

No. 22-412

IN THE
Supreme Court of the United States

ROY HARNESS; KAMAL KARRIEM,
Petitioners,

v.

MICHAEL WATSON,
SECRETARY OF THE STATE OF MISSISSIPPI
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth
Circuit**

**BRIEF OF *AMICUS CURIAE* CAMPAIGN LEGAL
CENTER
IN SUPPORT OF PETITION FOR A WRIT OF
CERTIORARI**

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus Curiae Campaign Legal Center (CLC) is a leading nonpartisan election law nonprofit dedicated to ensuring that the democratic process is accessible and responsive to all citizens.

Through its Restore Your Vote program, CLC is a national expert on the wide array of felony disenfranchisement and voting rights restoration schemes across the United States. CLC hosts an online tool—restoreyourvote.org—that provides comprehensive, detailed, and accessible information about voting rights restoration for people with convictions in all 50 states and Puerto Rico, as well as an email and phone hotline to respond to user questions. CLC’s Restore Your Vote online tool is relied upon in election law resources published by the United States Department of Justice,² Election Protection (administered by Lawyers’ Committee for

¹ Pursuant to this Court’s Rule 37.6, counsel for *Amicus Curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than the *Amicus Curiae*, its members, or its counsel has made a monetary contribution intended to fund the preparation or submission of this brief. Petitioners and Respondents have consented to the filing of this *amicus curiae* brief by written blanket consent.

² U.S. Dep’t of Justice, Guide to State Voting Rules that Apply After a Criminal Conviction (May 20, 2022), https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2022/05/19/voting_with_a_criminal_conviction.pdf.

Civil Rights Under Law),³ Vote.org,⁴ and other election law authorities.

In addition to its online tool and hotline, CLC's Restore Your Vote program works closely with local partners in states with complicated rights restoration policies to ensure every eligible citizen with a past conviction has access to the information and assistance necessary to vote.

Finally, CLC is a leading litigator on felony disenfranchisement and rights restoration matters. In *Raysor v. DeSantis*,⁵ CLC challenged Florida's requirements that people with past convictions pay fines and fees in order to restore their voting rights. In *Tennessee NAACP v. Lee*,⁶ CLC represents a proposed class challenging the lack of procedural protections within Tennessee's rights restoration scheme. In *Thompson v. Merrill*,⁷ CLC represents plaintiffs in a challenge, *inter alia*, to the ex post facto imposition of felony disenfranchisement in Alabama. CLC also represents individuals in state court cases in Alabama and Tennessee, addressing those states' improper application of their felony

³ Election Protection, Resources, <https://866ourvote.org/resources/>.

⁴ Vote.org, Register to Vote, <https://www.vote.org/register-to-vote/>.

⁵ *Raysor v. DeSantis*, No. 19A1071, 591 U.S. ___ (2020).

⁶ *Tennessee NAACP v. Lee*, No. 3:20-cv-010309 (M.D. Tenn.).

⁷ *Thompson v. Merrill*, No. 21-10034 (11th Cir.) (pending).

disenfranchisement laws to out-of-state and federal convictions.

Based on CLC’s expertise in the field, CLC writes to shine a light on Mississippi’s position as an extreme outlier in its felony disenfranchisement and rights restoration restrictions, even amongst the most prohibitive states.

SUMMARY OF THE ARGUMENT

This case is about Mississippi’s continuing permanent disenfranchisement of hundreds of thousands of citizens, including an estimated 15.74% of its Black population,⁸ pursuant to a constitutional provision that everyone agrees was drafted to “obstruct the exercise of the franchise by the negro race.”⁹ Petitioners seek to invalidate a central remaining feature of that provision—the list of eight specific disenfranchising crimes that was indisputably adopted in 1890 because those crimes were thought to be committed more frequently by Black Mississippians. The Fifth Circuit nevertheless

⁸ See Christopher Uggen, Ryan Larson, Sarah Shannon, and Robert Stewart, *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction*, The Sentencing Project at 8-10 (Oct. 2022),

<https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>. This estimate is based on all disqualifying felonies in Mississippi. The *Harness* Plaintiffs do not challenge disqualification for rape and murder convictions, which were added to the constitution in 1968. These convictions, however, represent a small percentage of the disenfranchised population.

