

Nos. 19-60662 & 19-60678

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60662

DENNIS HOPKINS, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; HERMAN PARKER, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; WALTER WAYNE KUHN, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; BYRON DEMOND COLEMAN, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; JON O'NEAL, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; EARNEST WILLHITE, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLEES,

v.

SECRETARY OF STATE MICHAEL WATSON, IN HIS OFFICIAL CAPACITY, DEFENDANT-APPELLANT,

CONSOLIDATED WITH

No. 19-60678

DENNIS HOPKINS, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; HERMAN PARKER, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; WALTER WAYNE KUHN, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; JON O'NEAL, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; EARNEST WILLHITE, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; BYRON DEMOND COLEMAN, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLEES CROSS-APPELLANTS,

v.

SECRETARY OF STATE MICHAEL WATSON, IN HIS OFFICIAL CAPACITY, DEFENDANT-APPELLANT CROSS-APPELLEE.

ON APPEAL FROM ORDERS OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
No. 3:18-cv-188

**BRIEF OF THE DISTRICT OF COLUMBIA, CONNECTICUT, ILLINOIS,
CALIFORNIA, COLORADO, DELAWARE, HAWAI'I, MAINE,
MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK, OREGON,
PENNSYLVANIA, RHODE ISLAND, VERMONT, WASHINGTON, AND
WISCONSIN AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-
APPELLEES AND REVERSAL IN PART**

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The District of Columbia, Connecticut, Illinois, California, Colorado, Delaware, Hawai‘i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin (collectively, the “Amici States”) file this brief as amici curiae in support of plaintiffs-appellees.

In a clear national trend, states have begun moving away from disenfranchising people convicted of felonies. Furthest along are the District of Columbia, Maine, and Vermont, which do not restrict the voting rights of convicted people, including those currently incarcerated. Nat’l Conf. of State Legislatures, *Felon Voting Rights* (Dec. 5, 2023), available at <https://bit.ly/3u8SCtP>.¹ Another 23 states automatically restore voting rights to any convicted person not serving a prison sentence or upon release from prison. *Id.*² And 14 more states restore voting rights after disenfranchised convicted people complete their parole or probation, or after they pay certain fines, fees, and restitution. *Id.*³

¹ All websites were last visited on December 6, 2023.

² Those states are California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, and Washington.

³ Those states are Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Missouri, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and Wisconsin.

Still, during the 2022 election cycle, permanent felony disenfranchisement laws barred an estimated 4.6 million Americans from voting. That number includes more than 220,000 Mississippians who completed their sentences or who were on probation or supervised release. Christopher Uggen et al., *The Sentencing Project, Locked-Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction* 2, 16 (Oct. 2022), available at <https://bit.ly/4799Rko>. However, “on the whole,” according to recent survey data, “Americans are unsure of the goals of disenfranchisement.” Bruce E. Cain & Brett Parker, *The Uncertain Future of Felon Disenfranchisement*, 84 *Mo. L. Rev.* 935, 949 (2019).

“[R]estoration of voting rights,” by contrast, can “provide[] a clear marker of reintegration and acceptance as a stakeholder in a community of law-abiding citizens.” Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 *Am. Soc. Rev.* 777, 794 (2002). Recent state initiatives that restore the franchise—ranging from repealing permanent disenfranchisement laws to instituting administrative systems that notify returning residents of their rights—show that allowing people who have been convicted to vote benefits both the voters and their communities.

Although the Amici States have reached different conclusions on how best to realize the benefits of felon reenfranchisement, they share an interest in promoting civic participation and public safety by reintegrating people convicted of felonies as

full-fledged, productive members of society. The Amici States' positive experiences expanding the franchise underscore the benefits of restoring the right to vote to this population. By contrast, Mississippi's permanent disenfranchisement scheme harms these important interests. Section 241 of Mississippi's Constitution permanently disenfranchises people convicted of a wide range of felonies. Miss. Const. art. XII, § 241. And Section 253, the reenfranchisement provision, is practically unattainable, usually resulting in fewer than five people regaining the right to vote in any given year. *Id.* § 253.

