,’” p. 13, Folder 14, Box 23, Series II, Ollie T. Osborne Papers (Collection 93), Special Collections, University of Louisiana Lafayette (cited hereinafter as ULL) (emphasis added). While the only date on this document is a handwritten note indicating the document was received July 11, 1973, the language of the voting rights provision is the same as the language included in a document in this same archival folder entitled, “Proposed Constitution for Louisiana, Draft Proposal as of June 15, 1973, of the Committee on Bill of Rights and Elections with respect to the ‘Preamble’ and ‘Declaration of Rights’ for submission to CC-73 on July 5, 1973.”

Voting is included in the ‘Declaration of Rights’ because it is regarded as a basic political right rather than a privilege. As a right, it should be suspended only in the most serious cases. The Illinois provision does not even except interdicted persons. The Montana provision excepts persons ‘of unsound mind, as determined by a court.’ This provision also recognizes a right to register as long as registration is a prerequisite to voting.²⁰

The comment that voting is “a basic political right rather than a privilege” that “should be suspended only in the most serious cases” demonstrates CBRE’s intent to impose the least possible restrictions upon voting rights.

The constitution’s supporters shared this desire to expand rather than restrict voting rights. Prior to the ratification vote, the most vocal organization in the greater New Orleans area urging Louisiana voters to support the document was the Council for a New State Constitution, a coalition of two thousand delegates representing over thirty religious and civic organizations from the greater New Orleans area.²¹ Member organizations—which included the NAACP, Catholic Human Relations Commission, Louisiana Chaplain’s Association, Louisiana League of Good Government, National Organization for Women, Archdiocese of New Orleans, the American Civil Liberties Union, and the League of Women Voters—represented notably diverse perspectives and political interests. Together,

²⁰ *Id.*

²¹ Errol Laborde, Felicia Kahn, and Joel Myers to “Mr. Perez and Committee Members of the Local and Parochial Committee,” September 4, 1973, Folder 5, Box 2, Series 9, League of Women Voters of New Orleans Records, LaRC.

these groups spoke for considerably broad swaths of Orleans, Jefferson, and St. Bernard parishes. Not only did the Council for a New State Constitution vocally support felon suffrage, their support was predicated on their belief that Section 10(A) only restricted the vote from persons presently held within a carceral or mental-health facility.

Early in the constitutional drafting process, the Council for a New State Constitution passed a resolution asking the Constitutional Convention to ensure full suffrage rights for the formerly incarcerated:

[The] privileges of citizenship shall not be denied to any person because of prior criminal record, excepting only those persons presently in institutions for the mentally ill and penitentiaries of the State.²²

This resolution was one of eight provisions that the Council recommended to the Constitutional Convention.²³ It was publicized, and sent to members of affiliated organizations.²⁴ It was also reprinted in booklets made freely available to

²² Council for a New State Constitution Resolution, [n.d.], Folder 18, Box 6, Community Relations Council of Greater New Orleans Records, 1965-1982, Amistad Research Center.

²³ Jean Smientana to [Convention Delegate], [1974], Folder 5, Box 2, Series 9, League of Women Voters Collection, LaRC.

²⁴ *The Council for a New State Constitution: Proposals to the Convention* (1973), "Constitutional Convention 1973" Ephemera Folder, LARC; Barbara Herman to Members of the Greater New Orleans Section of the National Council of Jewish Women, March 29, 1974, Folder 1, Box 99, National Council of Jewish Women, LaRC.

the public.²⁵ Criminal-justice reform and felon suffrage were also discussed in open forums hosted by the Council for a New State Constitution.²⁶

When Secretary of State Wade O. Martin proposed to the constitutional convention that “no citizen shall be denied the right to vote ... unless such a person is lawfully imprisoned” (Opening Brief of Appellants at 26), members of the Council for a New State Constitution privately acknowledged that Martin’s proposed wording seemed ambiguous. The article would benefit from rewording to “to clear up the ambiguity” and provide “clarification,” the Council’s leadership noted. Nevertheless, the council’s leaders concluded that Martin’s proposal guaranteed full suffrage rights for the formerly incarcerated:

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 is a step forward.²⁷

Significantly, the Council recommended one change to Martin’s proposal that revealed that their understanding of legal terminology did not always align

²⁵ *Booklet is Given*, *New Orleans Times Picayune*, August 2, 1973, sec. 3, p. 10.

