

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DOCKET NO. C649587

SECTION 22

VOICE OF THE EX-OFFENDER, ET AL.

VERSUS

STATE OF LOUISIANA, ET AL.

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


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**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW INTO COURT, through undersigned counsel, come Voice of the Ex-Offender, Kenneth Johnson, Bruce Reilly, Dwight Anderson, Randy Tucker, Bill Vo, Huy Tran, Checo Yancy, Ashanti Witherspoon, and all others similarly situated ("Plaintiffs") who have been or who are currently being unconstitutionally disenfranchised by the Secretary of State's acts and/or omissions. Plaintiffs respectfully move for summary judgment as a matter of law against Tom Schedler in his official capacity as Secretary of State for Louisiana for the reasons set forth in the supporting memorandum of law.

WHEREFORE, Plaintiffs pray that this Court grant their Motion for Summary Judgment.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing *Motion for Summary Judgment* and *Memorandum In Support* filed by the Plaintiffs has been served upon counsel of record via US Mail and electronic mail this 17th the day of January, 2017.

  
\_\_\_\_\_  
Anna Lellelid

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**ORDER**

Considering the foregoing *Motion for Summary Judgment*, it is ordered that Tom Schedler, in his official capacity as the Secretary of State for Louisiana, appear and show cause on \_\_\_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_\_\_, am/pm why this Court should not grant summary judgment in favor of Plaintiffs.

Order signed in Baton Rouge, Louisiana on \_\_\_\_\_.

\_\_\_\_\_  
Judge Timothy Kelley  
19th JDC, East Baton Rouge

**Please serve:**

Tom Schedler through counsel of record:  
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Legal Division  
Louisiana Secretary of State  
8585 Archives Ave.  
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**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

NOW INTO COURT, through undersigned counsel, come Voice of the Ex-Offender and the other named plaintiffs whom the State has unconstitutionally disenfranchised by denying them the fundamental right to vote. Plaintiffs submit this Memorandum in Support of their Motion for Summary Judgment. No genuine issue of material fact exists because: 1) the right to vote is fundamental and so La. R.S. 18:2(8) and La. R.S. 18:102(A) are not entitled to a presumption of constitutionality; 2.) the language of Article I, § 10 of the 1974 Louisiana Constitution unambiguously states that voting rights may be suspended while a person is *imprisoned*, but not while that person is on probation or parole; and 3) the framers and the people of Louisiana did not intend to disenfranchise parolees and probationers when they drafted, adopted, and ratified Article I, § 10. As such, Plaintiffs request that this court grant their motion for summary judgment against Secretary of State Tom Schedler.

**I. BACKGROUND**

After laboring under an unconstitutional system that deprived them of the right to vote, Plaintiffs filed a petition on behalf of themselves and 71,000 others similarly situated asking this Court to declare that two provisions of the Louisiana Election Code unconstitutionally violate the Louisiana Constitution. The Louisiana Constitution guarantees the right to vote to all registered persons over eighteen unless a person is “under an order of imprisonment for the conviction of a felony.” La. Const. art. I, § 10. However, the Louisiana Legislature unconstitutionally expanded this exception to include persons on probation or parole. La. R.S. 18:2(8), 102(A)(1).

On behalf of more than 70,000 Louisiana citizens denied their constitutional right to vote, Plaintiffs filed a Petition for Injunctive and Declaratory Relief on July 1, 2016 against the State of Louisiana, the Governor, and the Secretary of State to prevent them from enforcing these unconstitutional statutes.

On October 31, 2016, a hearing was held on Plaintiffs' Motion to Certify Class and Defendants' dilatory exceptions of no cause of action. The Court denied Plaintiffs' class certification motion, and granted the dilatory exceptions filed by the State of Louisiana and the Governor. The Secretary of State was left as the sole Defendant. Plaintiff's timely filed a Motion for Certification, which was denied by the Court on November 15, 2016.

The Secretary of State filed a motion for summary judgment on September 29, 2016 ("Secretary's Motion for Summary Judgment"). This matter has been set for hearing on February 6, 2017. In turn, Plaintiffs submit this memorandum in support of their own motion for summary judgment.

## **II. LIST OF UNCONTESTED MATERIAL FACTS**

1. The full text of Article I, Section 10(A) of the Louisiana Constitution, as approved by the voters of Louisiana reads: "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."
2. The Louisiana constitution does not define "order of imprisonment."
3. On May 19, 1973, during the Constitutional Convention, the Committee on the Bill of Rights and Elections ("CBRE") considered several variations of Article I, Section 10(A). All versions stated that the right to vote "may be suspended" while a person is "under an order of imprisonment for conviction of a felony." However, the Committee specifically rejected by a 3-5 vote CBRE Tentative Proposal No. 109, which read: "After the word 'imprisonment', add the words 'or is serving a probation sentence.'" The minutes indicate that the purpose of this defeated proposal was "to keep parolees from voting." *State Of Louisiana Constitutional Convention of 1973 Committee Documents* May 19, 1973, 62-63.<sup>1</sup>

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<sup>1</sup> La. Evid. Code Ann. 902(5) does not require authentication of official public documents.

4. As noted by the Secretary of State, one member of the Constitutional Convention, Delegate Chris Roy, made one statement of his own understanding of what this provision of the proposed Constitution meant. Exhibit A to the *Answer of Defendant Tom Schedler* 1203–04.

5. Professor and renowned legal scholar Lee Hargrave, who the Louisiana Supreme Court called one of the “leading figures of the constitutional convention,” served as the Convention’s Coordinator of Legal Research and directed research for the committee on the Bill of Rights and Elections. *State v. Sepulvado*, 367 So. 2d 762, 765 (La. 1979). Professor Hargrave stated explicitly that the Convention did not intend to disenfranchise probationers and parolees when they used the term “under an order of imprisonment.” According to Professor Hargrave, the phrase “under an order of imprisonment” was used rather than the more simple word “imprisoned” to overcome an objection that an escapee, who by definition is not imprisoned, would be eligible to vote. He further explained, “[t]hat 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.” Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 34 La. L. Rev. 1, 34 (1974).

6. Professor Hargrave’s entire discussion of the meaning of “under order of imprisonment” is: “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.” *Id.*

7. In 1976, the legislature enacted the Louisiana Election Code and defined “under an order of imprisonment” to include parolees and individuals with suspended sentences. Act of Aug. 5,

1976, No. 697, § 2(2), 1976 La. Acts 1779, 1780 (codified as amended at La. R.S. 18:2(8)) (“‘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.”)

8. In 1977, the legislature expanded that definition to include probationers. Act of July 15, 1977, No. 544, § 2(2), 1977 La. Acts 1473, 1474 (codified at La. R.S. 18:2(8)). (“‘Under an order of imprisonment’ means a sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled.”)