As the plaintiffs-appellees explain, *see* Appellees' En Banc Br. 42-45, Mississippi's regime is inconsistent with the growing national consensus supporting reenfranchisement. Indeed, over the century-plus since a Jim Crow convention first enacted Mississippi's felon disenfranchisement regime, 40 states have reached a consensus that people convicted of felonies should be able to vote after paying their debts to society. This consensus reflects the Amici States' understanding, backed by empirical evidence, that restoring voting rights helps convicted people fully reintegrate into their communities, fosters civic participation, and improves public safety. By contrast, approaches like Mississippi's permanent disenfranchisement scheme disparately harm minority communities without promoting deterrence or incapacitation. Amici States thus agree that the district court's judgment should be affirmed in part on the Section 253 claims and otherwise reversed.

ARGUMENT

I. Mississippi Is Out Of Step With The Growing State Consensus Expanding Voting Rights For People Convicted Of Felonies.

Over the past 25 years, states have restored voting rights to more than one million people by reforming their felon disenfranchisement laws. Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform 3* (Oct. 2018), available at <https://bit.ly/3MBKR6k>. These varied reform efforts include ending all disenfranchisement or repealing lifetime disenfranchisement; allowing convicted people to vote while on probation or parole; eliminating requirements to pay certain fees before regaining the franchise; and providing information to newly released people about reenfranchisement and registration.

A handful of states have ended their permanent voting bans for all people convicted of felonies. *See* A.B. 431, 80th Sess. § 3 (Nev. 2019) (automatically restoring voting rights upon release from prison); S.B. 488, 2007 Reg. Sess. § 2 (Md. 2007) (same); L.B. 53, 99th Leg., 1st Sess. § 1 (Neb. 2005) (repealing permanent ban and automatically restoring voting rights two years after sentence completion); S.B. 204, 2001 Reg. Sess. § 2 (N.M. 2001) (similar). And in the past few years, Florida citizens amended their constitution to automatically restore the franchise for all felonies except murder and sexual offenses, Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018); Delaware amended its laws to repeal permanent

disenfranchisement except for some disqualifying felonies, Del. Const. art. V, § 2; Del. Code Ann. tit. 15, §§ 6102-6103; and Wyoming lifted voting restrictions for people who complete sentences for nonviolent felonies, H.B. 75, 64th Leg., 2017 Gen. Sess. § 1, 2017 Wyo. Sess. Laws 504.

Other states have restored the right to vote to some or all individuals who are still under criminal justice supervision. For example, the District of Columbia recently joined Maine and Vermont in allowing people with felony convictions to vote, even while incarcerated. Restore the Vote Amendment Act of 2020, D.C. Law 23-277 (Apr. 27, 2021); *see* Me. Stat. tit. 21-A, § 112(14); Vt. Stat. Ann. tit. 28, § 807(a). And several states have reenfranchised residents in post-incarceration supervision. Earlier this year, New Mexico and Minnesota passed laws restoring the franchise to parolees. H.B. 4, 2023 Reg. Sess. § 6 (N.M. 2023); H.F. 28, 93 Leg., 2023-2024 Reg. Sess. § 1 (Minn. 2023). In 2021, Connecticut, New York, and Washington passed laws restoring voting rights to all non-incarcerated individuals convicted of felonies. S.B. 1202, 2021 Gen. Assemb., June Spec. Sess. § 98 (Conn. 2021) (restoring voting rights to parolees; probationers' voting rights had previously been restored); S.B. 830B, 2021-2022 Reg. Sess. §§ 1-3 (N.Y. 2021) (restoring voting rights upon release from incarceration); H.B. 1078, 2021 Reg. Sess. § 1 (Wash. 2021) (similar). And California, Colorado, Louisiana, Maryland, New Jersey, and Rhode Island have restored voting rights to certain residents who have