²⁶ Bill Shearman, *Attorney Tells Document Needs*, *New Orleans Times-Picayune*, March 10, 1973, sec. 3, p. 7.

²⁷ Dennis G. Driscoll, Gideon Stanton, and Citizens for Democratic Action to Composite Committee and the Bill of Rights and Elections Committee of the Louisiana Constitutional Convention, [n.d.], Folder 5, Box 2, Series 9, League of Women Voters Collection, LaRC.

with their intent for how that terminology should be applied. The Council suggested changing “lawfully imprisoned” in Martin’s draft to “convicted of a felony and presently under sentence” in order to ensure that those in jail but not yet convicted could vote.²⁸ While the Council had clearly indicated that it wanted people on probation and parole to be able to vote, its proposed language perhaps proved detrimental to its aims given the decision below’s interpretation of “under sentence” to include both serving a “custodial sentence” (i.e., in jail) and also a “noncustodial” sentence (e.g., on probation).²⁹ That was not what the Council intended, and it was not the understanding of voters who ratified the Constitution.

The disconnect between the Council for a New State Constitution’s intent and how a lawyer might interpret the language the Council used is important to note when considering Louisiana voters’ understanding of Section 10(A) and their intent in approving it. The Council, for instance, understood Section 10(A)’s final language to permit the suspension of voting rights only for those physically behind bars. This was evident from the steps the Council took after the constitutional convention voted in January 1974 to put the proposed constitution before voters.

²⁸ *Id.*

²⁹ See definition of “sentence” in Steven H. Gifis, *Dictionary of Legal Terms: Definitions and Explanations for Non-lawyers* (Hauppauge, NY: Barron's Educational Series, 5th ed., 2016), *retrieved from* <http://ezproxy.library.wisc.edu/login?url=https://search.credoreference.com/content/entry/barronsgkwm/sentence/0?institutionId=1177>.

The Council evaluated the final, proposed document against the eight provisions it had previously recommended for inclusion in the constitution. Concluding that the proposed Bill of Rights reflected the eight provisions that they had demanded, including the one permitting voting restrictions only for those behind bars, the Council endorsed the document.³⁰ Prior to the vote on the Constitution, the thirty-three member organizations strongly encouraged their several thousand contacts and supporters to vote for the constitution.³¹ For the Council, as for other Louisiana voters, “under an order of imprisonment” meant “incarcerated.”

III. Louisiana voters intended Section 10(A) to guarantee convicted felons their affirmative right to vote provided they were not in prison.

Statements from supporters of the constitution and from some of its most vocal opponents, along with data on voter behavior, reveal that voters viewed the Constitution of 1974 as a document that expanded individual rights in general and voting rights in particular. That perception became more pronounced during the period between the constitutional delegates’ January 19, 1974, approval of a proposed constitution and the April 20, 1974, ratification vote. As the April 1974 ratification vote loomed, Louisianans relied upon news media, civic groups, and

³⁰ Jean Smientana to [Convention Delegate], [1974], Folder 5, Box 2, Series 9, League of Women Voters Collection, LaRC.

³¹ *Constitution Given Backing*, New Orleans *Times-Picayune*, March 15, 1974, p. 8.

employers to concisely explain and summarize the more than three hundred sections of the proposed 35,000-word document. In the months prior to the vote, many organizations printed voting guides that translated the document's legal language for laypeople and elucidated how the proposal would impact voters' lives. This material explained Section 10(A) in one of three ways:

1. By quoting Section 10(A) verbatim without providing analysis of its meaning or impact.
2. By explaining that Section 10(A) would guarantee universal suffrage, without acknowledging any caveats.
3. By explicitly stating that Section 10(A) allowed the convicted to vote provided they were not physically held within a carceral facility.

Surviving materials indicate that voters would have had almost no access to information suggesting that the constitution would prevent parolees from voting. Quite the contrary, available information either implicitly or explicitly stated that Section 10(A) enfranchised ex-offenders upon their release from prison.