⁹ *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896).

upheld Mississippi's 1890 disenfranchising provision based on an erroneous conclusion that two later amendments to the provision—which deleted one crime from the list and added two others but did not give voters the opportunity to accept or reject the 1890 law itself—somehow cleansed the taint of discrimination. Because this case raises an issue of exceptional importance—continuing intentional racial discrimination governing the franchise—this Court should grant certiorari and reverse.

Rather than repeat the persuasive arguments in the petition, *amicus* seeks to contextualize those arguments by describing the severity of Mississippi's felony disenfranchisement system and how that system compares with other states. Such a comparison further demonstrates that Mississippi's felony disenfranchisement scheme is an outdated relic of the Jim Crow era and a stain on our democracy.

In Mississippi, those with a disenfranchising felony are permanently disqualified from voting unless they receive an entirely discretionary (and rare) bill of suffrage from the Legislature or pardon from the Governor. Even as compared to other states in the Deep South, Mississippi stands apart with respect to criminal disenfranchisement. It is the *only* state in the nation that continues to impose broad permanent disenfranchisement for even a single felony conviction without providing a systematic pathway to rights restoration. Only five other states in the nation—Arizona, Iowa, Kentucky, Virginia, and Wyoming—have laws that continue to impose permanent disenfranchisement beyond a narrow set

of convictions. But even compared to these states, Mississippi is an outlier. Arizona and Wyoming only impose permanent disenfranchisement in cases of multiple felony convictions (and Arizona provides a discretionary pathway to restoration in state court) and governors in Iowa, Kentucky, and Virginia have all used their executive powers to extend rights restoration broadly post-sentence. Every other state in the country either automatically restores voting rights upon completion of certain benchmarks or allows for a non-discretionary application for rights restoration.

Moreover, Mississippi is the only state where the legislature is prohibited from systematically restoring voting rights and the executive branch has not acted to restore voting rights broadly. Consequently, Mississippi leads the nation in the percentage of its voting-eligible population that is disenfranchised, and trails only Tennessee in its percentage of disenfranchised Black citizens. More than one in ten citizen-voting-age Mississippians have had their right to vote permanently taken away, including more than one in seven Black voting-age citizens.

Finally, this state of affairs is unlikely to change unless the Court intervenes to remove this Jim Crow law from the books. While Mississippi's Constitution provides for voter-initiated constitutional amendments, it requires that no more than 20 percent of the requisite signatures gathered for an amendment be from any individual congressional district. Since Mississippi's congressional delegation has been reduced from five to four, that method is now

foreclosed. Thus, there is currently only a single, extremely narrow avenue for erasing Mississippi's Jim Crow past: amending the constitution via a legislatively referred amendment requiring the support of two-thirds of the legislature.

By every measure, Mississippi's felony disenfranchisement regime is an extreme outlier. This should come as no surprise since that regime has not meaningfully changed since 1890, when it was drafted for the explicit purpose of disenfranchising Black citizens. In 2022, it continues to perform that function very effectively. If the Fifteenth Amendment stands for anything, it is to guard against such intentional maneuvers to maintain an exclusionary democracy. This Court should grant certiorari to preserve our core constitutional commitment to a democracy free from racial discrimination.

ARGUMENT

I. Mississippi's System of Permanent Disenfranchisement is an Extreme Outlier.

A. Mississippi is the Only State to Broadly and Permanently Disenfranchise People with Convictions.

Permanent disenfranchisement¹⁰ for criminal convictions is a relic of the Jim Crow oppression of

¹⁰ For purposes of this brief, permanent disenfranchisement is defined as disenfranchisement for a conviction without any systematic pathway for voting rights restoration. In Mississippi,

Black citizens. Mississippi is the *only* state to broadly¹¹ impose permanent disenfranchisement for even a single felony conviction. Every other former Jim Crow state (and every other state in the nation) has created a systematic pathway to voting rights restoration for people who have served their criminal sentences.

The broad application of criminal disenfranchisement to permanently exclude people with convictions from the franchise is directly linked to efforts to disenfranchise Black Americans after the Civil War and the ratification of the Reconstruction Amendments.¹² Between 1865 and 1880, at least 13 states adopted felony disenfranchisement laws intended to circumvent the Fifteenth Amendment's

the only pathway to rights restoration is an individualized pardon or bill of suffrage. *See infra* Section I.B.