completed the terms of either their felony probation or parole. *See* California Proposition 17, Voting Rights Restoration for Persons on Parole Amendment (Cal. 2020) (restoring voting rights to parolees);⁴ H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 3, 2019 Colo. Sess. Laws 2642 (same); H.B. 265, 2018 Reg. Sess. § 1 (La. 2018) (restoring voting rights to former felons, including those on parole or probation, who have not been incarcerated in the past five years); H.B. 980, 2015 Reg. Sess. § 1 (Md. 2015) (restoring voting rights to parolees and probationers upon release from incarceration); A.B. 5823, 2018-2019 Reg. Sess. § 2 (N.J. 2019) (similar); H.B. 7938, 2006 Gen. Assemb., Jan. Sess. § 1 (R.I. 2006) (similar).

In addition to broadening eligibility for restoration, states have taken steps to help eligible people restore their voting rights. In California, Illinois, New Jersey, New Mexico, New York, and Washington, among others, state agencies must now explain the process for seeking voting rights restoration and/or provide voting rights information to incarcerated people by the time they are released. *See* Cal. Elec. Code §§ 2105.5, 2105.6 (requiring corrections officials to provide information about voting rights restoration online and in person to individuals leaving prison); 730 Ill. Comp. Stat. 200/10, /15 (establishing civics program for soon-to-be released

⁴ Before the passage of Proposition 17, California permitted residents subject to felony community supervision (essentially probation) and those serving felony sentences in county jail to vote. *See* A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016).

individuals to learn about voting rights); N.J. Stat. Ann. § 30:1B-6.2(b) (requiring that soon-to-be-released individuals be provided with “[g]eneral written information on the inmate’s right to vote”); N.M. Stat. Ann. § 31-13-1(C) (requiring that a “person who has served the entirety of a sentence imposed for a felony conviction” be “inform[ed] . . . that the person is entitled to register to vote”); N.Y. Corr. Law § 75 (requiring that individuals be notified of their right to vote and be provided with a voter registration application and registration assistance before release); Wash. Rev. Code § 72.09.275 (similar).

Mississippi’s system of large-scale, permanent felon disenfranchisement—largely untouched since 1890—is out of step with the rest of the country. In total, 39 states and the District now allow convicted people to retain or eventually regain their voting rights. These laws reflect a clear and growing consensus among states toward facilitating restoration and expanding the franchise. *Contra* Appellant’s En Banc Br. 38.

Meanwhile, since 2016, “as more states enacted policies to curtail [felon disenfranchisement] and state prison populations declined modestly,” the percentage of voting-age Americans disenfranchised by felony convictions has declined. *See* Uggen et al., *Locked-Out 2022*, *supra*, at 2. In Mississippi, by contrast, that percentage has *increased*. *Compare id.* at 16, with Christopher Uggen et al., The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony*

Disenfranchisement, 2016, at 15 (Oct. 2016), available at <https://bit.ly/3nihtTw> (between 2016 and 2022, disenfranchisement in Mississippi increased from 9.63% of the voting-age population to 10.69%). Mississippi's persistence against the national trend leaves it as the only state that disenfranchises more than 10% of its voting-age population. Uggen et al., *Locked-Out 2022*, *supra*, at 16.

Notably, Mississippi is out of step with the other states in this Circuit. Mississippi's 10.69% felon disenfranchisement rate is an order of magnitude higher than Louisiana's (1.5%), and much higher than Texas's (2.45%). *Id.* Texas—a state with over eight times the number of voting-age residents as Mississippi—has only about 1.9 times the number of disqualified voters. *Id.* And Louisiana—a state with over one million more voting-age residents than Mississippi—disenfranchises a little over 187,000 fewer residents. *Id.* Overall, Mississippi disenfranchises 17,340 residents on parole or probation and an additional 180,810 people who have completed their sentences entirely. *Id.* In other words, a huge driver in these disproportionate voting-eligible populations is Mississippi's commitment to permanently disenfranchising people convicted of felonies.

