COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA
DOCKET NO. 2017-CA-1141

VOICE OF THE EX-OFFENDER, ET AL.,

Plaintiffs-Appellants,

versus

STATE OF LOUISIANA, ET AL.,

Defendants-Appellees

On Appeal from the 19th Judicial Circuit,
Parish of East Baton Rouge, Section 22, State of Louisiana
Docket No. 64,9587
Honorable Judge Timothy Kelley, Presiding
CIVIL PROCEEDING

ORIGINAL REPLY BRIEF OF APPELLANTS

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MAY IT PLEASE THE COURT: Plaintiffs/Appellants Voice of the Experienced, *et al.* ("VOTE"), present this Brief in Reply to the Opening Brief of Defendant/Appellee Secretary of State Tom Schedler ("Secretary").

INTRODUCTION

The question in this case is whether La. R.S. 18:2(8) and La. R.S. 102(A)(1) violate Article I, Section 10(A) of the 1974 Louisiana Constitution, which guarantees a right to vote that may be suspended "while a person is . . . under an order of imprisonment for conviction of a felony." *See* La. Const. art. I, § 1(A) (1974) ("Section 10(A)"). Both parties agree that the key issue before this Court is the interpretation of "while . . . under an order of imprisonment" in Section 10(A). VOTE contends the plain language does not include parolees and probationers, especially when read in context with Article I, Section 20, which expressly includes them. *See* La. Const. art. I, § 20 (1974) ("Section 20"). The Secretary contends that it does. There are two major defects in the Secretary's interpretation.

First, the "natural and popular" meaning. The Secretary's argument ignores the "natural and popular" meaning of the plain language. But this is what governs. A layperson in Louisiana would understand an individual who is "under an order of imprisonment" as one who is incarcerated. The layperson would not associate parolees and probationers with Section 10(A) because not a single word

in the six-word phrase "while . . . under an order of imprisonment" is synonymous with suspension of sentence, supervision, parole or probation.

Instead of countering this "natural and popular" interpretation with other common definitions, the Secretary attempts to classify "under an order of" as a "modifier" (rather than a simple adverb) and asserts this modifier would lead a layperson to include parolees and probationers within the scope of Section 10(A). Original Appellee Brief ("Opp.") at 7-8. This tortured interpretation violates Section 10(A)'s "natural and popular" meaning and should not be adopted here.

Second, the interplay between Section 10(A) and Section 20. Likewise, the Secretary's reading of Section 10(A) *in pari materia* with Section 20 is defective. Throughout this litigation, VOTE has flagged that if parolees and probationers are found to be included in Section 10(A), then the Declaration of Rights will contain two differently worded provisions disenfranchising the same class of persons. *See* Opening Brief of Appellants ("OBA") at 16-21. This would render Section 10(A)'s unique phrase superfluous. The framers knew how to include probationers and parolees and expressly did so in Section 20, but chose not to in Section 10(A). *Id.*

Without explanation, the Secretary incorrectly responds it is Section 20 – not Section 10(A) – that would be read out of the Constitution. Opp. at 11. But, as even the Secretary admits, Section 20 is clearly the more general provision. *Id.* at 11-12. It wholly subsumes Section 10(A), the more specific provision concerning

only voting rights of people with felony convictions. Indeed, the relationship between the two provisions – first identified over 40 years ago by Professor Lee Hargrave, is the textbook definition of conflict. *See* OBA at 16-21.[1] Under well-established principles of construction, this Court should give effect to Section 10(A)'s "meaningful variation" from Section 20 and construe it as Section 20's exception. *See Arrata v. La. Stadium & Exposition Dist.,* 254 La. 579, 609-10, 225 So.2d 362, 372-73 (1969); OBA at 17-19.