9. Because of these two statutes, persons in Louisiana who were convicted of felonies who are not in prison are not allowed to register to vote if they are on probation or parole.

10. Individual plaintiffs in this litigation have been convicted of felonies but are not in prison. *Affidavits of plaintiffs attached to the Plaintiffs Motion to Reconsider Class Certification.*

11. Individual plaintiffs in this litigation are on probation or parole. *Affidavits of plaintiffs attached to the Plaintiffs Motion to Reconsider Class Certification.*

12. Individual plaintiffs in this litigation are not permitted to register to vote in Louisiana by the Secretary of State even though they are not in prison. *Affidavits of plaintiffs attached to the Plaintiffs Motion to Reconsider Class Certification.*

13. The Louisiana Department of Corrections reported on September 30, 2016 that there were 39,856 people on probation and 30,900 people on parole in Louisiana. *Fact Sheet*, La. Dep’t Pub. Safety & Corrections (Sept. 30, 2016), <http://www.doc.la.gov/media/1/Briefing%20Book/Oct%2016/p.and.p.demos.oct.16.pdf>.<sup>2</sup>

14. The organizational plaintiff, Voice of the Ex-Offender, includes and advocates for and with many people across the state of Louisiana who are not in prison but who are not allowed to register to vote because they were convicted of felonies and are on probation or parole. *Affidavit of Norris Henderson* attached to this Motion as Plaintiff’s Exhibit One.

### **III. LIST OF ESSENTIAL LEGAL ELEMENTS**

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<sup>2</sup> See La. Evid. Code. Ann. 902(5), *supra*, (official public documents are self-authenticating).

1. It is well settled that statutes are presumed constitutional unless fundamental rights, privileges and immunities are involved. *World Trade Ctr. Taxing Dist. v. All Taxpayers, Prop. Owners*, 2005-0374, p. 11 (La. 6/29/05); 908 So. 2d 623, 632.
2. The Louisiana Supreme Court has held that the right to vote is a fundamental right. *Adkins v. Huckabay*, 1999-3605, p. 7 (La. 2/25/00); 755 So. 2d 206, 211 (“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.”).
3. “[T]he constitution is the supreme law of this state, to which all legislative acts must yield.” *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 2007-2371, p. 22 (La. 7/1/08); 998 So. 2d 16, 32 (citing *World Trade Center Taxing Dist.*, 2005-0374, p.11; 908 So. 2d at 632; *Caddo-Shreveport Sales & Use Tax Comm’n v. Office of Motor Vehicles*, 97-2233, p. 8 (La. 4/14/98); 710 So. 2d 776, 780).
4. “When a statute conflicts with a constitutional provision, the statute must fall.” *M. J. Farms, Ltd.*, 2007-2371 at p. 22 (citing *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780).
5. “Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.” *Ocean Energy, Inc. v. Plaquemines Par. Gov’t*, 04-0066, p. 7 (La. 7/6/04); 880 So. 2d 1, 7 (citing *Cajun Elec. Power Coop., Inc. v. La. Pub. Serv. Comm’n*, 544 So. 2d 362, 363 (La. 1989)).
6. “In order to ascertain the ordinary, usual, and commonly understood meaning of a word not otherwise defined in a constitution, courts generally look first to the dictionary definition.” *Ocean Energy, Inc.*, 04-0066, at p. 7 (quoting *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780).
7. If constitutional language is subject to more than one reasonable interpretation, it is necessary to determine the intent of the provision. *Id.* (citing *E. Baton Rouge Par. Sch. Bd. v. Foster*, 02-2799, pp. 15–16 (La. 6/6/03); 851 So. 2d 985, 996) “When construing an ambiguous constitutional provision, a court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls.” *Id.* (citing *E. Baton Rouge Par. Sch. Bd.*, 02-2799, p. 16; 851 So. 2d at 996). The function of the court in construing constitutional provisions



is to ascertain and give effect to the intent of the people who adopted it. *Id.* It is the understanding that can reasonably be ascribed to the voting population as a whole that controls. *Id.*

#### IV. LAW AND ARGUMENT

##### A. Summary of Argument

Because the statutes challenged in this matter infringe on the fundamental right to vote, they are not entitled to a presumption of constitutionality. “It is well settled that statutes are presumed constitutional unless fundamental rights, privileges and immunities are involved.” *World Trade Center Taxing Dist.*, 2005-0374, p.11; 908 So. 2d at 632. The Louisiana Supreme Court has held that the right to vote is a fundamental right. *Adkins*, 1999-3605, p. 7; 755 So. 2d at 211(“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.”).

Because “under order of imprisonment” is not defined in the Constitution, this Court must determine the usual meaning of the words in accordance with their dictionary definitions. The generally understood meaning of the words “under order of imprisonment” is that a person is ordered into prison. Legal and general dictionaries clearly indicate that “under order of imprisonment” means sent to prison. Therefore, this Court must give these words in the Constitution that meaning and apply the denial of the right to vote only to those currently in prison. “Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.” *Ocean Energy*, 04-0066, p. 7; 880 So. 2d at 7 (citing *Cajun Elec. Power Coop.*, 544 So. 2d at 363). “In order to ascertain the ordinary, usual, and commonly understood meaning of a word not otherwise defined in a constitution, courts generally look first to the dictionary definition.” *Id.* (quoting *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780).

In the alternative, and only if this Court finds that the words “under order of imprisonment” have more than one reasonable interpretation should this Court determine the intent behind the words. If it does so, this Court must discern the intent of both the provision’s framers and of the voters. The record indicates one item of support for the interpretation being pushed by the Secretary of State and two items of support for the interpretation advocated by

plaintiffs. This returns the inquiry to determining the voters' intent, because their intent prevails over that of the framers if the intents conflict. "When construing an ambiguous constitutional provision, a court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls." *Ocean Energy*, 04-0066 at p. 7 (citing *E. Baton Rouge Par. Sch. Bd.*, 02-2799, p. 16; 851 So. 2d at 996). Because the voters could not have known the framers' positions were in conflict, the voters' intent must have been based on the usual, dictionary definitions of the words themselves..

Because the Louisiana constitution does not deny the right to vote to people convicted of a felony who are not in prison but are on parole or probation while the later enacted statutes do, the statutes are unconstitutional and must fall. "When a statute conflicts with a constitutional provision, the statute must fall." *M.J. Farms*, 2007-2371, p. 22; 998 So. 2d at 32 (citing *Caddo-Shreveport Tax Comm'n*, 97-2233, p. 8; 710 So. 2d at 780).