Further contributing to Mississippi's substantially higher numbers is the state's arduous path to reenfranchisement. To regain the right to vote, Mississippi requires a Governor's pardon, Miss. Const. art. V, § 124; Miss. Code Ann. § 47-7-31, an executive order, Miss. Code Ann. § 47-7-41, or a two-thirds vote by both

houses of the state legislature, Miss. Const. art. XII, § 253. The first two are entirely discretionary, and pardons in Mississippi are a particularly drawn-out process. For example, applicants must first publish their request for 30 days in a newspaper of the county where the crime was committed. Miss. Const. art. V, § 124. Meanwhile, legislative relief is nearly nonexistent. During the 2022-2023 legislative session, the legislature did not reenfranchise a single person. Bobby Harrison, *Legislature Restores No Voting Rights During 2023 Session*, Miss. Today (Apr. 4, 2023), available at <https://bit.ly/3uhuMMK>. Usually, there are fewer than five restorations any given session. *Id.*; see Bobby Harrison, *Should Felons Vote? The MS Legislature Plans to Discuss That in the 2022 Session*, SunHerald (Nov. 29, 2021), available at <https://bit.ly/3QZEvQD>. All told, these routes often lead nowhere: from 2000 to 2015, “just 335 of 166,494 persons who completed their sentence had their [voting] rights restored.” The Sentencing Project, *Felony Disenfranchisement in Mississippi* (Feb. 2018), available at <https://bit.ly/484eyF4>.

II. The Experiences of Many Amici States Show That Expanding The Franchise Benefits Residents And Communities While Broad Disenfranchisement Serves Little Penological Purpose.

Many states have successfully expanded the franchise to former felons in recent years. These efforts reflect the Amici States’ understanding that restoring voting rights reintegrates convicted people into their communities, fosters civic participation, and improves public safety.

Probation and parole are intended to be periods of social and civic reintegration. Probationers and parolees raise families, hold jobs, pay taxes, and participate in their communities. After their incarceration and supervised release ends, individuals convicted of felonies should be fully reintegrated into society. Extended disenfranchisement—especially beyond any period of supervised release—is counterproductive for rehabilitation and reformation. Put simply, states have a powerful interest in restoring the franchise to people convicted of crimes—especially those who have successfully reformed and reintegrated.

1. People who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004). Studies suggest that “attachment[s] to social institutions . . . increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior.” *Id.*

Allowing convicted people to vote fosters this prosocial behavior. When individuals who were convicted of felonies vote, “they are doing what all voters do: actively endorsing the political system.” Alec C. Ewald, *An “Agenda for Demolition”’: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004)

(emphasis omitted). Participating in the political process “produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system,” which, “in turn, fosters continued political participation.” Uggen & Manza, *Voting and Subsequent Crime and Arrest, supra*, at 198. In this way, restoring voting rights “communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process.” *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says*, VCU News (Apr. 26, 2016), available at <https://bit.ly/3pjGr6L>.

When individuals are excluded from this process, by contrast, they “express a feeling of being an ‘outsider.’” Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1926 (2015). Denying them the “ability to participate in the political process” only “further isolates and segregates ex-felons re-entering into society.” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 408 (2012). This extended exclusion, in turn, conveys the message “that ex-offenders are beyond redemption.” Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 Stan. L. Rev. 1147, 1166 (2004).

On top of that, studies suggest that disenfranchisement may be positively correlated with recidivism and therefore reduce public safety. For example, a study of individuals released from prison in 15 states in 1994 revealed that “individuals released in states that permanently disenfranchise [offenders] are roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release,” even when controlling for such factors as an individual’s criminal history, race, and gender, and a state’s rate of unemployment. Hamilton-Smith & Vogel, *supra*, at 423, 427.