This *in pari materia* defect – along with a purported lay reading that violates the "natural and popular" understanding of the language – are both fatal to the Secretary's interpretation. None of the Secretary's other arguments hold weight. VOTE's interpretation is reasonable and does not lead to absurd results under the current criminal code. Indeed, it is the Secretary's interpretation that departs from the plain meaning and impermissibly expands the suspension of the right to vote to include those in "legal custody." But to the extent this Court finds that the plain meaning of Section 10(A) is ambiguous and necessitates an intent inquiry, then the following two principles of interpretation should guide its course:

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[1] Other legal commentators have also noted this conflict. *See, e.g.,* Robert Stockstill, *Comment: Voting and Election Law in the Louisiana Constitution*, 46 La. L. Rev. 1253, 1255-1256 (1986) ("Had the Convention sought to deny the right to vote to persons supervised during a suspended sentence, it could have chosen the wording of article I, section 20, i.e., 'supervision following conviction.' Instead, 'order of imprisonment' was chosen, thus producing two phrases which seem to create different results.").

First, the presumption in favor of the fundamental right to vote. In Louisiana, any question regarding the scope of the right to vote should be resolved in favor of greater access to the ballot. This favors VOTE's interpretation.

Second, the presumption in favor of the intent of the voters. The Constitution "emanates from the people." *In re Office of Chief Justice*, 2012-1342 (La. 10/16/12); 101 So.3d 9, 18. As such, the intent of the voters who adopted the provision is paramount. *See* OBA at 11, 21-22. Historical records show that voters in 1974 enshrined an affirmative right to vote for all, including the right to vote upon release from prison. *Id.* at 21-27.[2] Voters' intent is difficult to ascertain with precision. *Arrata*, 225 So.2d at 372-73. Courts thus revert to the "natural and popular meanings in which words are usually understood by the people who adopt them." *Ocean Energy, Inc. v. Plaquemines Par. Gov't*, 04-0066 (La. 07/06/04); 880 So.2d 1, 8. Here, this meaning is clear: those with felony convictions have a right to vote that is only suspended while in prison.[3]

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[2] Community organizations, concerned citizens, and state officials called for expansion of voting rights. OBA at 21-27; *see also id.* at 11. The Secretary's challenge to Raymond Nance's call fails. *See* Opp. at 17. While Mr. Nance referenced those "arrested for crimes," he also references "penitentiary," "prison," and his organization's ("Community Action for *Corrections*") advocacy for "a more humane *correctional system*." *Id.* at 21-22 (citing Records of the Louisiana Constitutional Convention of 1973 ("CC73 Records"): Committee Documents, Vol. XI at 313 (emphasis added). This was likely his way to describe prisoners in the state penitentiary, not pretrial detainees.

[3] Few voters in 1974 would have been familiar with parolees and probationers. *See* Pamela A. Prestridge, *Probation: A Comparative Study of Louisiana Law and the*

With respect to the remaining assignments of error, strict scrutiny should be applied because the right to vote is fundamental to Louisiana citizens, and people with felony convictions are not "exempt" from this right as the Secretary contends. Opp. at 24. Finally, appeal of class certification is not time barred and is warranted.

ARGUMENT

I. INCLUDING PROBATIONERS AND PAROLEES IN "UNDER AN ORDER OF IMPRISONMENT" IS INCONSISTENT WITH CANONS OF CONSTITUTIONAL CONSTRUCTION.

A. The Secretary's interpretation, not VOTE's, violates the plain meaning of Section 10(A).

1. VOTE's interpretation is reasonable and does not lead to absurd results under the existing criminal code.

The plain meaning of "while . . . under an order of imprisonment" is while a person is in the physical custody of prison authorities. This reflects the "natural and popular" understanding, while the Secretary's interpretation reflects that of a "legally-trained mind." *See* OBA at 10-16. The Secretary responds that Section 10(A) would "resonate" with laypeople as "more than simply imprisonment" though he does not explain how. *See* Opp. at 8-10. He contends, again without explanation, that VOTE's reading renders "under an order of" superfluous even

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ABA Standards, 33 La. L. Rev. 579, 583, n. 23 (1972) ("In 1969, there were 4,611 probation cases . . . and 2,129 parolees.")(internal citation omitted)); *see also* OBA at 7 (at least 71,000 persons are on parole and probation in Louisiana today).

though it incorporates dictionary definitions associating "order" with judges and courts. *See, e.g.*, OBA at 12-13 ("ordered to serve time"); R. 265.