#### **B. Standard for Summary Judgment**

"[S]ummary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). If the request of summary judgment requires only statutory interpretation, then "there are no material issues of fact in dispute and the sole issue . . . is a question of law . . . ." *Milbert v. Answering Bureau, Inc.*, 2013-0022, p. 8 (La. 6/28/13); 120 So. 3d 678, 684 (citing *Vizzi v. Lafayette City-Par. Consol. Gov't*, 2011-2648, p. 2 (La.7/2/12); 93 So.3d 1260, 1262).

Because this case turns solely on whether La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) impermissibly and unconstitutionally expand the definition of "under an order of imprisonment" found in La. Const. Art. I, § 10, there is no dispute over material fact. *See id.* The legal question that remains is properly presented for judgment as a matter of law.

Because the Election Code violates the plain, unambiguous meaning of the phrase chosen by the framers as well as the intent of the voters who ratified the 1974 Constitution, Plaintiffs are entitled to judgment as a matter of law.

#### **C. These Statutes Infringe On Fundamental Right to Vote and Thus Not Entitled to Presumption of Constitutionality.**

Statutes are presumed constitutional “unless fundamental rights, privileges and immunities are involved.” *World Trade Ctr. Taxing Dist.*, 2005-0374, p. 11; 908 So. 2d at 632. Because the Supreme Court of Louisiana has consistently identified the right to vote as fundamental, La. R.S. 18:2(8) and La. R.S. 18:102(A) are not entitled to a presumption of constitutionality. *See Adkins*, 1999-3605, p. 7; 755 So. 2d at 211 (per Knoll, J., with two justices joining, one justice concurring, and one justice concurring and assigning reasons).

The Election Code’s overly expansive definition of “under an order of imprisonment,” now codified as La. R.S. 18:2(8) and La. R.S. 102(A)(1), violates the Louisiana Constitution because it conflicts with the plain language of the constitution, the intent of the framers who drafted it, and the understanding of the voters who ratified it.

The Louisiana Supreme Court has repeatedly championed Louisiana citizens’ right to vote: “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.” *Id.* “The fundamental right of a citizen [to vote] is paramount to our democratic process and attempts to circumvent that process must be curtailed.” *Denham Springs Econ. Dev. Dist. v. All Taxpayers, Prop. Owners*, 2004-1674, p. 14 (La. 2/4/05); 894 So. 2d 325, 335. The Legislature’s enactment of La. R.S. 18:2(8) and La. R.S. 102(A)(1) unconstitutionally restrict plaintiffs’ fundamental rights and must be curtailed by this Court.

But for the legislative misinterpretation of the plain meaning of “imprisonment,” plaintiffs would be able to exercise their fundamental right to vote. Without civic engagement, plaintiffs truly cannot be considered “returning citizens” to the community or indeed citizens of Louisiana at all.

In addition to the Louisiana Supreme Court, the Second Circuit has recognized that the right to vote is “fundamental.” *Fox v. Municipal Democratic Executive Comm.*, 328 So. 2d 171, 174 (La. App. 2 Cir. 1976). The *Fox* Court held that “[u]nless this right is specifically suspended by legislative or other constitutional means . . . , it is not automatically forfeited because a citizen is convicted of a felony.” *Id.* Because the legislature had passed no statute implementing the exception found in La. Const. art. I, § 10, the felon at issue had not lost his right to vote. *Id.*

It is without dispute that the Convention did not intend to deny or deprive individuals like Plaintiff of the right to vote. The restriction on the right of franchise pertained to those “under an

order of imprisonment for conviction of a felony. Because the intention of the Convention was not to disenfranchise probationers and parolees and because the statute does more than implement that intention but in fact goes far beyond it, the portions that go beyond it are not protected by the logic of *Fox*. Hence, *Fox* does not stand for the proposition that the Constitution allows the legislature to disenfranchise probationers and parolees.

Professor Hargrave supports this interpretation in yet another law review article.

[T]he decision reaches the correct result, for under Section 10, the legislative grant allows suspension of the right only during the time a person is “under an order of imprisonment for conviction of a felony.” The defendant in *Fox* was not under an order of imprisonment, as required under Section 10, for his sentence of imprisonment in the parish jail was suspended. Though the 1976 legislature has acted to provide for suspension of the right to vote while a person “is under an order of imprisonment for conviction of a felony,” the result in the instant case would remain the same, for the defendant was not imprisoned and would thus still have the right to vote.<sup>3</sup>

#### **D. The Generally Accepted Understanding of “Under Order of Imprisonment” Does Not Include People Out of Prison on Probation or Parole.**

The interpretation of constitutional provisions begins with the language of the constitution itself. “Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.” *Ocean Energy*, 04-0066, p. 7; 880 So. 2d at 7 (citing *Cajun Elec. Power Coop.*, 544 So. 2d at 363). The plain and unambiguous language of Article I, § 10 of the Louisiana Constitution does not preclude probationers or parolees from voting.

The generally understood meaning of the words “under order of imprisonment” is that a person is ordered into prison. Therefore, this Court must give effect to these words in the Constitution and apply the Constitution’s suspension of the right to vote only for people in prison.

Because “under order of imprisonment” is not defined in the Constitution, the Louisiana Supreme Court directs this Court to determine the usual meaning of the words in accordance with their dictionary definitions. *Ocean Energy*, 04-0066, p. 7; 880 So. 2d at 7. “In order to ascertain the ordinary, usual, and commonly understood meaning of a word not otherwise defined in a constitution, courts generally look first to the dictionary definition.” *Id.* (quoting *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780 (citing 16 Am. Jur. 2d

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<sup>3</sup> Lee Hargrave, *Public Law: Louisiana Constitutional Law*, 37 LA. L. REV. 480, 491 (1977).

*Constitutional Law* § 71 (1998))).<sup>4</sup> If this meaning is clear and unambiguous, and application of that meaning does not lead to “absurd consequences,” the constitutional provision containing the undefined term “must be interpreted as written without further interpretation in search of its intent.” *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780.

The plain, unambiguous meaning of “an order of imprisonment” is confinement in prison as a result of a judicial decision. An order is a “command, direction, or instruction” or a “mandate.” *Order*, *Black’s Law Dictionary* (10th ed. 2014). More specifically, an order is a “written direction or command delivered by a government official, esp[ecially] a court or judge.” *Id.* The term “imprisonment” is equivalent to “incarceration.” *Imprisonment*, *Black’s Law Dictionary* (10th ed. 2014) (stating that imprisonment is “also termed *incarceration*”). Imprisonment is thus “the act of confining a person, esp[ecially] in a prison.” *Id.* (“Imprisonment, by whatever name it is called, is a harsh thing, and the discipline that must be exercised over human beings *in close confinement* can never be wholly agreeable to those subject to it.” (emphasis added) (citing Lon C. Fuller, *Anatomy of the Law* 57 (1968))).