¹¹ In Mississippi, not all felony convictions are disqualifying. However, the list of disqualifying felony convictions—which was hand-picked to intentionally disenfranchise Black Mississippians—includes a broad swath of common crimes, including non-violent offenses such as larceny, theft, and felony shoplifting. *See* Miss. Const. art. XII, § 241. As a result, Mississippi's felony disenfranchisement scheme is unlike those in other states that reserve permanent felony disenfranchisement for a limited number of particularly serious or violent crimes. *See, e.g.,* Ala. Code § 15-22-36.1(g) (enumerating permanently disenfranchising crimes, including murder, rape, and others).

¹² *See generally* Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship (Studies in Crime and Public Policy)* (2013); Angela Behrens, Christopher Uggen, and Jeff Manza, *The Racial Origins of Felon Disenfranchisement*, in Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (2006).

prohibition against racial discrimination in voting, including Mississippi.¹³ A second wave of felony disenfranchisement laws—often quite explicit in their racist goals—were enacted at the end of the nineteenth century, including in Mississippi, South Carolina, Louisiana, and Alabama.¹⁴ While this trend was not limited to Southern states,¹⁵ the link between racial exclusion and post-Civil War felony disenfranchisement is clear: “[w]hen African Americans [made] up a larger proportion of a state’s prison population, that state [was] significantly more likely to adopt or extend felon disenfranchisement.”¹⁶

Trends in recent years reflect a rejection of the racist and exclusionary history of felony disenfranchisement and a widespread preference for restoring voting rights for people with past convictions. From 1997 to 2021, 25 states and the District of Columbia eased their restrictions on voting for people with convictions.¹⁷ This trend applies equally to former Jim Crow states. For example, in 2003, Alabama enacted a streamlined process

¹³ Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice (May 9, 2017), <https://www.brennancenter.org/media/386/download>.

¹⁴ *Id.*

¹⁵ For example, when New York was forced to abandon its property ownership requirement for Black voters, it expanded its felony disenfranchisement provision. *Id.*

¹⁶ Manza & Uggen, *supra* note 12, at 67.

¹⁷ *Voting Rights in the Era of Mass Incarceration: A Primer*, The Sentencing Project (July 2021), <https://www.sentencingproject.org/wp-content/uploads/2015/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf>.

guaranteeing voting rights restoration for people with convictions after they meet the prerequisites (including completion of sentence and payment of certain legal financial obligations (“LFOs”)).¹⁸ And in 2017, Alabama passed the Felony Voter Disqualification Act to finally define—and limit—which crimes involve “moral turpitude” and thus result in the loss of the right to vote;¹⁹ prior to 2017, whether a crime involved “moral turpitude” and was thus disenfranchising was undefined and left up to the discretion of the local registrar.²⁰ Florida voters overwhelmingly passed Amendment 4 to the Florida Constitution in 2018 to automatically restore the right to vote for most Floridians with felony

¹⁸ Ala. Code §§ 15-22-36.1, 17-3-31.

¹⁹ Ala. Code §§ 17-3-30.1, 17-3-31.

²⁰ Ala. Code § 17-3-30.1 (acknowledging that, prior to the 2017 law’s passage, “there [wa]s no comprehensive list of felonies that involve moral turpitude which disqualify a person from exercising his or her right to vote” and “[n]either individuals with felony convictions nor election officials ha[d] a comprehensive, authoritative source for determining if a felony conviction involves moral turpitude and is therefore a disqualifying felony”). This ambiguity, stemming from Alabama’s 1901 Constitution, was a feature, not a bug, allowing registrars to apply the law selectively to disenfranchise Black citizens. See Malcolm Cook McMillan, *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro and Sectionalism* at 287 (1978) (quoting John B. Know, the 1901 constitutional convention chair stating: “If you select the test of education . . . if you select the test of patriotism, if you select the test of freedom from commission of crime, every such test, when properly applied, will exclude largely more one race than another.”).

convictions upon completion of their sentence.²¹ In 2019, Louisiana passed Act 636, which provides for automatic restoration of voting rights for people with felony convictions if they have been out of prison for at least five years or if they are no longer on probation or parole (whichever comes first).²² Previously, Louisiana barred all people with felony convictions who were on probation or parole from voting,²³ which disenfranchised tens of thousands of people every year, most of whom were Black.²⁴

These new laws governing voting rights restoration are far from perfect, and they still result in the disparate disenfranchisement of Black and Latino people.²⁵ Yet, these incremental reforms represent a response by voters, advocates, and legislators to the devastating effects of permanent

²¹ Fla. Const. art. VI, § 4. The state legislature later passed legislation that requires those eligible voters to pay their fines, fees, and restitution before their right to vote can be restored, limiting the impact of this constitutional amendment. *See* Fla. Stat. Ann. § 98.0751.