The Secretary next argues that VOTE's interpretation "disregards that a person can legally be *under an order of* imprisonment without being physically in prison" which results in the "absurdity" of judges not being able to suspend sentences. Opp. at 8-10 (emphasis in original). But this purported "absurdity" results only if "order of imprisonment" is construed as the "original sentence," an interpretation rejected by VOTE. *See* OBA at 14-16.

Indeed, "order of imprisonment" should *not* be equated with "original sentence" or (in the Secretary's words) the "single order," which can be suspended, probated, and paroled. *See* Opp. at 10; La. C.Cr.P. art. 871(A); OBA at 14-16. Contrary to the Secretary's portrayals, "order of imprisonment" is *not* regularly used in criminal court – the term appears zero times in the Code of Criminal Procedure.[4] It should be understood as the self-executing custodial sentence or the incarceration "portion" of an "original sentence," where an individual with a felony conviction is committed "not to a particular institution, but to the custody of the Louisiana Department of Public Safety and Corrections (DOC)." *State v.*

[4] In contrast, the words "order of imprisonment" appear in at least ten Election Code provisions: La. R.S. 18:176; La. R.S. 18:104; La. R.S. 18:2; La. R.S. 18:102; La. R.S. 18:171; La. R.S. 18:171.1; La. R.S. 18:177; La. R.S. 18:177.1; La. R.S. 18:451; La. R.S. 18:461; La. R.S. 18:463; La. R.S. 18:1303. It also appears once in the Trade and Commerce Code: La. R.S. 51:944.

Bradley, 99-364 (La. App. 3 Cir. 11/3/99); 746 So.2d 263, 267 (citing La. R.S. 15:824(A); *see also* OBA at 14-16; La. R.S. 14:2; La. C.Cr.P. art. 933.

VOTE's narrower interpretation is consistent with the existing criminal code. Parole and probation are legally distinct from incarceration. *See, e.g.,* La. R.S. 15:529.1(c) ("In computing the intervals of time . . . any period of *parole, probation, or incarceration* by a person in a penal institution . . . shall not be included). Probation and parole are alternatives to incarceration. *See, e.g.,* Plaintiffs' Memorandum in Support of Motion for Summary Judgment (Jan. 13, 2017), R. 266-67, Adult Probation, La. Servs. Data Network Consortium (probation is imposed "in lieu of incarceration") (citation omitted); Adult Probation Parole Overview, DOC (the Division of Probation and Parole "facilitat[es] the offender's . . . 'reintegration into society'") (citation omitted); *Parkerson v. Lynn*, 556 So.2d 91, 95 (La. App. 1 Cir. 1989).[5]

Accordingly, individuals placed on parole or probation in lieu of incarceration are not "under orders of imprisonment." Although they are under the *threat* of imprisonment or future imprisonment, they are not under self-executing custodial sentences. Rather, they must take affirmative steps (volitional acts or omissions) and are entitled to a due process hearing to trigger the custodial

[5] The Legislature has also adopted such distinctions in constitutional language. *Shepard v. Schedler*, 209 So.3d 752, 758; 2015-1750 (La. 01/27/16) (describing a person who "was not incarcerated but who received probation").

sentence and return to physical custody. *See* La. R.S. 15:574.7; La. R.S. 15:574.9; La. C.Cr. P. art. 900. This distinguishes their legal status from those who are incarcerated. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (rights of parolees); *Gagnon v. Scarpelli*, 411 U.S. 778, (1973) (rights of probationers).

