

NINETEENTH JUDICIAL DISTRICT COURT FOR THE  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

DOCKET NUMBER:

649507

SECTION

SEC. 22

VOICE OF THE EX-OFFENDER, KENNETH JOHNSON, BRUCE REILLY, DWIGHT  
ANDERSON, RANDY TUCKER, BILL VO, HUY TRAN, CHECO YANCY, ASHANTI  
WITHERSPOON, AND OTHERS SIMILARLY SITUATED

VERSUS

STATE OF LOUISIANA; JOHN BEL EDWARDS, GOVERNOR OF LOUISIANA; AND  
TOM SCHEDLER, SECRETARY OF STATE OF LOUISIANA

DATE FILED: \_\_\_\_\_

DEPUTY CLERK: \_\_\_\_\_

CLASS ACTION PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

**I. INTRODUCTORY STATEMENT**

This is a class action brought on behalf of nearly 70,000 citizens of Louisiana whose voting rights are unconstitutionally denied. These citizens are being wrongfully excluded from registering to vote and voting because they are on probation or parole resulting from a conviction for a felony. The 1974 Louisiana Constitution, Article 1, Section 10, protected the right of all people over 18 to register and to vote, "except that this right may be suspended while a person is under an order of imprisonment for conviction of a felony." In 1974, Louisiana's most respected constitutional scholar and expert on the new 1974 Constitution, LSU Law Professor Lee Hargrave, stated that this denial of the right to vote applied only to people actually in prison or who had escaped. Minutes of the convention which drafted the constitution show a proposal to deny the right to vote to people serving probation for a felony was specifically rejected. However, two years later the Louisiana legislature, through Act 697 of 1976, overhauled the Louisiana Election Code and, in violation of the Louisiana Constitution, unconstitutionally

expanded the Louisiana denial of the right to vote to not only those persons who were imprisoned for felony convictions but also to anyone who was on probation or parole after a felony conviction. This disenfranchisement was codified in Louisiana Revised Statutes Title 18, Section 2, subsection 8, which in concert with Title 18, Section 102 A (1), excludes anyone on probation or parole for a felony conviction from registering to vote or voting. This action seeks declaratory and injunctive relief to strike down the unconstitutional statute which results in the wrongful and unconstitutional disenfranchisement and denial of voting rights of 70,000 people in this state and to restore the constitutional right to vote to these citizens.

## **II. THE PARTIES**

### **A. Plaintiffs**

The Named Plaintiffs in this matter are:

1.

Voice of the Ex-Offender (hereinafter VOTE) is a Louisiana non-profit corporation of and for formerly incarcerated persons, convicted people, and their families, which focuses on voter registration, electoral participation and social change. VOTE is a plaintiff with both first party and associational standing on behalf of its members. VOTE began in 1987 as the Angola Special Civics Project, a group at the Louisiana State Penitentiary at Angola run by a prisoners who had become paralegals. When they discovered that detainees who are not on probation, parole or serving time on a felony conviction could vote, they began to lobby their legislators and encourage their family and friends to vote. In 2003, several members were released, and took their efforts further, creating VOTE, an organization originally focused on voter registration for pre-trial detainees and those convicted of misdemeanors in the state of Louisiana. Since 2003, VOTE has expanded its work to educating formerly incarcerated people about their rights and registering them to vote. VOTE has successfully registered thousands of voters, educated the public about the collateral consequences that inhibit successful reentry, created a model reentry program (The First 72+), partnered with Tulane Medical School to provide medical care for people leaving prison (FIT Clinic), and won several policy victories, such as parole reform, Ban the Box, and a new public housing policy. In 2004, VOTE hosted the only conference on felony disenfranchisement in the history of the state. VOTE members and staff encourage civic engagement by people directly impacted by the criminal justice system. VOTE's staff is 60% formerly incarcerated, with one member still on probation and a named plaintiff within this litigation. Among the board members: two are formerly incarcerated, and two others have immediate family members who were incarcerated. VOTE's mission is frustrated by the prevalence of members, and potential members, who are denied the right to vote in Louisiana. Multiple active VOTE members are denied the right to vote due to probation or parole status,

along with thousands of other potential members who fit the target demographic of the association.

2.

All individual plaintiffs in this matter are residents of and domiciled in Louisiana.

3.

