

NO. 19-60662

IN THE UNITED STATES COURT OF APPEALS

No. 19-60662

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 DEMON 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

Consolidated with No. 19-60678

DENNIS HOPKINS, individually and on behalf of a class of all others similarly situated; HERMAN PARKIER, 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; JOHN 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 Cross-Appellants

V.

SECRETARY OF STATE DELBERT HOSEMANN, in his official capacity,

Defendant-Appellant Cross-Appellee

**CERTIFICATE OF INTERESTED PARTIES
AND CORPORATE DISCLOSURE STATEMENT**

In accordance with Federal Rule of Appellate Procedure 29(a) and 5th Cir. R. 29.2, the undersigned hereby certifies that, in addition to the Certificate of Interested Persons and Corporate Disclosure Statements submitted by Plaintiff-Appellees and Defendant-Appellant, the following persons or entities have an interest in the outcome of this case:

American Probation and Parole Association, *Amicus Curiae*

Kissinger, Ashley, *Attorney for Amicus Curiae*

Petrich, Louis, *Attorney for Amicus Curiae*

Sakai, Joseph, *Attorney for Amicus Curiae*

A. Corporate Disclosure Statement

Pursuant to Fed. R. App. P. 29(4)(A), *Amicus Curiae* states that it is not a corporation, has no separate parent organization, and has no stockholders.

Undersigned counsel of record certifies that the American Probation and Parole Association is the only entity that has an interest in this *amicus* brief, which is filed in support of the Plaintiffs-Appellees. No counsel for any party authored any portion of this brief. No party, and no person other than the American Probation and Parole Association and its counsel, contributed monetarily to the preparation of this *amicus* brief.

These representations are made in order that the judges of this Court may evaluate their possible recusal or disqualification as provided by Fifth Circuit Rules 29.2 and 28.2.1.

SO CERTIFIED, this the 6th day of November, 2019.

/s/ Louis Petrich

Counsel for *amicus curiae*

NO. 19-60662

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DENNIS HOPKINS, individually and on behalf of a class of all others similarly situated,

Plaintiffs-Appellees,

v.

SECRETARY OF STATE DELBERT HOSEMANN, in his official capacity,

Defendant-Appellant.

(Continuation of Caption on Following Page)

On Appeal from the United States District Court for the
Southern District of Mississippi

**MOTION OF THE AMERICAN PROBATION AND PAROLE
ASSOCIATION
FOR LEAVE TO FILE ITS *AMICUS CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF-APPELLEES AND REVERSAL**

Pursuant to 5th Cir. R. 29.1, Fed. R. App. P. 27, and Fed. R. App. P. 29(a)(3), the American Probation and Parole Association, by and through its undersigned counsel, respectfully moves for leave to file the attached *amicus curiae* brief in support of Plaintiff-Appellees and reversal.

This brief and motion for leave to file are timely because they are being submitted “within 7 days after the filing of the principal brief of the party whose position the *amicus* brief will support.” 5th Cir. R. 29.1.

INTEREST OF THE *AMICUS*

The APPA is an international 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 is now based in Lexington, Kentucky. The APPA’s membership in the United States 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 more than five million individuals on probation and parole.

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; publishes a quarterly journal, *Perspectives*, dedicated to issues of concern to the probation and parole community;

at least three other cases in support of restoring voting rights to people with criminal records.

important assistance to the court.” *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 132 (3d Cir. 2002).

“Some friends of the court are entities with particular expertise not possessed by any part to the case Still others explain the impact a potential holding might have on an industry or other group.” *Id.* Amicus briefs are regularly accepted by courts, since a “restrictive policy with respect to granting leave to file may also create the perception of viewpoint discrimination.” *Id.* at 133.

This *amicus* brief explores and analyzes a central legal issue in this case: the impact of Mississippi’s felon disenfranchisement law both on the disenfranchised individuals, as well as the com

already in the principal briefs, and focuses instead on points not adequately or properly addressed in the Plaintiffs-Appellees' brief. 5th Cir. R. 29.2.

CONCLUSION

The American Probation and Parole Association, as movant and as prospective *amicus curiae* respectfully requests leave to file the attached *amicus curiae* brief in support of Plaintiff-Appellees and reversal. The Plaintiff-Appellees have consented to the filing of this brief, as noted in the Certificate of Conference. The Secretary of State, as Defendant-Appellant, has not consented to the timely filing of this brief, as explained in the Certificate of Conference.

CERTIFICATE OF CONFERENCE

Counsel for *amicus curiae*, the American Probation and Parole Association, has conferred with counsel for Plaintiffs-Appellees, and their clients consent to the relief requested in this *amicus* brief.

Counsel for *amicus curiae* has also conferred with counsel for Defendant-Appellant, who indicated that Defendant-Appellant would not consent to the submission of this *amicus* brief.

November 6, 2019

/s/ Louis Petrich

Counsel for *amicus curiae*

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be filed electronically with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on November 6, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

November 6, 2019

/s/ J. Sakai
An employee of BALLARD SPAHR LLP

NO. 19-

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IDENTITY AND INTERESTS OF AMICUS CURIAE

Vj g" Co gtlecp" Rtqdcvkqp" cpf " Rctqrq" Cuuqekc vkqp" *öCRRCö+ " t gur ge vhwnt " submits this brief as amicus curiae in support of Plaintiffs-Appellees. The APPA is an international 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 is now dcugf "kp"Ngz kpi vqp."Mgpwem{ 0""Vj g"CRRCöu" membership in the United States 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 more than five million individuals on probation and parole.