Parolees and probationers thus are distinguishable from prison escapees. Once apprehended by the authorities, escapees are re-committed to physical custody; no additional affirmative steps are needed.[6] To read otherwise has troubling implications. All people – not just parolees and probationers – are "subject to custodial supervision at any time." *See State ex rel. Talbert v. State*, 99-2899 (La. App. 1 Cir. 6/23/00); 814 So.2d 2, 4. Arguably then, anyone could be "under an order of imprisonment," which is the true "absurdity."

2. The Secretary's interpretation departs from the plain meaning, is self-contradictory, and unreasonable.

According to the Secretary, probationers and parolees remain in the "legal custody of the Department," and therefore, are still "under an order of imprisonment." *See* Opp. at 10 (citation omitted). This interpretation is flawed.

First, the Secretary's interpretation is wholly inconsistent with his position that people who are on "simple probation" have the right to vote. *See* Opp. at 9-10 (conceding those "ordered *only* to probation *can* register and vote") (emphasis in

[6] *See State v. Stramiello*, 392 So.2d 425, 427 (La. 1980) (distinguishing between the escapee's "present sentence and "any sentence he might receive for the pending charge of simple escape").

original). These individuals, after all, are still in the "*legal* custody" of the Department and thus should be disenfranchised under the Secretary's definition of "under the order of imprisonment." Their legal status is no different from other probationers and parolees. *See* La. C.Cr.P. art. 893(A)(1)(a); La. C.Cr. P. art. 895. The Secretary's equating of Section 10(A) to "legal custody" is thus inconsistent, rendering the Secretary's interpretation unworkable and unreasonable.

Second, the Secretary's equating of Section 10(A) to "legal custody" departs from its plain meaning, which is being committed to *physical custody*. "The fiction of 'legal custody' is not in any sense imprisonment." Lee Hargrave, *Public Law: Louisiana Constitutional Law*, 37 La. L. Rev. 480, 491, n. 76 (1977).

Understanding the genesis of the "fiction of legal custody" is critical. Contrary to the Secretary's characterization, the 1921 Constitution did more than "deprive persons of the right to vote upon the mere conviction of a felony." Opp. at 4. The 1921 Constitution also explicitly disenfranchised those committed to the physical custody of prison authorities. La. Const. art. VIII, § 6 (1921) (barring "those actually confined in any public prison" from voting).

This notion of disenfranchising those in physical custody carried through the Constitutional Convention of 1973 ("CC73"). OBA at 22-28. The first Attorney General opinion addressing Section 10(A) also focused on physical custody, declaring: "All citizens not imprisoned are eligible to vote." La. Att'y Gen. Op.

No. 75-131 (Mar. 7, 1975) (recalled), at 2. It concluded: "The clear import of [Section 10(A)], as borne out by the debates of the [CC73], is that the right to vote may denied only to those persons actually imprisoned." *Id.* This opinion was issued within the year that voters ratified Section 10(A) and is the same interpretation VOTE asserts here. *See* OBA at 5.

By May 1975, the Attorney General began shifting his position on parolee voting based on the "fiction of legal custody." The Attorney General began by excluding parolees from the right to vote, arguing that they remained in "legal custody" pursuant to La. R.S. 15:574.7(A).[7] *See* La. Att'y Gen. Op. No. 75-131 (May 2, 1975), at 2. Professor Hargrave sharply criticized this opinion in his article, explaining: "If a person is released from prison, he is under no order of imprisonment; he is under an order of release." 37 La. L. Rev. at 491, n.76.

By 1981, the Attorney General opined that disenfranchisement extended to both parolees and probationers, relying on La. R.S. 18:2(2). La. Atty. Gen. Op. No. 1981-283 (Mar. 5, 1981).[8] This perfected Section 10(A)'s conflation with Section

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[7] The words "legal custody" appear in the current version of La. R.S. 15:575.7(A).