The Public Affairs Research Council of Louisiana (PAR)—regarded as the most influential and widely read policy analysis organization in Louisiana—prepared regular political guides for use by state newspapers. Newspapers throughout the state often reprinted PAR's analyses verbatim, and reporters and editors relied heavily on them when explaining the proposed constitution to

voters.³² An editorial in the Lafayette *Sunday Advertiser* newspaper, for instance, noted that PAR's guide to the constitution would likely serve voters better than the copies of the constitution itself that the convention mailed to all registered voters.³³ Voter Lois Ennis similarly informed the editor of the *Shreveport Times* that PAR's analysis was one of the sources she relied upon before deciding to vote in favor of the constitution.³⁴

PAR's February 1974 newspaper guide elucidated seven overarching trends contained within the proposed document. Noting a trend towards the expansion of "Individual Rights," this guide stated that the proposed Constitution extended the right vote to all those not currently incarcerated. PAR noted that "some of the principal additional rights in the proposed declaration of rights" included "granting automatic voting and citizenship rights to former prisoners or other inmates *upon their release*, without having to await a pardon from the governor."³⁵ To laypeople,

³² *Philosophies in the Proposed Constitution* (Baton Rouge: Public Affairs Research Council of Louisiana, 1974), 1, in Folder 3, Box 14, Cecil Morgan Collection, Rare and Special Collections, Tulane Law Library.

³³ "Voters Face Task of Learning What Constitution is About," *The Sunday Advertiser* 24 February 1974, p. 38, in Folder 22, Box 25, Series II, Osborne Papers, ULL.

³⁴ Lois Ennis, Letter to the Editor, *Shreveport Times*, 20 March 1974, Folder 23, Box 25, Series II, Osborne Papers, ULL.

³⁵ *Id.*, at 11 (emphasis added).

“former prisoners ... upon their release” could only mean persons released from carceral facilities.

Other explanatory aids available simply stated that the constitution guaranteed universal voting rights. A 1974 Shreveport pamphlet produced by the Louisiana League of Women Voters explained that the new constitution “guarantees every citizen fundamental rights... [that] may not be infringed upon by the state,” including the “RIGHT TO VOTE.”³⁶ A mailer produced by the New Orleans chapter of the National Council of Jewish Women informed recipients that the new constitution “restores the rights of citizenship and voting after a convict has served his time (now it takes a pardon from the Governor)”—invoking the colloquialism, “served his time,” popularly associated only with carceral confinement.³⁷

At least one group that opposed the constitution based its opposition upon its perception that the document dramatically expanded individual rights. The Metropolitan Crime Commission of New Orleans, a civic organization lobbying for harsher criminal penalties, longer sentencing, and increased police funding,

³⁶ Emphasis in original. *Decision '74... A Study of the Proposed Constitution, January, 1974* (Shreveport: Louisiana League of Women Voters, 1974), 2.

³⁷ Barbara Herman to Members of the Greater New Orleans Section of the National Council of Jewish Women, March 29, 1974, Folder 1, Box 99, National Council of Jewish Women, LARC.

opposed the proposed constitution in part because its reading of the Declaration of Rights suggested that it enfranchised felons upon their exit from a carceral facility. In *An Analysis of the Proposed 1974 Louisiana Constitution as it adversely relates to Crime Control, Criminal Justice, Integrity in Government*, the Metropolitan Crime Commission highlighted Section 20 in urging voters to reject the Constitution:

This is a new and astonishing addition to the Constitution. It completely eliminates evaluation of an ex-convict to determine if it is safe to entrust him with a permit to buy or carry a gun; to run for or be appointed to public office; to be granted other potentially hazardous rights which are safe only in the hands of responsible persons.

This provision would automatically give such rights to an individual previously convicted... As of now, such rights can be restored only after review by, and approval of, the Pardon Board.³⁸

For the average voter who received only limited information on Section 10(A), the repeated portrayal of the constitution as a document that expanded rights would have encouraged them to read Section 10(A) expansively. In endorsing the proposed constitution, for instance, the Louisiana Catholic Conference (LCC) noted the additional rights it offered Louisianians. “We are particularly pleased with the Bill of Rights, with its guarantee of religious liberty

³⁸ Emphasis in original. Metropolitan Crime Commission of New Orleans, Inc., *An Analysis of the Proposed 1974 Louisiana Constitution as it adversely relates to Crime Control, Criminal Justice, Integrity in Government*, March 1974, p. 2, in Crime, Metropolitan Crime Commission folder, Ephemera Collection, LaRC.