The experiences of the Amici States confirm that when former felons are fully reintegrated into their communities, including by regaining the right to vote, “it can help transform [their] identity from deviant to law-abiding citizen.” Erika Wood, Brennan Ctr. For Just., *Restoring the Right to Vote* 8 (May 2009), available at <https://bit.ly/3511E8b>. In their efforts to expand the franchise, the Amici States embrace the idea that “restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety.” Christina Beeler, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (quotation marks and citation omitted). For example, the California Secretary of State launched an online tool for individuals seeking to regain the right to vote, in part because “[c]ivic engagement can be a critical piece in reintegrating formerly incarcerated Californians into their

communities and reducing recidivism.” Press Release, Cal. Sec’y of State, *Secretary of State Alex Padilla Launches ‘Restore Your Vote’ Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018), available at <https://bit.ly/3eNWFjI>.

Studies of convicted people’s voting behavior support the idea that reenfranchisement helps rehabilitative efforts. A report by the Florida Parole Commission noted a decrease in recidivism beginning in April 2007, when the Florida Executive Clemency Board amended its rules to automatically restore the voting rights of most nonviolent felons upon completion of their sentences. Compare Fla. Parole Comm’n, *Status Update: Restoration of Civil Rights (RCR) Cases Granted 2009 and 2010*, at 7 (July 1, 2011), available at <https://bit.ly/3neef36>, with *id.* at 13. The report found that, among convicted people whose voting rights were restored in 2009 and 2010, about 11% had reoffended as of May 2011. *Id.* at 13. Meanwhile, from 2001 to 2008, the recidivism rate after 24 months for people previously convicted of non-violent offenses sat north of 20%, while the three-year recidivism rate for all people convicted of felonies was 33%. Walter A. McNeil, Fla. Dep’t of Corr., *2009 Florida Prison Recidivism Study Releases from 2001 to 2008*, at 4, 10 (May 2010), available at <https://bit.ly/46zhsRl>.

Another study found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.”

Uggen & Manza, *Voting and Subsequent Crime and Arrest, supra*, at 213. This survey of one thousand former high school students analyzed “the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000.” *Id.* at 200. The study found that “[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.” *Id.* at 205. The analysis “suggest[ed] that the political participation effect is not entirely attributable to preexisting differences between voters and non-voters in criminal history, class, race, or gender.” *Id.* at 207-10, 213. And the experts concluded that “[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons’ lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society.” *Id.* at 213.

Members of the law enforcement community have endorsed full reintegration through enfranchisement, too. For example, a police officer testified before the Maryland legislature that reenfranchisement “promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods safer.” Wood, *Restoring the Right to Vote, supra*, at 11 (quoting *Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. On Educ., Health & Env’tl. Affairs*, 2007 Leg., 423rd Sess. 1 (Md. 2007) (written testimony of Ron Stalling, Nat’l Black Police Ass’n), available at <https://bit.ly/3kNYsGN>). Similarly, a former city police chief in Rhode Island wrote that disenfranchisement

“disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation,” whereas “[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community.” Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, Providence J. (Sept. 25, 2006), available at <https://bit.ly/2IyxIMQ>.

State legislators have similarly endorsed the proposition that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared that restoring voting rights to parolees “will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities.” H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 1(1)(c), 2019 Colo. Sess. Laws 2642-43. State legislatures have also recognized that restoring the franchise benefits communities more broadly by promoting civic participation. According to the Rhode Island legislature, “[r]estoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society.” R.I. Gen. Laws § 17-9.2-2(a)(1).