[8] This Court should not rely on R.S. 18:2 or *Rosamond*. *See* Opp. at 14-17 (citing *Rosamond v. Alexander*, 2003-235 (La. App. 3 Cir. 02/28/03); 846 So.2d 829, and its use of La. R.S. 18:2). *Rosamond* is distinguishable and did not address the meaning of "under an order of imprisonment" under Section 10(A) or the constitutionality of La. R.S. 18:2(8) and La. R.S. 18:102(A)(1). In *Rosamond*, the defendant, a mayoral candidate, filed a direct appeal of his conviction. The suit challenged his candidacy under La. Const. art. I, § 10(B), and at the time of the appeal, defendant was not on probation (or parole). *Id.* Here there is no reason to

20: "*Upon expiration of the federal or state supervision* [the express language from Section 20], the convicted felon would be able to register to vote." *Id.* (emphasis added). At least twelve more opinions disenfranchising parolees and probationers, except for those on "simple probation," have followed, based on this "legal custody" distortion. This Court should restore Section 10(A) to its plain words.

B. Section 10(A) is the exception to Section 20.

Principles of construction require this Court to interpret Section 10(A) as an exception to Section 20, which harmonizes them. The Secretary responds that the two provisions are "not really in conflict" as Section 10(A) merely authorizes the Legislature's suspension of the right to vote. Opp. at 12. Setting aside the Legislature's actual authority,[9] this response ignores the legal effect of this interpretation and the glaring knot it creates in the Constitution. The Secretary's interpretation would result in two differently worded provisions disenfranchising the same class of persons. In addition, the Secretary's argument that Section 20 is a

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rely on statutes to define Section 10(A). *See Ocean Energy, Inc.,* 880 So.2d at 12-14 (where there is "no constitutional intent to utilize a statutory definition," courts should refrain from relying on statutes to interpret the Constitution. *See infra* at 11, n. 9. With respect Section 10(B), the parties disagree on whether R.S. 18:451 and R.S. 18:461(A)(3) remain good law. *See* Opp. at 3, n.2. Their constitutionality have not been challenged since the *Shepard* decision, and this is an open question. *See Malone v. Shyne*, 2006-2190 (La. 09/13/06); 937 So.2d 343, 352.

[9] The Legislature's authority under Section 10(A) is far from clear: "It is unnecessary for us to find whether the implementation [of Section 10(A)'s voting rights suspension] must be by legislative act or otherwise." *Fox v. Mun. Democratic Exec. Comm.*, 328 So.2d 171, 174 (La. App. 2 Cir. 1976).

"backstop" (Opp. at 11-12) is incoherent since the Secretary agrees that those on "simple probation" can vote. Section 20's "backstop" would disenfranchise this population too. In response, the Secretary refers to a 1973 floor discussion to show the framers "ultimate" decision on the inconsistent language. Opp. 12-14. Arguably, however, Delegate Roy's statements pertain only to those on "probation or suspension" thereby casting doubt whether this "ultimate" decision included parolees. *Id.* at 12-13 (citations omitted). Floor discussions, much less failures to introduce amendments in such discussions, "may be of little value," especially here where they are mixed with strong CBRE evidence. *See* OBA 23-28.

C. The "natural and popular meaning" – voters' intent – controls.

With respect to framers' intent, despite the language in La. R.S. 24:177, courts frequently rely on convention committee materials and failed amendments when interpreting constitutional provisions. *See* OBA at 23; *see also State v. Chinn*, 2011-2043, p. 9-10 (La. 2/10/12); 92 So.3d 324, 329 (court cited La. R.S. 24:177, but still relied on a failed amendment for interpretation). Moreover, the Secretary fails to respond to the Public Welfare Committee's understanding. OBA at 27. The Secretary omits that Delegate "Woody" Jenkins erroneously declared that Section 10(A) disenfranchises misdemeanants and that he noted that delegates were "not really listening" during his explanation. CC73 Records: Verbatim Transcripts, Vol. VII at 1689-90. He also presumably voted to delete his own

proposed Elections Article as duplicative of Section 10. OBA at 26. The framers' intent is at best mixed, and thus is unreliable. The plain meaning must control.