Kenneth Johnston is a 67-year-old African American man who resides in New Orleans and who served his country in the army for three years, including eighteen months in Vietnam. He attended the University of New Orleans from 1967-1968. He transitioned from a full-time student to part-time student to earn money for his family as a server at several prominent restaurants in New Orleans. Two months after he became a part-time student he was drafted at the age of eighteen and two months. Like many Vietnam veterans he returned from Vietnam with Post-Traumatic Stress Disorder (PTSD) and a heroin addiction. There were little to no services available to Vietnam veterans and the culture of the country was not receptive to their return home. Following a robbery and gunfight with a fellow Vietnam veteran, also addicted to heroin and suffering from PTSD, he was convicted of felony murder in 1972. Mr. Johnston spent twenty-two years in prison and has been home for twenty-three years. He is currently serving parole for life. While he was incarcerated he founded Veterans Incarcerated. After his release, he started his own paralegal services because there were no other options available for employment. He works for several attorneys in New Orleans and uses his skills as a paralegal to benefit others working on behalf of inmates who need assistance with appeals. He is successful in his career and pays taxes. He is raising two sons, ages fourteen and nineteen, on his own. He also has a daughter and son who live out of state. All of his children are successful. Despite his service to his country, his successful transition back to the community, his contribution to the federal and state governments by paying his taxes, he will never have the opportunity to vote and participate in the democratic process before he dies.

4.

Bruce Reilly is a forty-two-year-old Caucasian man who is the Deputy Director of Voice of the Ex Offender. He works with, and on behalf of, formerly incarcerated people regarding civic engagement and multiple policy initiatives that impact re-entry, including, but not limited to: housing, health care, education and employment. He also works to change sentencing practices. Bruce educates practitioners around the country regarding challenges faced by convicted people and policy proposals that either reduce the challenges or help people overcome them. He educates federal, state and local leadership, regardless of affiliation or status. Bruce

was convicted of crimes committed in 1992 in Rhode Island and was disenfranchised under the laws of Rhode Island at the time. In 2005 he entered the community on parole and still did not have the right to vote. In 2006, the Rhode Island constitution was amended by popular ballot, and Bruce's voting rights were restored. In 2010 he completed parole and began a twenty-five-year probation term based on his original sentence. In 2011 Bruce moved to New Orleans to attend law school at Tulane University, creating a new domicile and transferring his probation. Being subject to the laws of Louisiana, Bruce lost his right to vote. He successfully earned his juris doctorate in law in 2014. Bruce publishes articles on a regular basis and has received numerous awards because of his work. He is also the proud father of a seven-year-old daughter. Despite Bruce's professional success, his service to the community, national recognition for his work, education and that he pays state and federal taxes, he cannot vote in Louisiana until 2035. His disenfranchisement is simply a result of moving from Rhode Island to Louisiana to pursue a law degree.

5.

Dwight Anderson is a 40-year-old African American man who lives in New Orleans. His job is to do outreach for CeaseFire New Orleans, which aims to reduce shootings and killing in New Orleans. He has been working for CeaseFire for three years. He gives back to the community through his work and volunteers on his own to resolve conflicts, assist high-risk youth to change thinking and behaviors, and mobilizes the community to promote new behaviors around conflict resolution. He works with young people to get them the tools they need to take the initiative to become successful, get jobs, and appreciate the full support of a person who has been through what they experience on a daily basis. Mr. Anderson sees himself in the youth he encounters on a daily basis. He grew up in New Orleans and has lost forty friends and family members due to violence over the years. He was an excellent student, graduating in the top ten of his class. He received a partial scholarship to attend Southern University. After a short period at Southern he was torn between continuing his education and going to work to raise his two sons. Though he worked tirelessly at jobs to send his sons to the best schools and provide them with everything they needed, he eventually became involved in dealing drugs. He spent five months in jail for felony drug convictions and was sentenced to probation for ten years. Mr. Anderson is now a solid and exemplary member of our community, helping to reduce the culture of violence in New Orleans. He pays state and federal taxes. Despite all of this, he remains on probation and will not be able to vote until 2017.

6.