State legislators have also explained that reintegrating convicted people as full-fledged members of their communities can improve public safety. The sponsors of recent New York legislation, which reinstates voting rights upon release from

felony incarceration, explained that “[i]f the goal of imprisonment is truly to prevent individuals from straying from the confines of our laws and society’s norms, then facilitat[ing] reentrance into the voting process should be an essential component of rehabilitation and reintegration during community supervision.” Sen. Leroy Comrie et al., Sponsor’s Memo, S.B. 830B (2021), *available at* <https://bit.ly/3ybO1nj>. Washington State legislators similarly credited testimony that “restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism.” H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (Wash. 2009). And the legislator who authored the recently passed amendment to the California Constitution also described restoring parolees’ rights to vote as “good for democracy and good for public safety.” Patrick McGreevy, *Prop. 17, Which Will Let Parolees Vote in California, Is Approved by Voters*, L.A. Times (Nov. 3, 2020), *available at* <https://lat.ms/38A6O2s>.

2. While reenfranchisement offers significant benefits for public safety, there is little evidence that permanent disenfranchisement furthers traditional penological state interests, such as incapacitation, deterrence, or rehabilitation. *See Graham v. Florida*, 560 U.S. 48, 71 (2010). The New Jersey legislature, for instance, found that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose.” N.J. Stat. Ann. § 19:4-

1.1(f). This conclusion makes sense: there is little reason to believe that permanent disenfranchisement deters or prevents future crime.

To start, “[g]iven the conditions in which crime often occurs, the political alienation of many offenders, and the existence of serious criminal sanctions, it is extremely unlikely that the loss of voting rights forms a substantive, necessary deterrent against crime.” Alex C. Ewald, “*Civil Death*”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 Wis. L. Rev. 1045, 1106. Indeed, potential felons probably do not even know that their anticipated offense will strip them of their right to vote forever. See Christopher Haner, *Felon Disenfranchisement: An Inherent Injustice*, 26 J. Civ. Rts. & Econ. Dev. 911, 930 (2013). What is more, permanent disenfranchisement “cannot prevent an offender from committing future crimes,” so it generally does not incapacitate former felons. *Id.* (quoting Bailey Figler, *A Vote for Democracy: Confronting the Racial Aspects of Felon Disenfranchisement*, 61 N.Y.U. Ann. Surv. Am. L. 723, 733 (2006)).

III. The Disproportionate Impact Of Felon Disenfranchisement On Communities Of Color Raises Profound Democratic Concerns.

Restoring voting rights is particularly important given the disparate impact of permanent felon disenfranchisement laws on minority communities. This country’s high rate of incarceration “has disproportionately impacted people of color,” and “the disparities in incarceration rates by race ultimately become disparities in voting rights.” Beeler, *supra*, at 1085. For example, in the November 2022 elections, felon

disenfranchisement laws barred more than 5.3% of the Black voting-age population from voting, compared with 1.5% of the non-Black voting-age population. Uggem, *Locked-Out 2022*, *supra*, at 2. In Mississippi, the disparity is even starker: 15.74% of the Black voting-age population is disenfranchised, versus 7.75% of the non-Black voting-age population. *Id.* at 16-17.

Evidence suggests that broad disenfranchisement laws—and misinformation about their scope—are more likely to deter even enfranchised Black people from voting than their white counterparts. A 2009 study found that “eligible and registered [B]lack voters were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies,” as compared with white voters, whose “probability of voting decreased by only 1 percent in such states.” Erin Kelley, Brennan Ctr. For Just., *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017), available at <https://bit.ly/38Dn3vs>. According to another scholar, “in states with restrictive criminal disenfranchisement laws, the probability of voting declines for African-Americans, even if they do not possess a criminal record,” because “[t]he fact that so many are barred from voting . . . makes exercising the franchise less a part of the fabric of the community.” Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 *How. L.J.* 587, 607 (2011). Yet another scholar observed “that neighborhoods that are home to [disenfranchised voters with

a history of voting]—and particularly neighborhoods with large Black populations—systematically turn out for local elections at lower rates than otherwise similar neighborhoods.” Kevin Morris, *Neighborhoods and Felony Disenfranchisement: The Case of New York City*, 57 Urb. Affs. Rev. 1, 19 (2020). In short, barring “so many” individuals in minority communities from voting disconnects these communities from the political process, “precipitating a negative ripple effect.” Thompson, *Unlocking Democracy*, *supra*, at 607.