Other commonly used dictionaries also define imprisonment as confinement in prison. According to Merriam-Webster’s Collegiate Dictionary, the word imprison means “to put in or as if in prison.”<sup>5</sup> *Imprison*, *Merriam Webster’s Collegiate Dictionary* (11th ed. 2003). Similarly, Random House defines imprison as “to confine in or as if in prison.” *Imprison*, *Random House Unabridged Dictionary* (2d ed. 1993). Finally, Webster’s New International Dictionary defines imprisonment as “the act of imprisoning or the state of being imprisoned: CONFINEMENT, RESTRAINT.” *Imprisonment*, *Webster’s Third New International Dictionary of the English Language Unabridged* (1986) (uppercase in original). According to these definitions, a person “under an order of imprisonment” is a person confined in prison pursuant to a court order.

The Louisiana constitution does not say that voting rights may be suspended while a person is “under the jurisdiction of the court,” “under sentence,” “under probation,” “under parole,” or “under supervision.” Rather, Article I, § 10 states specifically that voting rights may be suspended only while a person is “under an order of imprisonment.” Hence, according to the

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<sup>4</sup> In *Caddo-Shreveport*, the Court had to determine the plain meaning of the word “collect” in order to resolve an issue related to the collection of locally levied sales taxes on motor vehicles. To do so, the court relied on various reference books including the Oxford English Dictionary and Webster’s New Collegiate Dictionary. *Caddo-Shreveport Sales & Use Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780.

<sup>5</sup> Prison is defined as: “1: a state of confinement or captivity. 2: a place of confinement for lawbreakers; *specif*: an institution (as one under state jurisdiction) for confinement of persons convicted of serious crimes – compare JAIL.” *Prison*, *Merriam Webster’s Collegiate Dictionary* (11th ed. 2003).

generally understood definitions of “order” and “imprisonment,” an individual is “under an order of imprisonment” when confined in prison upon court order. Because an individual on probation or parole is not confined in prison, it follows that such an individual is not “under an order of imprisonment.” As such, a plain reading of Article I, § 10 indicates that a person’s voting rights may be suspended while he or she is incarcerated, but not while he or she is on probation or parole.

There are many examples in Louisiana law distinguishing probation and parole from imprisonment.

For instance, when a sentence is suspended, a defendant “is placed on probation under the supervision of the *division of probation and parole*,” rather than the supervision of prison authorities. La. C.Cr.P. art. 893(B)(1)(b) (emphasis added). Probationers remain under the jurisdiction of the court, but are not imprisoned. *Id.* art 895(A)(9). Further emphasizing the distinction between probation and imprisonment, a court may impose a “*term of imprisonment* without hard labor for a period not to exceed two years.” *Id.* art. 895(B)(1) (emphasis added). Because a defendant is placed on probation at the conclusion of that term of imprisonment, an “order of imprisonment” means something distinct from a term of probation.

In another example, if parolees violate the terms of their supervision, they risk imprisonment. La. R.S. 15:574.9(B), (E). Hence, when a person is released from prison onto probation or parole, he or she may be under supervision, but he or she is no longer imprisoned.

Reflecting the statutory understanding of probation as distinct from imprisonment, the Louisiana Services Network Data Consortium defines probation as:

Programs that provide formal supervision and support for adults who have been convicted of an offense and *released into the community* under the supervision of a probation officer, *in lieu of incarceration*. The individual must agree to standards of conduct specified by the court for a set amount of time. Violations of the agreement subject the individual to revocation of his or her liberty.<sup>6</sup>

Because probation is an alternative “in lieu of incarceration” and because incarceration is the very definition of imprisonment, the plain language of “under an order of imprisonment” cannot include probationers.

Likewise, parole in Louisiana

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<sup>6</sup> *Adult Probation*, La. Servs. Data Network Consortium, <http://www.lsndc.org/index.php/component/cpx/?task=services.code&code=FF-0500.6550-050> (last visited Nov. 29, 2016) (emphasis added).

provides for an offender to serve the latter portion of his or her sentence within the community, but under the direct supervision of the Department of Public Safety and Corrections, Division of Probation and Parole (supervised release). The offender must follow certain conditions to be afforded with this privilege, and any deviation from the restrictions could result in immediate *re-imprisonment*.<sup>7</sup>

If imprisonment is a consequence of a parole violation, then a parolee cannot be “under an order of imprisonment” when he or she is on parole; the order of imprisonment results from the violation of parole rather than being a condition of parole.

The mission of the Division of Probation and Parole specifically includes “facilitating the offender’s adjustment and *reintegration into society*.”<sup>8</sup> The Division provides alternatives to incarceration specifically because people released on probation and parole are “at risk of *returning to prison*” from the community.<sup>9</sup> As such, probationers and parolees are not imprisoned. Acknowledging this distinction, the Louisiana Board of Pardons and Parole recently revised its mission statement “to recognize the importance of [parolees’] need to adequately prepare for *community supervision*.”<sup>10</sup> A person under the supervision of the Division of Probation and Parole completes his or her sentence by completing his or her term of probation or parole in the community.

As stated previously, the language of a constitutional provision must be given effect if its application does not lead to absurd consequences. *Caddo-Shreveport Tax Comm’n*, 97-2233, p. 8; 710 So. 2d at 780. No absurd consequences arise from the plain interpretation of the phrase “under an order of imprisonment” as meaning actual incarceration. Rather, the plain meaning of this phrase allows plaintiffs to exercise a foundational tenet of democracy: the right to vote.

**E. In the Alternative, and Only If this Court Finds “Under Order of Imprisonment” Has More Than One Reasonable Interpretation, the Court Should Look to the Framers’ and Voters’ Intent, Which Was Not to Disenfranchise Probationers and Parolees.**

Plaintiffs argue that the plain meaning of the words in the Constitution dispose of this case and renders the statutes at issue unconstitutional.

In the alternative, and only if this Court finds that the words “under order of imprisonment” have more than one reasonable interpretation, this Court should determine the

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<sup>7</sup> *Parole in Louisiana*, La. Dep’t Corrections 1, [http:// doc.louisiana.gov/media/1/2009/10/PAROLE-IN-LOUISIANA.pdf](http://doc.louisiana.gov/media/1/2009/10/PAROLE-IN-LOUISIANA.pdf) (last visited Nov. 29, 2016) (emphasis added).