²² Act 636, 2019 Reg. Sess. (La. 2019); *see also* Editorial Board, *Our Views: Thanks to new law, more Louisiana voters have a stake in democracy*, The Baton Rouge Advocate (Mar. 1, 2019), https://www.theadvocate.com/baton_rouge/opinion/our_views/article_2bd6919c-3b6d-11e9-a86c-9733299a2efb.html.

²³ *See Voice of the Ex-Offender v. State*, 249 So. 3d 857, 860 (La. App. 1st Cir. 2018), *writ denied*, 255 So. 3d 575 (La. 2018).

²⁴ *Barriers to Voting in Louisiana*, Louisiana Advisory Committee for the U.S. Comm'n on Civil Rights at 24 (June 2018), <https://www.usccr.gov/pubs/2018/08-20-LA-Voting-Barriers.pdf> (estimating that 80 percent of eligible parolees/probationers who were disenfranchised before Act 636's enactment were Black).

²⁵ *See* Uggen et al., *supra* note 8, at 17.

disenfranchisement, particularly on Black voters.²⁶ Notwithstanding this national trend, Mississippi has not meaningfully changed its felony disenfranchisement regime since 1890.²⁷

²⁶ *E.g.*, Lesley Stahl, *The legal and political fight over Amendment 4, granting as many as 1.4 million Florida felons the right to vote*, 60 MINUTES (Aug. 27, 2020), <https://www.cbsnews.com/news/amendment-4-florida-felony-voting-rights-60-minutes-2020-09-27/> (describing advocacy efforts in Florida); Katy Reckdahl and Bryn Stole, *Convicted felons out of prison on parole, probation now allowed to vote in Louisiana, but not all do*, New Orleans Advocate (Oct. 5, 2019), https://www.nola.com/news/politics/convicted-felons-out-of-prison-on-parole-probation-now-allowed-to-vote-in-louisiana-but/article_21c3ea7e-e7c5-11e9-bb6c-7b8cee9c755e.html (describing advocacy efforts in Louisiana); Julie Ebenstein, *The Alabama Governor Just Signed a Bill That Will Restore Voting Rights to Thousands of Alabamians*, Am. Civ. Lib. Union (May 26, 2017), <https://www.aclu.org/news/voting-rights/alabama-governor-just-signed-bill-will-restore-voting-rights> (describing advocacy efforts in Alabama).

²⁷ *See Harness v. Watson*, 47 F.4th 296, 300-02 (5th Cir. 2022). Mississippi adopted permanent disenfranchisement for certain disqualifying felonies—which it deemed most likely to disenfranchise Black citizens—as a part of its 1890 constitution. *Id.* In 1950 and 1968, Mississippi removed one disqualifying offense and added two others but otherwise left the permanent disenfranchisement law untouched. *See id.* Those amendments did not give voters the option to otherwise approve or disapprove of the 1890 disenfranchisement scheme. *Id.* *See also* Angela Behrens, Christopher Uggen, and Jeff Manza, *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 American Journal of Sociology 559, 565-66 (2003) (demonstrating that Mississippi is one of only a handful of states that has not significantly changed its broad disenfranchisement scheme since the 1890s).

As a result of this consistent trend towards rights restoration, Mississippi now stands alone in applying the harshest of felony disenfranchisement schemes.²⁸

Two states, Maine and Vermont, plus the District of Columbia and Puerto Rico impose no restriction on