Randy Tucker is a 57 year old African American man who has worked as a paralegal with his own business, Tucker Legal Services, since 2006. As a result of a felony conviction he spent twenty-five years in prison until he was released by the Parole Board in 2003. He is on parole until 2065. Upon his release from prison, he struggled to find a job or housing. He was



ultimately hired by a lawyer, and the lawyer's mother rented him an apartment for very little money until he could stand on his own. His work was exemplary and as a result he received referrals from other attorneys. When Mr. Tucker was released by the parole board in 2003 he was ordered to remain on probation until 2065. Although he is on parole, he does not need to meet with a parole officer. He serves as a Deacon at Israel Baptist Church and assists the church's operational functions, coordinates youth programs, works with the Executive Board and uses his skills as a paralegal to ensure the church is compliant with its 501(c)(3) status. He is a devoted father to his daughter, son, and two step-children. He has three grandchildren. He works incredibly hard, is an exemplary member of our community, takes care of his family, serves his church and pays state and federal taxes. Despite his successful transition back into the community, because he is on probation until 2065, he will likely never have the right to vote during his life time.

7.

Bill Vo is a thirty-one-year old Vietnamese American who works in construction and on alternative pharmaceutical pain relief in New Orleans. His partner in this endeavor is a pharmacist. He is a talented music producer and volunteers for VAYLA, a non-profit organization that is a multi-racial community-based organization in New Orleans that empowers youth and families through supportive services and organizing for cultural enrichment and positive social change. Mr. Vo sets up events, marketing, fund raising and mentors young people. He was convicted of felony possession with intent to distribute and is on inactive probation for another two years. Despite the fact that Mr. Vo is gainfully employed, serves his community and pays federal and state taxes he will not be able to vote until 2018.

8.

Huy Tran is a thirty-one year old Vietnamese American man who lives in New Orleans and is a student at the University of New Orleans. He is dedicated to his studies in Information Technology to better himself and contribute to his community upon graduation. He spent six months in federal prison for a felony conviction of possession of crack cocaine and conspiracy to distribute drugs. Following his term, he spent time in a halfway house for six months and is now on probation. Mr. Tran began his education while he was incarcerated obtaining a GED and went to college through correspondence classes. Upon graduation he wants to start his own software company. Despite his successful transition back into the community, paying state and federal taxes, his dedication to his studies, future endeavors and his desire to give back to the community he will not be able to vote until October 2017.

9.

Checo Yancy is an African American man who lives in Baton Rouge. He currently serves as the state president of Louisiana Citizens United for the Rehabilitation of Errants

(CURE), a national organization whose mission is to help reduce crime through criminal justice reform. For the last six years he has worked as a mentor assisting inmates with the re-integration of persons back into society after incarceration with the Capital Area Reentry Coalition (CAPARC). Mr. Yancy served twenty years at Angola for a felony conviction and has been out on parole for twelve years. He will be on parole until 2029. While in prison his conduct record was so exemplary he received no disciplinary reports at all. He was a Hospice volunteer, was active in religious activities, took numerous academic courses and graduated from Northwest Missouri Community College in computer technology. Upon his release he worked as an administrative assistant for Personal Care Services before he retired. He is now an active member of the Grace and Compassion Church in Baton Rouge, a member of the Kairos Angola Advisory Board and an active volunteer with Promise Keepers - Men of Integrity. He pays both state and federal taxes. Despite Mr. Yancy's successful transition back into the community, his good work and civic participation and his desire to give back to the community he is not able to vote in Louisiana.

10.

Ashanti Witherspoon is a 66 year old African American man who lives in Baker, Louisiana. He is a pastor and has earned a Doctorate in Theology. He is involved with the Baton Rouge Violence Elimination Program (BRAVE) and speaks before schools, universities, churches, government and community organizations. He was convicted of a felony in the early 1970s, was imprisoned for 25 years until he was released on parole in 1999. He remains on parole. While in prison he participated in numerous educational activities. He was so accomplished and trusted that, while still in prison, he was allowed to travel across the state to speak in schools, community centers and conferences to promote alternatives to crime. In 2014, he was among a group of formerly incarcerated people who met with President Obama's staff concerning long term incarceration, police community relations and voting rights for formerly incarcerated people. He has appeared in five documentaries. Despite Pastor Witherspoon's successful transition back into the community, paying state and federal taxes, his good work and civic participation, he is not able to vote in Louisiana.

**B. Plaintiffs Class Action Allegations**

11.

Plaintiffs bring this challenge as a class action for themselves and for all others similarly situated who seek to vote in Louisiana, pursuant to Article 591 of the Louisiana Code of Civil Procedure.

12.

This class is defined as those people who have been convicted of felonies, who are not in prison, and who are prohibited from registering to vote and voting because they are on probation or parole as a result of their conviction.