The disproportionate racial impact of broad felon disenfranchisement, by muting the political voice of minority communities, can distort democracy. Communities with many disenfranchised residents necessarily have less of a say in who represents them at the federal, state, and local levels—and so they lack influence over policies that affect their daily lives. See Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. Rev. 255, 282-83 (2004). Parents who live in communities affected by restrictive voting restoration laws, for example, may not be heard on a referendum to increase taxes to support schools or in efforts to “prevent yet another waste incinerator from moving in nearby.” Haner, *supra*, at 917 (2013) (quoting Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* 1-5 (2006)). Lower voter turnout is also associated with less inclusive healthcare policies—which, in turn, can increase existing “health disparities” between voters and non-voters. Nicolas Yagoda, *Addressing Health Disparities*

Through Voter Engagement, 17 *Annals Fam. Med.* 459, 460-61 (2019); see Jonathan Purtle, *Felon Disenfranchisement in the United States: A Health Equity Perspective*, 103 *Am. J. Pub. Health* 632, 632 (2013) (explaining how “felon disenfranchisement might affect health by means of inequitable public policies that differentially allocate resources for health and the inability to participate fully in society, including by voting”).

To that end, many states have expressly recognized the disparate racial impact of broad felon disenfranchisement. In the debates over New York’s recent reenfranchisement legislation, for instance, one co-sponsor argued that felon disenfranchisement “is a racial issue,” because “[a]lthough African-Americans comprise only 12 percent of the country’s general population, they account for 40 percent of those who are disenfranchised.” N.Y. Assembly, Debate on S.B. 830B, at 52 (Apr. 21, 2021) (statement of Assembly Member Bichotte Hermelyn). Likewise, in Rhode Island, the legislature noted that “[b]y denying so many the right to vote, criminal dis[en]franchisement laws dilute the political power of entire minority communities.” R.I. Gen. Laws § 17-9.2-2(a)(4). And the legislator who authored the California Proposition that restored voting rights to parolees touted the measure’s power to “right a wrong and restore voting rights for a marginalized community and people of color.” McGreevy, *supra*.

Mississippi's law stems from an especially troubled racial history. The "racist drafting" of the state constitution, *Harness v. Watson*, 47 F.4th 296, 301 (5th Cir. 2022) (en banc), guaranteed "a home government, under the control of the white people of the State," *Senator J.Z. George, He Addresses a Large Audience at His Old Home*, *Clarion-Ledger* (Jackson) 1 (Oct. 24, 1889). To that end, "the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race." *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896). Among the Jim Crow convention's obstructions, as this Court recognized last year, was the voter disenfranchisement provision: "Section 241 was reconfigured in the 1890 Constitution to eliminate voter disenfranchisement for crimes thought to be 'white crimes' and by adding crimes thought to be 'black crimes.'" *Harness*, 47 F.4th at 300. Although the Court also held that the "taint" of racial animus was "cured" by the 1950 amendment that removed burglary from the list of crimes and the 1968 amendment that added rape and murder, *id.* at 300-01, 303, the deleterious effects of the provision remain, as Mississippi disenfranchises Black residents at a rate higher than every state other than Tennessee, *Uggen, Locked-Out 2022, supra*, at 17.

CONCLUSION

This Court should affirm in part and reverse in part the district court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2023, I electronically filed the foregoing amicus brief with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in 5th Circuit Rule 29.3 and Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because the brief contains 4,733 words, excluding exempted parts. This brief complies with the typeface and type style requirements of 5th Circuit Rules 29.2 and 32.1 and Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

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