²⁸ Any distillation and categorization of the myriad state felony disenfranchisement schemes will omit some nuance. For example, some states permanently bar people who are convicted of the most serious offenses, such as murder or rape, or election-related offenses from voting. *See, e.g.* Ohio Rev. Code Ann. § 3599.39 (after a second election-related offense, an Ohio voter “shall be disfranchised”). And in some states—including Mississippi, Alabama, and Alaska—not all felonies are disqualifying. *See* Miss. Code Ann. § 23-15-19 (vote fraud and an enumerated list of crimes are disenfranchising); Ala. Code § 17-3-30.1 (an enumerated list of felonies involving moral turpitude are disenfranchising); Alaska Stat. Ann. § 15.05.030 (crimes of moral turpitude are disenfranchising). There are often different rules for out-of-state and federal felonies. *See, e.g.*, Miss. Attorney Gen. Op. No. 2005-0193, 2005 WL 1220438 (Apr. 26, 2005). These rules, and rules about payment of legal financial obligations, can be murky. *See* Tenn. Code Ann. § 40-29-202 (requiring that a person pay “all court costs” to restore his or her voting rights, but not defining “court costs”). Sometimes the rules differ based on the date of your felony. *See, e.g.*, Tenn. Code Ann. § 40-20-112; *Crutchfield v. Collins*, 607 S.W. 2d 478 (Tenn. Ct. App. 1980) (differentiating between convictions that occurred before January 15, 1973, between January 15, 1973 and May 17, 1981, and on or after May 18, 1981).

The descriptions and map below are based on how a state’s felony disenfranchisement scheme applies to the mine run of disqualifying felonies, not non-disqualifying felonies or discrete categories of felonies that are subject to harsher restrictions. They reflect rules related to felonies today (not rules that may apply to older felonies) and Campaign Legal Center’s best assessment of unclear or ambiguous restrictions related to legal financial obligations.

voting for people with convictions.²⁹ Twenty-two states only disenfranchise people with felony convictions while they are incarcerated.³⁰ Twelve

²⁹ Me. Const. art. II, § 1; Me. Stat. tit. 21-A § 115; Vt. Const. ch. II, § 42; Vt. Stat. Ann. Tit. 17, § 2121 ; D.C. Code § 1-1001.02 ; 16 L.P.R.A. § 4563.

³⁰ California (Cal. Const. art. II, § 4), Colorado (Colo. Const. art. VII, § 10), Connecticut (Conn. Gen. Stat. Ann. § 9-46a), Hawaii (Haw. Rev. Stat. Ann. § 831-2), Illinois (730 Ill. Comp. Stat. Ann. 5/5-5-5), Indiana (Ind. Code Ann. § 3-7-13-5), Maryland (Md. Code Ann., Elec. Law § 3-102), Massachusetts (Mass. Gen. Laws Ann. Ch. 51, § 1), Michigan (Mich. Comp. Laws Ann. § 168.758b), Montana (Mont. Code Ann. § 13-1-111), Nevada (Nev. Rev. Stat. Ann. § 213.157), New Hampshire (N.H. Rev. Stat. Ann. § 607-A:2), New Jersey (N.J. Stat. Ann. § 19:4-1), New York (N.Y. Elec. Law § 5-106 (McKinney)), North Dakota (N.D. Cent. Code § 12.1-33-03), Ohio (Ohio Rev. Code Ann. § 2961.01), Oregon (Or. Rev. Stat § 137.281), Pennsylvania (25 Pa. Cons. Stat. § 1301(a); *Mixon v. Pa.*, 759 A.2d 442 (Pa. Commw. Ct. 2000)), Rhode Island (R.I. Const. art. II, § 1), Utah (Utah Code § 20A-2-101.5), and Washington (Wash. Rev. Code § 29A.08.520). In North Carolina, there is ongoing litigation concerning voting rights for people on parole and probation. Currently, people on parole and probation in North Carolina can vote pursuant to a court order. See *Community Success Initiative v. Moore*, No. 19 CVS 15941 (N.C. Super. Ct., Sept. 4, 2020), available at <https://forwardjustice.org/wp-content/uploads/2020/09/19-CVS-15941-Order-on-Plt-MSJ.pdf>. The North Carolina Supreme Court will hear that case in 2023. See Order Granting Certiorari, *Community Success Initiative v. Moore*, No. 331PA21, <https://appellate.nccourts.org/orders.php?t=PA&court=1&id=407971&pdf=1&a=0&docket=1&dev=1>. Even if the Plaintiffs do not prevail in that case, North Carolina statutes provide for rights restoration after completion of sentence, including parole and probation. See N.C. Gen. Stat. Ann. § 13-1.

states re-enfranchise people with convictions after completion of any prison term, parole, and probation.³¹ Thus, the majority of states impose no disenfranchisement after a person's term of supervision. Three states restore voting rights automatically after completion of sentence plus payment of some or all legal financial obligations.³² Five states impose additional requirements post-sentence for rights restoration, such as a waiting period, application, or documentation requirement.³³