II. THE RIGHT TO VOTE IS FUNDAMENTAL TO LOUISIANA CITIZENS, INCLUDING CITIZENS WITH FELONY CONVICTIONS, FOR WHOM VOTING MAY BE SUSPENDED.

The Secretary's contention that the standard of constitutional review is "irrelevant to the issue currently before this Court" is misplaced. Opp. 23. This case addresses whether the challenged statutes infringe on the fundamental right to vote in Section 10(A); thus, the standard of constitutional review is relevant.

The Secretary argues that "convicted felons" are "exempted" from the voting protections in Section 10(A) and "therefore do not have a fundamental right to vote." Opp. 24. This is in error. The plain language enshrines a fundamental right to vote that can only be "suspended" – not lost – during two specific time periods. Section 10(A) grants the right to vote to "*every citizen* of the state," and "this right may be *suspended while* a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment[ ]." (emphasis added). People with felony convictions are thus not "exempt" from the Constitution's right to vote. Rather, their right is temporarily suspended "while" incarcerated. *See Adkins v. Huckabay*, 33593 (La. App. 2 Cir. 12/23/99); 749 So.2d 900, 905, *rev on other grounds*, *Adkins v. Huckabay*, 99-3605 (La. 2/25/00); 755 So.2d 206,

describing Section 10(A) as a law that does not "immediately suspend[] the right to vote" for a person with a felony conviction without notice and a waiting period.

Those with felony convictions thus retain the right to vote explicitly afforded Louisiana citizens. *See e.g.*, *Adkins*, 755 So.2d at 211; OBA at 32-33. Because Louisiana's unique constitutional language confers stronger protection to the right to vote than its federal counterpart, the Secretary's reliance on cases based on the federal constitution are inapposite. Opp. at 26-27 (citing *Richardson v. Ramirez*, 418 U.S. 24 (1974) and its progeny to support a lower level of scrutiny for limiting voting rights for those convicted of felonies).[10] And because a fundamental right is at issue, any ambiguity as to the breadth of Section 10(A) must be resolved in favor of the more expansive reading of the right. *See* OBA at 31-32.

The Secretary does not contest that strict scrutiny applies to restrictions on the right to vote in Louisiana. The Secretary's argument that strict scrutiny is inapplicable is based solely on his contention that no fundamental right is at stake. Opp. at 25. The Secretary offers nothing other than inapplicable federal caselaw to claim this constitutional standard does not apply to those on probation and parole.

[10] Louisiana courts have recognized other rights where the state constitution confers greater protection than the federal, for example the right of privacy. *See e.g.*, *State v. Brenan*, 99-2291, p. 9 (La. 5/16/00); 772 So.2d 64, 71 ("[Louisiana's] state constitution's declaration of the right to privacy contains an affirmative establishment of a right of privacy, and this is one of the most conspicuous instances in which our citizens have chosen a higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution.")

Where a fundamental right is at stake, the Louisiana Supreme Court has applied strict scrutiny even when those seeking the relief are probationers and parolees. *State v. Draughter*, 2013-0914 (La. 12/10/13); 130 So.3d 855 (applying strict scrutiny to restrictions on firearms for those on probation and parole). The Secretary argues the standard in *Draughter* is inapplicable here because the Constitution explicitly requires strict scrutiny for statutory infringements on the right to bear arms. Opp. at 25. But the Louisiana Supreme Court likewise requires strict scrutiny for statutory infringements on the right to vote. *See* OBA at 33.