<sup>8</sup> *Probation Parole Overview*, La. Dep’t Pub. Safety & Corrections, [http:// doc.louisiana.gov/probation-parole-overview](http://doc.louisiana.gov/probation-parole-overview). (last visited Nov. 29, 2016) (emphasis added).

<sup>9</sup> *Alternatives to Incarceration*, La. Dep’t of Pub. Safety & Corrections, [doc.louisiana.gov/alternatives-to-incarceration](http://doc.louisiana.gov/alternatives-to-incarceration) (last visited Nov. 29, 2016) (emphasis added).

<sup>10</sup> La. Bd. of Pardons & Parole, *Annual Report CY 2015*, at 1 (2016), <http://doc.louisiana.gov/media/1/PardonParole%20Policies/2015.annual.report.pdf> (emphasis added).

reasonable intent of the words. In that case, this Court should ascertain the intent of both the provisions' framers and of the voters. The intent of the voters prevails over the intent of the framers if the intents are in conflict. *Ocean Energy*, 04-0066, p. 7; 880 So. 2d at 7 (citing *E. Baton Rouge Par. Sch. Bd.*, 02-2799, p. 16; 851 So. 2d at 996). "When construing an ambiguous constitutional provision, a court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls." *Id.*

In this instance the clear intent of the framers is difficult to ascertain because there are contradictory indications in the historical record. The Secretary of State points to the statement of one delegate to support its position. Plaintiffs point to the statement of another delegate to and expert on the Convention, Professor Lee Hargrave, who contradicts the Secretary of State. Plaintiffs also point to a decision by the committee that drafted the provision which supports plaintiffs' position.

As to the intent of the framers, Plaintiffs suggest this court examine two parts of the record: first, the record of the Convention's Committee on the Bill of Rights and Elections; second, the statements and scholarly observations of Professor Hargrave. These strongly indicate that the framers did not intend to deny people on probation and parole the right to vote.

### **1. Committee on the Bill of Rights and Elections**

The Louisiana Constitution was adopted during the Constitutional Convention of 1973. Records from the Convention's Committee on the Bill of Rights and Elections ("CBRE"), which drafted Article I, Section 10, indicate that the drafters of Article I, § 10 did not intend for the phrase "under an order of imprisonment" to include probationers and parolees.

In May 1973, the CBRE adopted a preliminary version of Article I, § 10.<sup>11</sup> The CBRE considered letters from the public and from various officials, all of which recommended that the right to vote be suspended only while a person is in prison. The committee also explicitly rejected adding language to Section 10 that would disenfranchise probationers. According to minutes in the record, the rejected language would have also kept parolees from voting.

Then-Secretary of State Wade O. Martin proposed that the CBRE adopt the following language: "No citizen of this state shall be denied the right to vote . . . unless such person is

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<sup>11</sup> *State of Louisiana Constitutional Convention of 1973 Committee Documents*, May 19, 1973, 14–15.



*lawfully imprisoned*, interdicted or notoriously insane” (emphasis added).<sup>12</sup> Mr. Gideon Stanton and Mr. Dennis C. Driscoll wrote to ask that the CBRE adopt Secretary Martin’s proposal with one difference: that “lawfully imprisoned” be changed to “convicted of a felony and presently under sentence.”<sup>13</sup> Their letter notes:

The right to vote is one of our most precious rights and should not be taken away except in the gravest circumstances. Wade O. Martin’s proposal respects this important right. 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 would be a step forward.<sup>14</sup>

By extending the right to vote to pre-trial detainees, Messrs. Stanton and Driscoll’s proposed changes were intended to “allow people who are imprisoned but not convicted to vote.”<sup>15</sup> Also, their support for Secretary Martin’s proposal, which allowed people to vote upon release, indicates that they did not consider “under sentence” to extend beyond post-conviction incarceration.

The CBRE also considered testimony from Russell R. Gaspard, Director of the State Board of Registration. Mr. Gaspard charged the committee with expanding the right to vote to include many thousands of then-disenfranchised voters.<sup>16</sup> He submitted language from the Louisiana Registrars of Voters Association on the right to vote to be included in the Declaration of Rights:

Every citizen of this state and of the United States, native born or naturalized, not less than 18 years of age; who is an actual bona fide resident and who has registered 30 days prior to any election, shall be an elector and shall be entitled to vote at any election held in the precinct in which he is registered.<sup>17</sup>

The Association also suggested that Article VIII, § 6 of the 1921 Constitution, which disenfranchised persons with felony convictions, be deleted explaining, “[o]nce a person has paid his debt to society and is released, if he can go to work, teach school, or be employed under Civil Service regulations, then he is entitled to register.”<sup>18</sup>

On May 19, 1973, the CBRE considered several variations of the section. All versions stated that the right to vote “may be suspended” while a person is “under an order of

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<sup>12</sup> *Id.* at 156–57.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 156.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 157.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

imprisonment for conviction of a felony.”<sup>19</sup> However, the Committee specifically rejected by a 3-5 vote CBRE Tentative Proposal No. 109, which read: “After the word ‘imprisonment’, add the words ‘or is serving a probation sentence.’”<sup>20</sup> The minutes indicate that the purpose of this proposal was “to keep parolees from voting.”<sup>21</sup>

In sum, the CBRE considered testimony and letters from the Secretary of State, Director of the State Board of Registration, Louisiana Registrars of Voters Association, and others, all of which recommended that persons with felony convictions be allowed to vote upon their release from incarceration. Further, the Committee specifically refused a proposal intended to keep parolees from voting by declining to add “or is serving a probation sentence” to the phrase “under an order of imprisonment.”

As a result, the record is clear that the CBRE did not intend “under an order of imprisonment” to include probationers and parolees.

## **2. Statement of Convention Expert Lee Hargrave on Under Order of Imprisonment.**

Plaintiffs now bring before this Court a series of strong and clear statements by Professor Lee Hargrave, one of the “leading figures of the constitutional convention” who served as the Convention’s Coordinator of Legal Research and directed research for the committee on the Bill of Rights and Elections. *Sepulvado*, 367 So. 2d at 765. After the 1974 Constitution had been ratified Professor Hargrave, published a commentary on the major changes to each section of the state’s new declaration of rights in the Fall 1974 issue of the Louisiana Law Review.<sup>22</sup> In his analysis of Article I, § 10, Professor Hargrave stated explicitly that the “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.”<sup>23</sup>

Professor Hargrave absolutely supports the plain meaning of the words in question.

According to Professor Hargrave, the Convention did not intend to disenfranchise probationers and parolees when it used the term “under an order of imprisonment.”<sup>24</sup> The phrase

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<sup>19</sup> *Id.* at 62–63.

<sup>20</sup> *Id.* at 63.