³¹ Alaska (Alaska Stat. Ann. § 15.05.030), Delaware (Del. Code Ann. tit. 15, §§ 6102-03), Idaho (Idaho Code Ann. § 18-310), Kansas (Kan. Stat. Ann. § 21-6613), Minnesota (Minn. Stat. § 609.165), Missouri (Mo. Ann. Stat. § 115.133), New Mexico (N.M. Stat. Ann. § 1-4-27.1), South Carolina (S.C. Code Ann. § 7-5-120(B)(2)-(3)), South Dakota (S.D. Codified Laws § 12-4-18) (South Dakota's Secretary of State previously advised on its website that it interprets the law to require payment of LFOs prior to restoration. However, there is no statutory language to that effect and that guidance has been removed from the website.), West Virginia (W. Va. Code Ann. § 3-2-2), and Wisconsin (Wis. Stat. Ann. § 6.03(1)(b)); *see also* Louisiana (La. Stat. Ann. § 18:102) (restoring eligibility upon completion of sentence, including probation and/or parole, *or* when five years have passed since the person was incarcerated, whichever is sooner).

³² Florida (Fla. Stat. Ann. § 98.0751) (requiring payment of court costs, fines, fees, and restitution imposed at the time of conviction), Georgia (Ga. Code Ann. § 21-2-216) (requiring payment of fines, but not restitution, fees, or costs), and Texas (Tex. Elec. Code Ann. § 11.002) (requiring full discharge of sentence for rights restoration, which may include LFOs).

³³ Alabama (Ala. Code § 15-22-36.1) (requiring that a person apply and receive a "Certificate of Eligibility to Register to Vote" from the Alabama Bureau of Pardons and Paroles to restore his

Finally, there are five other states in the nation—Arizona, Iowa, Kentucky, Virginia, and Wyoming—that have laws that continue to impose permanent disenfranchisement beyond a narrow set of convictions. But even compared to these states, Mississippi is an outlier. First, Arizona and Wyoming grant automatic restoration of rights to many residents, but not others, while Mississippi proves automatic restoration to no one. In Arizona, a person with a single felony conviction has their rights restored automatically upon completion of supervision and payment of restitution.³⁴ For those with more than one conviction, Arizona provides a discretionary application process for rights restoration through the courts.³⁵ No such process is available in Mississippi. In Wyoming, those with a single non-violent felony (or multiple non-violent felonies arising from the same occurrence) have their

or her voting rights after completion of sentence and payment of LFOs), Arkansas (Ark. Const. amend. LI, § 11) (requiring completion of sentence including probation and parole, payment of all applicable LFOs, and presentation of documentary proof of meeting such), Nebraska (Neb. Rev. Stat. § 29-112) (requiring a waiting period of two years after completion of sentence, including probation and parole), Oklahoma (Okla. Stat. tit. 26, § 26-4-101) (requiring that a person have “fully served their sentence of court-mandated calendar days” before restoration of voting rights even if they have already been discharged from that sentence), and Tennessee (Tenn Code Ann. § 40-29-202) (allowing disenfranchised individuals to seek a nondiscretionary “Certificate of Restoration” to restore his or her voting rights after completion of sentence and payment of LFOs).

³⁴ Ariz. Rev. Stat. § 13-907.

³⁵ Ariz. Rev. Stat. § 13-906.

rights automatically restored.³⁶ For those with multiple unrelated felonies or violent felonies, the statute creates a process for the Governor to grant restoration of rights upon completion of sentence.³⁷