13.

The class is so numerous that joinder of all members is impracticable. The latest numbers from the U.S. Department of Justice, Bureau of Justice Statistics reports that approximately 69,300 people in Louisiana are on probation or parole in Louisiana, with 41,761 on probation and 27,615 on parole.<sup>1</sup>

14.

The members of this class are all wrongfully disenfranchised by the same unconstitutional laws and share common questions of law and fact as well as common claims and defenses which are appropriate for proceeding as a class action.

15.

The plaintiffs are excellent representatives of the class having participated in efforts to improve the opportunities for the class for years. Attorneys for the class have been counsel in numerous class actions in state and federal courts both in voting rights cases such as this one as well as other cases involving constitutional rights.

### **C. Defendants**

Defendants in this matter are:

16.

The State of Louisiana.

17.

The Governor of Louisiana, John Bel Edwards. The Governor is the Chief Executive officer of the State and is charged with following the constitution and laws of Louisiana and the United States under Article 4, Section 5 of the Louisiana Constitution.

18.

The Secretary of State of Louisiana, Tom Schedler. The Louisiana Secretary of State is the chief elections officer for the State of Louisiana under Article 4, Section 7 of the Louisiana Constitution.

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<sup>1</sup> <http://www.bjs.gov/content/pub/pdf/ppus14.pdf>

### III. LAW AND ARGUMENT

#### A. The 1974 Louisiana Constitution

19.

The first Article of the 1974 Louisiana Constitution enacted a Declaration of Rights. Section 10 addressed the right to vote. Section 10 (A) states: “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.”

20.

The Coordinator of legal research for the Constitutional Convention of 1973 that produced the declaration of rights, Professor Lee Hargrave of LSU Law School, wrote a powerfully influential law review article on this section of the Constitution, titled “The Declaration of Rights of the Louisiana Constitution of 1974, 35 Louisiana Law Review 1 (1974). Professor Hargrave’s article has been cited as an authority seven times by the Louisiana Supreme Court and another seven times by Louisiana Courts of Appeal.

21.

Professor Hargrave pointed out that Article 1, Section 10’s suspension of the right to vote for those convicted of a felony only applies while they are “under an order of imprisonment.” Hargrave explains what this means on pages 34-35:

“The word choice, “under an order of imprisonment,” may seem unusual; “imprisoned” would be simpler and more direct. The reason for the choice was to overcome an objection that an escapee would not be “imprisoned” and thus not within the exception. That choice of words does not prevent a person on probation or parole from voting since such a person is not under an order of imprisonment. The language contrasts with Section 20’s deliberate use of “termination of state and federal supervision following conviction for any offense,” where it was intended that completion of probation or parole requirements be met before full rights of citizenship are restored. Though the general expression used in Section 20, “full rights of citizenship,” normally encompasses voting rights, the more specific provision in this article providing for return of the right to vote when one is no longer under an order of imprisonment will prevail. In fact, under this section, the right to vote is never taken away. It is simply suspended while certain conditions are met. When those conditions no longer exist, the suspension automatically ends. There is no need for any kind of pardon or other formality before an offender regains his right to register and vote. The same applies to incompetents; once one is no longer under interdiction or no longer under a judicial declaration of mental incompetence, the right to vote returns with no formality required.”



22.

As Professor Hargrave wrote, “That choice of words does not prevent a person on probation or parole from voting since such a person is not under an order of imprisonment.” At 34.

23.

Further, notes from the constitutional convention indicate that on May 19, 1973, a proposed amendment which would have added the words “or is serving a probation sentence” after the word imprisonment was rejected.

24.

Thus, people in Louisiana not in prison for conviction of a felony or not escapees from prison are guaranteed the right to register and vote under the 1974 Louisiana Constitution.

**B. Act 697 Of The 1976 Louisiana Legislature**

25.

Despite the Louisiana constitutional right to vote guaranteed by Article 1, Section 10, the 1976 Louisiana Legislature enacted Act 697 which overhauled the election code of Louisiana in a way that denied the right to register and vote to all those who were convicted of a felony and who were not in prison but were on probation or parole.

26.

Act 697 of 1976 enacted Title 18, the Louisiana Election Code and in Section 2, Definitions, subsection 2, changed the definition of who could register and vote to: "Under an order of imprisonment" means a sentence of confinement, whether or not suspended, with or without supervision, and whether or not the subject of the order has been paroled." Page 1784 of Acts of Louisiana 1976.