<sup>21</sup> *Id.* at 15.

<sup>22</sup> Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 34 La. L. Rev. 1 (1974).

<sup>23</sup> *Id.* at 34.

<sup>24</sup> *Id.* (emphasis added).

“under an order of imprisonment” was used rather than the more simple word “imprisoned” to overcome an objection that an escapee who was not imprisoned would be able to vote.<sup>25</sup>

Plaintiffs strongly suggest this Court seriously consider Professor Hargrave’s statements for the many reasons stated below and suggest that Professor Hargrave’s participation in the Convention and his scholarly writings on this topic far outweigh the statement of delegate.<sup>26</sup> Plaintiffs are aware of the caution expressed by the Louisiana Supreme Court that “the understanding of one member, or even a few members, of the legislature is not determinative of legislative intent,” *E. Baton Rouge Par. Sch. Bd.*, 02-2799, p. 22; 851 So. 2d 985, 999, but suggest that the respect Louisiana courts have shown for Professor Hargrave makes his contributions significant.

Professor Hargrave was uniquely positioned to appreciate the Convention’s intent because he served as the Convention’s Coordinator of Legal Research and directed research for the committee on the Bill of Rights and Elections. *See Sepulvado*, 367 So. 2d at 765. In fact, the Louisiana Supreme Court has described him as one of the “two leading figures of the constitutional convention.” *Id.*

When discussing the correct interpretation of the provisions of the Declaration of Rights, the Louisiana Supreme Court has cited Professor Hargrave’s article 69 times, judicial recognition of his privileged insights. Louisiana Courts of Appeal have cited the article an additional 28 times, further confirming its importance and relevance.

The Louisiana Supreme Court has expressly approved Professor Hargrave’s analysis of the framers’ intent and the meaning of the Constitution. *See, e.g., State Dep’t of Transp. & Dev. v. Jacob*, 483 So. 2d 592, 594–95 (La. 1986) (citing Hargrave, *supra*) (“We note and approve the following summarization of the framers intent regarding La. Const. art. I, § 4 . . .”); *Sepulvado*, 367 So. 2d at 765–66 (citing Professor Hargrave’s interpretation regarding excessive punishment). *See also State v. Culotta*, 343 So. 2d 977, 982 (La. 1976) (“Professor Lee Hargrave summarizes the constitutional debates as to the section. He concludes, *correctly in our opinion*,

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<sup>25</sup> *Id.*

<sup>26</sup> It is noteworthy that Roy’s comments were in response to Delegate Willis’s proposal to include the language “termination of state and federal supervision” rather than “under order of imprisonment,” but the Convention did not include his proposed language. 7 *State of Louisiana Constitutional Convention of 1973 Verbatim Transcripts* 1204 (transcribing the floor debate from September 8, 1973) [hereinafter *Convention*]. Roy was responding to Willis’s suggestion to include language to ensure that individuals could only vote once they had completed supervision. *Id.* Roy began by saying, “I don’t know if I understand . . .” *Id.* The end of his response is cut off as he says, “. . . you are entitled to vote irrespective of whether you are . . .” *Id.* Willis suggested once more that “some adjustment should be made” to which Roy responded, “I don’t see it, but . . .” *Id.* He was then cut off by another delegate who changed the subject to residency requirements. *Id.*

that it was intended to give standing to third persons adversely affected . . . .” (emphasis added) (internal citation omitted).

Louisiana courts regularly quote from or cite to Professor Hargrave’s article when analyzing the framers’ intent with regard to many provisions of Article I. *See State v. Edwards*, 2000-1246, p. 7 (La. 6/1/01); 787 So. 2d 981, 988 (quoting Professor Hargrave as to the framer’s intent in Article I, § 4); *W. Jefferson Levee Dist. v. Coast Quality Const. Corp.*, 640 So. 2d 1258, 1303 (La. 1994) (quoting Professor Hargrave as to the framers’ intent in Article I, § 4); *State Through Dep’t of Transp. & Dev. v. Chambers Inv. Co.*, 595 So. 2d 598, 602 (La. 1992) (quoting Hargrave as to the framers’ intent in Article I, § 4); *State v. Kelly*, 362 So. 2d 1071, 1081–82 (La. 1978) (citing Professor Hargrave as to the framers’ intent in Article I, § 3); *State v. Bell*, 334 So. 2d 385, 387 (La. 1976) (quoting Professor Hargrave as to the framers’ intent in Article I, § 14); *State v. Jenkins*, 338 So. 2d 276, 279 (La. 1976) (quoting Professor Hargrave as to the framer’s intent in Article I, § 14); *State v. Howard*, 325 So. 2d 812, 814 (La. 1976) (citing Professor Hargrave as to the framers’ intent in Article I, § 13); *Hondroulis v. Schuhmacher*, 553 So. 2d 398, 415 (La. 1988) (citing Professor Hargrave as to the framers’ intent in Article I, § 5); *Vonderhaar v. Par. of St. Tammany*, 633 So. 2d 217, 220 (La. App. 1 Cir. 1993) (citing Professor Hargrave as to the framers’ intent in Article I, § 7); *State v. Coleman*, 466 So. 2d 68, 70 (La. App. 2 Cir. 1985) (quoting Professor Hargrave as to the framers’ intent in Article I, § 5); *State v. Counterman*, 461 So. 2d 664, 668 (La. App. 1 Cir. 1984) (citing Professor Hargrave as to the framers’ intent in Article I, § 19), *cause remanded*, 475 So. 2d 336, 337–38 (La. 1985).

The courts also use Professor Hargrave’s article to interpret the meaning of the Constitution itself. *See In re Warner*, 2005-1303, p. 20 n.36 (La. 4/17/09); 21 So. 3d 218, 236 n.36 (quoting Professor Hargrave as to the meaning of Article I, § 19); *State v. Castillo*, 2009-1358, p. 6 (La. 1/28/11); 57 So. 3d 1012, 1016 (citing Professor Hargrave as to the meaning of Article I, § 13); *State v. Jackson*, 2000-0015, pp. 9–10 (La. 7/6/00); 764 So. 2d 64, 71 (citing Professor Hargrave as to the meaning of Article I, § 5); *State v. Hattaway*, 621 So. 2d 796, 800–01 (La. 1993) (citing Professor Hargrave as to the meaning of Article I, § 13), *overruled by State v. Carter*, 94-2859 (La. 11/27/95); 664 So. 2d 367; *Moresi v. State Through Dep’t of Wildlife & Fisheries*, 567 So. 2d 1081, 1092 (La. 1990) (citing Hargrave as to the meaning of Article I, § 5); *State v. Spooner*, 520 So. 2d 336, 346 (La. 1988) (citing Professor Hargrave as to the meaning of