The APPA provides training, education, and technical assistance to its members in support of its mission to promote a fair and effective system of

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The APPA has found that restoring the right to vote to people with criminal records 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 resa

importance of voting rights to the reintegration of

ARGUMENT

I. ARBITRARY DISENFRANCHISEMENT OF PEOPLE WHO HAVE COMMITTED OFFENSES UNDERMINES THEIR SUCCESSFUL REINTEGRATION AND HARMS THEIR COMMUNITIES

A.

motivation. The original list was invented at the same time as other voting restrictions designed to limit minority voter participation, such as literacy tests and

selects which applications may be voted on by the full committee. If the bill passes the committee, it then must pass the entire chamber by a two-thirds vote.⁹ If it survives, the bill proceeds to the second chamber of the legislature. Finally, a bill that obtains committee approval and a two-thirds floor vote in

B.

This has been evident recently in Virginia, where former Governor Terry McAuliffe restored the voting rights of more than 170,000 formerly incarcerated citizens between 2013 and 2018.¹⁶ 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. "I felt like a citizen. I now felt like I will make a difference in my community."¹⁷ 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. "I felt like a citizen. I now felt like I will make a difference in my community."¹⁸

Other states, including New York and Louisiana have achieved similar goals through executive and legislative processes. In April 2018, New York Governor Andrew Cuomo signed an Executive Order restoring voting rights to individuals on parole supervision.¹⁹ In May 2018, Louisiana enacted legislation automatically

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etko kpcn'dgj cxkqt²⁸ 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 people with criminal records experience significantly higher rates of repeat offenses than states that do not.³⁰ Xqvt "f kugphtcpej kugo gpv'ugt xgu"öqpn "vq" further alienate and isolate a group of individuals at a time when they are trying to re-kpvgi tcvg" kpvg" uqekgv{³¹ Kpf ggf ." f kugphtcpej kugo gpv' etgcvgu" c" ör gtr gwcn' crimkpcn'wpf gtercuu"wpcdrg"vq"hwmm{ "tqlqk"uqekgv{ "chvt "vj gkt"ugpvpeg"ku"ugt xgf .ö" which only increases the potential for an increase in criminal activity.³²

II. DISENFRANCHISEMENT IS HISTORICALLY PREMISED ON RESTRICTING THE VOTING RIGHTS OF AFRICAN AMERICANS

Mississippiku'grp "f kugphtcpej kugo gpv'ry is historically rooted in restricting the ability of African Americans to vote.³³ Mississippi initially enacted its felon disenfranchisement law in 1890, only two and a half decades after the conclusion of the Civil War.³⁴ Vj g" O kukuuk r k' ngi kurwtgou" ej qleg" qh" qhgpugu" uwdlgevpki " offenders to lifetime disenfranchisement was based upon offenses that were

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 (Aug. 30, 2011), <https://goo.gl/jGTmcm>.

³¹ Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 La Raza L. J. 407, 413 (2015).

³² *The Ballot as Bulwark*, *supra* note 33, at 21.

³³ Cr r gmggu'Dtgh'cv'7: 0

³⁴ *Id.*

Vj g"ko r cev"qh"O kukuk r kzu"felon disenfranchisement law becomes more startling when one considers that it has remained largely untouched since its enactment in 1890. Aside from minimal changes to the applicable offenses, the application and impact has remained the same, including in its disproportionate ghgev"qp"O kukuk r kzu"Chlecp"Co gtlecp"ekizens. A tool of restricting voting on the basis of race alone is not only still in force, it still has its same racial impact. As of 2016, 15.86% of the African American population of Mississippi has been disenfranchised by the felon disenfranchiseeis(n)-39B912 0 612 792 reW*nM4(c)8(e)8Bseam85

and the provisions of the Act shall remain in force.

III. PROBATION AND PAROLE OFFICERS THOSE CLOSEST TO UNDERSTANDING THE INTERESTS AT STAKE ADVOCATE FOR GRANTING THE FRANCHISE TO OFFENDERS

CONCLUSION

The Court should reverse the decision of the District Court.

Dated: November 6, 2019.

BALLARD SPAHR LLP

/s/ Ashley Kissinger
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Boulder, CO 80301-2369

Attorneys for Amici

CERTIFICATE OF COMPLIANCE

This brief complies with word limitations of Fed. R. App. P. 29(a)(5) and 5th Cir. R. 29.3 because, excluding the parts of the documents exempted by Fed. R. Appl. P. 32, it contains 3,548 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface, including serifs, using Word in Times New Roman 14 font, except for the footnotes, which are in proportionally-spaced typeface, including serifs, using Word in Times New Roman 12-point font.

Dated: November 6, 2019

/s/ Ashley Kissinger
Counsel for *amicus curiae*

STATEMENT OF RELATED CASES

Amicus Curiae is not aware of any related cases pending before the Court.

Dated: November 6, 2019.

/s/ Ashley Kissinger
Counsel for *amicus curiae*

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be filed electronically with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on November 6, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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/s/ J. Sakai

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