27.

This Act of the Legislature is an unconstitutional violations of plaintiffs’ right to vote guaranteed by the 1974 Louisiana Constitution Article 1, Section 10, and resulted in illegal disenfranchisement of thousands of Louisiana citizens.

**C. Louisiana Revised Statutes**

28.

Act 697 of 1976 was codified as Louisiana Revised Statutes, Title 18, Section 2, subsection 8, which, in concert with Title 18, Section 102 A (1), excluded anyone on probation or parole for a felony conviction from registering to vote or voting.

29.

These statutes are unconstitutional violations of plaintiffs' right to vote guaranteed by the 1974 Louisiana Constitution Article 1, Section 10, and resulted in illegal disenfranchisement of thousands of Louisiana citizens.

**D. Impact On Plaintiffs**

30.

As a result of Act 697 of 1976 and Louisiana Revised Statutes, Title 18, Section 2, subsection 8, in concert with Title 18, Section 102 A (1), plaintiffs' right to vote under Article 1, Section 10 of the 1974 Louisiana Constitution have been and are being violated.

31.

Plaintiffs, and the rest of the class they represent, are being illegally prohibited from registering to vote and voting due to the illegal actions of defendants enforcing unconstitutional laws.

**E. Unconstitutionality Of Laws On Their Face And As Applied**

32.

"The right of qualified citizens of Louisiana to vote and to have their votes counted, inherent in our republican form of government and the democratic process, is a fundamental and constitutionally protected right," according to the Louisiana Supreme Court in *Adkins v Huckaby*, 755 So.2d 206, 210 (La. 2000).

33.

Laws which attempt to restrict fundamental rights like the right to vote must be strictly construed in favor of supporting the right to vote.

34.

The laws at issue in this matter are unconstitutional on their face and as applied.

**IV. RELIEF REQUESTED**

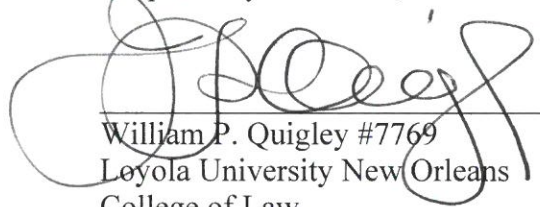
**WHEREFORE**, Plaintiffs pray that after due proceedings are had in this case, that there be judgment in their favor and against the defendants as follows:

1. One. Declaring Act 697 of the 1976 Louisiana Legislature unconstitutional in so far as it impermissibly restricts and or impinges on the right to vote by illegally expanding the definition of who is denied the right to vote in Louisiana in violation of the Louisiana Constitution of 1974, Article 1, Section 10;

2. Declare LSA RS 18: 2 (8), in concert with LSA RS 18:102 A (1), unconstitutional in so far as it impermissibly expands the definition of who is denied the right to vote in Louisiana in violation of the rights of plaintiffs under the Louisiana Constitution of 1974, Article 1, Section 10;
3. Certify this matter as a class action;
4. Issue a preliminary injunction, restraining, enjoining and prohibiting Defendants, their officers, agents, employees and counsel, and those persons in active concert with them from denying anyone on probation or parole after conviction of a felony from registering to vote and voting in Louisiana;
5. In due course, issue a permanent injunction in the form of the preliminary injunction prayed for herein;
6. Award plaintiffs reasonable attorney fees and all costs of these proceedings;
7. Award plaintiffs all other general and equitable relief that may be appropriate under the circumstances.

July 1, 2016

Respectfully submitted,



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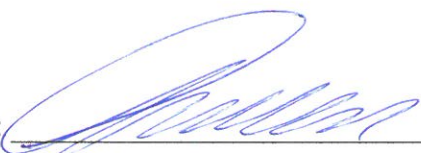


VERIFICATION OF PETITION

STATE OF LOUISIANA PARISH OF ORLEANS

Before me personally came and appeared the undersigned who swore the facts in this petition are true and correct to the best of his knowledge.

Date: JUNE 30, 2016 Affiant: WILLIAM P. QUIGLEY  
Sworn to and subscribed before me this 30 day of June, 2016.

Notary: 

ANNA LELLELID-DOUFFET  
NOTARY PUBLIC  
ID # 136889  
PARISH OF ST. TAMMANY, LA