Article I, § 16), *superseded by statute as stated by Edwards*, 2000-1246; 787 So. 2d 981; *Parker v. Cappel*, 500 So. 2d 771, 774 (La. 1987) (citing Professor Hargrave as to the meaning of Article I, § 3); *State v. Reeves*, 427 So. 2d 403, 408 (La. 1982) (citing Professor Hargrave as to the meaning of Article I, § 5); *State v. Sumler*, 395 So. 2d 766, 767–68 (La. 1981) (citing Professor Hargrave as to the meaning of Article 1, § 19); *Albright v. S. Trace Country Club Of Shreveport, Inc.*, 2003-3413, p. 7 (La. 7/6/04); 879 So. 2d 121, 141–42 (Knoll, J., concurring) (quoting Professor Hargrave as to the meaning of Article I, § 12); *State v. Neisler*, 633 So. 2d 1224, 1234–35 (La. 1994) (Dennis, J., concurring) (citing Hargrave as to the meaning of Article I, § 18); *City of Shreveport v. Chanse Gas Corp.*, 34,958, p. 8 (La. App. 2 Cir. 8/22/01); 794 So. 2d 962, 969 (citing Professor Hargrave as to the meaning of Article I, § 4).

Additionally, the courts rely on Professor Hargrave’s article to understand what occurred during Convention debates. *See Brown v. State*, 392 So. 2d 415, 417 (La. 1980) (quoting Professor Hargrave as to the background of Article I, § 4); *State v. Segers*, 355 So. 2d 238, 244 (La.) (citing Professor Hargrave as to the formulation of Article 1, § 13), *remanded on reh'g on other grounds*, 357 So. 2d 1 (La. 1978); *State v. Selmon*, 343 So. 2d 720, 722 (La. 1977) (citing Professor Hargrave as to the debates regarding Article I, § 20); *State v. Bryant*, 324 So. 2d 389, 392–93 (La. 1975) (quoting at length from the Hargrave article to evidence the progress of a provision from committee version through floor amendments). Only once, in a concurring opinion from the Third Circuit, does a Louisiana court expressly disagree with Professor Hargrave’s conclusions. *See State v. Goodman*, 427 So. 2d 529, 536 (La. Ct. App. 1983) (Domengeaux, J., concurring).

### **3. Professor Hargrave Found Critical Constitutional Differences Between Article I, Section 20 and Article I, Section 10.**

Professor Hargrave also notes that before it approved Article I, § 10, the Convention discussed and adopted a proposal regarding restoration of citizenship rights, which would become Article I, § 20.<sup>27</sup> The differences between these two constitutional provisions were found to be significant by Professor Hargrave and are of value to this Court in its analysis.

The CBRE proposed that Article I, § 20 read: *No person shall be subjected to euthanasia, torture, or cruel, unusual or excessive punishments or treatments, and full rights shall be*

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<sup>27</sup> Hargrave, *supra* note 20, at 34; *see Convention*, *supra* note 24, at 1189–203.

*restored by termination of state or federal supervision for any offense.*<sup>28</sup> The committee had expanded Article VIII, § 6 of the 1921 Constitution, adding a final phrase that would automatically restore individuals' rights of citizenship once they completed probation and parole.<sup>29</sup> The onerous process for re-enfranchisement and restoration of citizenship rights at that time required an individual to go before the Pardon Board, advertise in a local newspaper, and then seek pardon from the governor.<sup>30</sup> Introducing the section, Delegate Weiss referenced that process and concluded, “[i]t is for this reason that we have recommended full rights be restored to those who have served their sentence and who have terminated their supervision for any offense.”<sup>31</sup>

Professor Hargrave distinguishes the language used in Article I, § 20 from that of Article I, § 10, explaining that the Convention chose not to use the phrase “upon termination of state or federal supervision” in Article I, § 10 precisely so as not to disenfranchise parolees and probationers.<sup>32</sup> Indeed, during the debate over Article I, § 10, Delegate Willis asked whether the Convention should use the language used in the previous section (“termination of state and federal supervision”) instead of “under order of imprisonment” to clarify whether a person can register to vote “as soon as he gets out of Angola,” noting that one could be released but still “under probation.”<sup>33</sup> According to Professor Hargrave:

The language [“under an order of imprisonment”] 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 [Article I, § 10] providing for the return of the right to vote when one is no longer under an order of imprisonment will prevail.<sup>34</sup>

Given Professor Hargrave’s participation in the Convention and Louisiana courts’ consistent and nearly unanimous approval of his analysis of the Convention’s intent, the plain meaning of the language in the Declaration of Rights, and the occurrences during Convention debates, this Court should also adopt his view that the Convention did not intend to disenfranchise probationers and parolees.

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<sup>28</sup> *Convention*, *supra* note 24, at 1189.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 1189, 1201.

<sup>31</sup> *Id.* at 1189.

<sup>32</sup> Hargrave, *supra* note 20, at 34.

<sup>33</sup> *Convention*, *supra* note 24, at 1204.

<sup>34</sup> Hargrave, *supra* note 20, at 34.

#### **IV. CONCLUSION: THESE STATUTES UNCONSTITUTIONALLY DENY LOUISIANA CITIZENS THE RIGHT TO VOTE.**

The Louisiana constitution does not deny the right to vote to all people convicted of felonies who are not in prison but are on parole or probation. The later enacted statutes at issue in this case do. Therefore the statutes are unconstitutional and must fall. *M.J. Farms, Ltd.*, 2007-2371, p. 22; 998 So. 2d at 32 (citing *Caddo-Shreveport Tax Comm'n*, 97-2233, p. 8; 710 So. 2d at 780) (“When a statute conflicts with a constitutional provision, the statute must fall.”).

When a statute infringes upon a fundamental right, like the right to vote, it does not enjoy the normal presumption of constitutionality.

The function of a court in construing a constitutional provision is to determine the meaning of the word and give effect to the intent of the framers and of the people who adopted it. If and only if the words have many meanings, the Court is to try to find the intention of the framers and the people who voted the constitution into effect. In the case of a conflict, the intent of the voting population controls. It is the layperson’s understanding of a word that is of paramount importance.

The people of Louisiana ratified the Constitution on April 20, 1974. Because dictionary definitions of “imprisonment” equate imprisonment with incarceration, the voters would have understood “under an order of imprisonment” to refer to an order that confined a person in prison and to exclude probationers and parolees.<sup>35</sup> The common understanding of “under an order of imprisonment” as meaning incarceration pursuant to a court order indicates that the voters did not intend to deny the fundamental right to vote to those on probation or parole.