and *expansion of the rights of the individuals*” LCC president Archbishop Philip Hannan noted in February 1974. “We are advised by counsel that the Bill of Rights certainly is the most advanced in the South and possibly the nation.”³⁹ In an editorial that ran in at least seventeen newspapers throughout the state, the League of Women Voters stressed that “the Declaration of Rights for the proposed new Louisiana Constitution is the most up-to-date ‘bill of rights’ of any in the nation.”⁴⁰ In endorsing the constitution, the historically African-American Louisiana Education Association’s Executive Council “enthusiastically called the Proposed Constitution a giant step forward for freedom, dignity, and humane government for our State” and noted that the constitution contained “a strong equal protection clause that is designed to protect the rights of individuals.”⁴¹

The emphasis on expanded rights and the protection of voting rights was especially pronounced among African Americans. The 9th Ward Voters League in New Orleans, for instance, said it supported the constitution “because we believe it is superior to the old Constitution especially in the area of civil rights and civil

³⁹ Jack Wardlaw, “Bishops Hail CC-73 Work, Bill of Rights,” *States-Item*, 7 February 1974, in folder 22, box 25, Series II, Osborne Papers, ULL (emphasis added).

⁴⁰ See, for instance, League of Woman Voters, “A Look at CC-73,” *The Daily Review* (Morgan City), 19 December 1973, section 2, p. 10 and other copies of the editorial in folder 27, box 19, Osborne Papers, ULL.

⁴¹ “LEA Executive Council Endorses Constitution,” *Louisiana Weekly*, 13 April 1974, p. 1, 3.

liberties.”⁴² The black-owned *Louisiana Weekly* also endorsed the constitution, noting that “insofar as black Louisianians are concerned, the proposed new Constitution is the first in approximately 100 years which is not directed at denying or limiting the voting power of blacks.”⁴³ Since a disproportionate number of African Americans in Louisiana and nationally were in prison or on probation or parole, the *Weekly* would have been unlikely to take this position had its editors interpreted Section 10(A) to deny people on probation and parole the right to vote. The *Weekly’s* editors were also acutely aware of the history of Louisiana constitutional provisions designed to disfranchise black voters, and they reviewed several of those provisions that had been included in the 1921 Constitution in their editorial endorsing the 1974 Constitution.⁴⁴

After voters ratified the Constitution, observers attributed its narrow passage to the document’s strong support among both African American voters and the population-dense parishes of the Greater New Orleans area, which was where the Council for a New State Constitution was based and concentrated its lobbying

⁴² “9th Ward Voters League Endorses New Constitution,” *Louisiana Weekly*, 20 April 1974, p. 2.

⁴³ “We Endorse the New Constitution,” *Louisiana Weekly*, 20 April 1974, section 2, p. 6.

⁴⁴ *Id.*

efforts.⁴⁵ A sampling of thirty-six predominantly African American precincts found that thirty-three voted in favor of the Constitution—sometimes, with support in excess of 90%. That compared to only fifteen of thirty-six sample white precincts voting in favor of the constitution.⁴⁶ Another study of vote results found that among a sampling of 1,710 African American voters in New Orleans, 1,455 (85.1%) voted in favor of the constitution.⁴⁷ Support within the greater New Orleans area was equally essential: nearly 40% of all votes in favor of the Constitution came from Orleans, Jefferson, and St. Bernard parishes.⁴⁸ These voting patterns are significant since they correspond with those places and groups where voters received the clearest and most direct message that Section 10(A) guaranteed convicted felons their affirmative right to vote provided they were not in prison.

⁴⁵ James H. Gillis, *Orleans Area Put Constitution Over*, *New Orleans Times-Picayune*, April 22, 1974, p. 1.

⁴⁶ “Aid of Blacks, Chehardy Cited,” *New Orleans Times-Picayune*, May 25, 1974, p. 71; James H. Gillis, “Politics, Power and the People,” *New Orleans Times-Picayune*, April 30, 1974, p. 7; *PAR Analysis: Special Election on the Constitution, April 20, 1974*, April 1974, p. 1.

⁴⁷ James H. Gillis, “Politics, Power and the People,” *New Orleans Times-Picayune*, April 30, 1974, p. 7.

⁴⁸ *PAR Analysis: Special Election on the Constitution, April 20, 1974*, April 1974, p. 8-9.

CONCLUSION

The 1974 Constitution's drafting and ratification history demonstrates that Section 10(A) was framed to ensure that ex-offenders would be able to vote upon their release from prison, while Section 20 was framed to permit custodial supervision impinging upon other constitutional rights. The Court should reverse the judgment below, and hold that Section 10(A) protects the right to vote of citizens who are on parole or probation after imprisonment for a felony.

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Respectfully submitted,

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