The Secretary argues that even if strict scrutiny applies, the state has a compelling public interest in regulating those under state supervision. Opp. at 26. But this interest is not absolute. The Secretary asserts a state interest in "protecting the integrity of the voter registration rolls" by excluding those who have "'manifested a fundamental antipathy to the criminal laws of the state.'" Opp. at 26 (citing *Shepherd v. Trevino*, 575 F.2d 1110, 1115 (5th Cir. 1978)). But he asserts no problems with the voter rolls, nor that keeping the vote from probationers and parolees is narrowly tailored to electoral integrity.[11] Significant evidence supports the opposite –probationer and parolee voting advances compelling state interests.[12]

[11] In contrast, prior to the Civil War, when only white men could vote in Louisiana, they were barred from voting for just four specific felonies, all of which bore some causal relationship to the integrity of elections. *See* La. Const. art. VI, § 4 (1812).
[12] *See, e.g.,* Guy Padraic Hamilton-Smith and Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 La

The Secretary has not met his burden and thus, the statutes fail constitutional review.[13]

III. CLASS CERTIFICATION IS APPROPRIATE.

The Secretary argues that VOTE's appeal of class certification as part of its appeal of the trial court's final judgment is untimely. Opp. at 27-28. Because class certification can be revisited throughout the litigation, this argument fails.

The trial court made its initial determination on class certification on November 15, 2016. At any point through its judgment on March 28, 2017, the court could have revisited this issue. Indeed, in its August 23, 2017, amended judgment, the trial court clarified that its final ruling "supplants any prior orders." The initial determination on class certification is thus part and parcel of the court's final ruling and is properly a part of this appeal. *See e.g.,* La. C.C.P art. 592(A)(3)(d); *Price v. Martin*, 79 So.3d 960, 966 (La. 2011); *Baker v. PHC-Minden, L.P.*, 2014-2243 (La.5/15/15); 167 So.3d 528, 537-38.

Raza L.J. (2015); Alec C. Ewald, *"Civil Death:" The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 Wis. L. Rev. 1045, 1114-15 (2002) ("[D]isenfranchising released prisoners says that we do not believe our 'correctional' institutions have successfully prepared them to re-enter society, and barring those on probation and parole from voting runs counter to the rehabilitative assumptions behind these penalties.")

[13] *Draughter* does not confirm the state's compelling interest here. It found a compelling public purpose in regulating firearms by those on state supervision. 130 So.3d at 867. There is no such interest with respect to the right to vote.

The Louisiana Supreme Court has rejected the argument the Secretary makes here – finding that an appeal of a class certification decision issued years prior was not time barred. *Sutton Steel & Supply, Inc. v. BellSouth Mobility, Inc.*, 07-146, p. 4-6 (La. App. 3 Cir. 12/12/07); 971 So.2d 1257, 1262. Concluding that appeal of class certification was not limited to the period immediately following the initial ruling, the Court noted the "myriad points in the class certification process at which the trial court may opt to 'alter, amend, or recall its initial ruling on certification.'" *Id.* at 1263. As such, the court found "little justification for restricting a party's right to appeal class certification to the period immediately following the trial court's initial ruling." *Id.* To deny the appeal, "would run contrary to Louisiana courts' longstanding policy favoring appeals." *Id*.[14] Appellate review is thus proper here.

CONCLUSION

WHEREFORE, for the foregoing reasons, appellants pray this court reverse the trial court's ruling below, declare La. R.S. 18:2(8) and La. R.S. 18:102(A)(1) unconstitutional, enjoin the statutes, and remand for proceedings as appropriate.

[14] The Secretary also inexplicably argues – without any citation or support – that latitude to revisit class certification exists *only* if the initial decision was to certify the class, but not if the initial decision rejected class certification. Opp. at 29. This contravenes long-standing Louisiana law both favoring class certification and appeals of certification decisions. *See Baker*, 167 So.3d at 537-38.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, electronic mail, and/or placing a copy of same in the U.S. Mail, postage prepaid and addressed this 27th day of October, 2017.

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