The voters have never had the opportunity to vote on whether or not probationers and parolees are “imprisoned.” Instead, through Act 697 of 1976 and Act 544 of 1977, the legislature improperly amended the Louisiana Constitution without voter approval to deny the right to vote to thousands of Louisiana citizens. *See* Act of July 15, 1977, § 2(2); Act of Aug. 5, 1976, § 2(2).

The plain, unambiguous language of the constitution, the recommendations submitted to the CBRE by multiple officials and members of the public, and the statements and interpretation

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<sup>35</sup> *See, e.g., Imprison, Merriam Webster’s Collegiate Dictionary* (11th ed. 2003) (defining imprison as “to put in or as if in prison.”); *Imprison, Random House Unabridged Dictionary* (2d ed. 1993) (defining “imprison” as “to confine in or as if in prison”); *Imprisonment, Webster’s Third New International Dictionary of the English Language Unabridged* (1986) (defining “imprisonment” as “the act of imprisoning or the state of being imprisoned: CONFINEMENT, RESTRAINT” (uppercase in original)). In the absence of other explanations or references to “under order of imprisonment” in Louisiana case law, the legislative record, and Louisiana legal commentary in the early 1970s or before, Plaintiffs submit the most cited legal authority on this topic as well as the plain meaning of the word “imprisonment.”

published by Professor Hargrave mere months after ratification indicate that the Constitution did not authorize the legislature to disenfranchise parolees and probationers.

For these reasons, Plaintiffs respectfully request that this Honorable Court grant summary judgment in their favor.

These statutes are unconstitutional and must fall.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing *Motion for Summary Judgment* and *Memorandum In Support* filed by the Plaintiffs has been served upon counsel of record via US Mail and electronic mail this 13<sup>th</sup> the day of January, 2017.

  
\_\_\_\_\_  
Anna Lellelid

**PLAINTIFFS' EXHIBIT 1:  
AFFIDAVIT OF NORRIS HENDERSON,  
EXECUTIVE DIRECTOR OF V.O.T.E.**

**PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

STATE OF LOUISIANA  
PARISH OF ORLEANS

AFFIDAVIT OF NORRIS HENDERSON

1. My name is Norris Henderson and I am the founder and Executive Director of Voice of the Experienced (VOTE), formerly Voice of the Ex-Offender.
2. VOTE is a Plaintiff in *VOTE v. Louisiana*, filed July 1, 2016.
3. VOTE's focus is on felon disenfranchisement and civic engagement on all aspects of the criminal justice system.
4. VOTE is a membership based organization working for, with and on behalf of formerly incarcerated men and women, and their family, friends and loved ones.
5. Most of our members live in the community and are disenfranchised because of a felony conviction.
6. VOTE, originally the Angola Special Civics Project (the Civics Project), was founded in 1987 by me and a group of prisoners at the Louisiana State Penitentiary at Angola.
7. The Civics Project focused on voting rights when it became known that under Louisiana law people in the community convicted of a felony on probation and parole did not have the right to vote.
8. In 2003 me and several members of the Civics Project who were released founded VOTE as a non-profit 501(c)(3).
9. VOTE took the Civics Project principles out into the community.
10. Through volunteers and member leadership, VOTE educated those formerly incarcerated and convicted of a felony, who were no longer on probation parole, that they did have the right to vote and registered them to vote.
11. VOTE continues to educate and register formerly incarcerated people across the state who are eligible to vote.
12. VOTE also educates and registers people convicted of misdemeanors who do not know they have the right to vote.
13. VOTE sends out bi-weekly e-newsletter in the state and across the country with 1,248 people living in Louisiana.
14. VOTE has met with incarcerated and formerly incarcerated people on probation and parole across the state including North Louisiana, South West Louisiana, Acadiana, Baton Rouge the surrounding area and the Greater New Orleans area.
15. Because of its success and recognition VOTE received funding and hired a small staff to effect greater local, state, and national change around all issues affecting the formerly incarcerated.
16. As of the date of this affidavit, VOTE is a one of a kind in its model and scope of work on felony disenfranchisement at a local, state and national level.
17. VOTE partners with many local, state and national organizations dedicated to overcoming challenges faced by the incarcerated, formerly incarcerated and their families and loved ones.
18. Locally, VOTE has longstanding partnerships working on civic engagement and issues affecting all aspects that impact the formerly incarcerated with organizations such as the Orleans Parish Prison Reform Coalition, the Power Coalition, The First 72+, Stand with

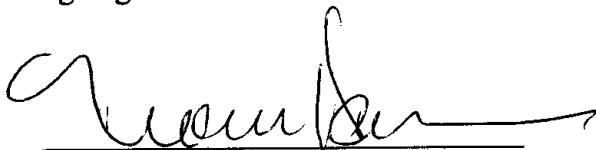
Dignity, the Solange MacArthur Justice Center, the New Orleans Workers' Center for Racial Justice and others.

19. VOTE just began a project with the Louisiana Department of Public Safety and Corrections (LDPSC) on civic engagement for those formerly incarcerated who are now eligible to vote as part of the LDPSC's commitment to rehabilitation across the state.
20. VOTE recently started the biggest felon disenfranchisement effort in the country, the Louisiana Campaign for Democracy (LCD).
21. LCD is the vehicle for VOTE to start the process of reaching out at the community level across the state through membership development, political education, mobilization, and advocacy.
22. Since September 30, 2016, VOTE directly mailed 4,576 people who are believed to be formerly incarcerated, currently on probation and parole or are loved ones of that community through LCD.
23. As of the date of this affidavit 1,848 pieces of mail were sent statewide.
24. Because of LCD VOTE will continue to reach out to the 71,000 people currently on probation and parole and their loved ones.
25. LCD will serve as a full-scale felon disenfranchisement model capable of replication across the country.
26. In 2011, VOTE helped to found the Formerly Incarcerated, Convicted People & Families Movement (FICPFM) and is the lead organization on felony disenfranchisement within that network.
27. VOTE is one of twenty-four national organizations of FICPM.
28. VOTE is suited to represent all of its members disenfranchised because of a felony conviction and under supervision in the community through probation and parole.
29. As a Plaintiff in *Vote v Louisiana*, the organization will work with its attorneys and communicate with our members as the litigation progresses.

I declare under penalty of perjury that the foregoing is true and correct.

Date:

12/20/16



Norris Henderson

Executive Director, Voice of the Experienced

Signed and subscribed to me on this

20<sup>th</sup>

day

December

, 2016.

Notary Public

ANNA LELLEID-DOUFFET  
NOTARY PUBLIC

ID # 136889

JUDICIAL DISTRICT OF ST. TAMMANY, LA

My commission expires

at 12/20/17