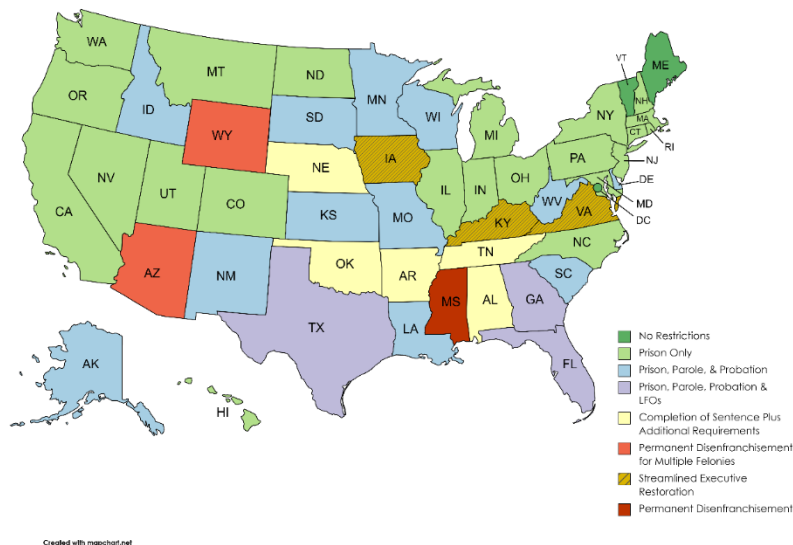
Second, while the state constitutions in Iowa, Kentucky, and Virginia continue to impose blanket permanent disenfranchisement, the governors in all three states have used their executive powers to extend rights restoration broadly post-sentence.³⁸ No Mississippi governor has ever implemented such a program.

³⁶ Wyo. Stat. Ann. § 7-13-105 (requiring completion of sentence, including probation and parole and, depending on the jurisdiction and date of offense, may require application for a certificate of restoration).

³⁷ *Id.*

³⁸ See Ky. Exec. Order No. 2019-003 (Dec. 12, 2019), https://governor.ky.gov/attachments/20191212_Executive-Order_2019-003.pdf (providing for the automatic restoration of voting rights for voters with certain felony convictions who have finally discharged their conviction and an application to restore voting rights to those voters whose felony convictions do not qualify for automatic restoration); Office of Governor Ralph Northam, *Governor Northam Restores Civil Rights to Over 69,000 Virginians, Reforms Restoration of Rights Process* (March 16, 2021), <https://www.governor.virginia.gov/newsroom/all-releases/2021/march/headline-893864-en.html> (restoring voting rights to Virginians who had completed their prison time and announcing the same policy moving forward); Iowa Exec. Order No. 07 (Aug. 5, 2020), <https://governor.iowa.gov/sites/default/files/documents/EO7%20-%20Voting%20Restoration.pdf> (restoring voting rights to people who completed sentences for all felony convictions except felony homicide offenses and implementing a process to restore voting rights to those who complete their sentences going forward).

As the map below illustrates, Mississippi stands alone in broadly and permanently disenfranchising people with felony convictions, even among its peers in the Deep South.



This is the natural outgrowth of the history of Mississippi's felony disenfranchisement scheme. While other states have abandoned or at least reformed the harsh felony disenfranchisement provisions of the post-Civil War era—which were explicitly crafted to disenfranchise Black Americans—Mississippi has not.

B. Mississippi’s Constitution Does Not Allow the Legislature to Create a Systematic Pathway for Voting Rights Restoration.

With respect to felony disenfranchisement, Mississippi’s constitution is also an outlier because it forecloses the legislative creation of a systematic voting rights restoration process.

The vast majority of state constitutions that disenfranchise their citizens based on felony convictions create room for a path to restoration. Several states have a mechanism for automatic restoration of rights embedded into their constitutions. For example, Georgia’s constitution provides that, “No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote *except upon completion of the sentence.*”³⁹ Similarly, Louisiana’s constitution provides that, “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 under an order of imprisonment for conviction of a felony.*”⁴⁰ In these states voting rights restoration is automatic without the need for legislation.

Other states have constitutional provisions that allow their legislatures discretion to create pathways for systematic restoration of rights. For example, Alabama’s constitution provides that, “No person convicted of a felony involving moral turpitude . . .

³⁹ Ga. Const. art. II, § 1, ¶ III(a) (emphasis added).

⁴⁰ La. Const. art. I, § 10 (emphasis added).

shall be qualified to vote *until restoration of civil and political rights or removal of disability*.”⁴¹ Texas’s constitution similarly states that, “The following classes of persons shall not be allowed to vote in this State: . . . persons convicted of any felony, *subject to such exceptions as the Legislature may make*.”⁴² Tennessee’s constitution, too, allows the legislature leeway to restore rights, providing: “Laws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.”⁴³ The constitutions of these states and others allow their legislatures to create systematic pathways to rights restoration.

Mississippi’s Constitution, on the other hand, does not allow the legislature to create a streamlined pathway to voting rights restoration. It states:

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, *and who has never been convicted of murder,*

⁴¹ Ala. Const. art. VIII, § 177(b) (emphasis added).

⁴² Tex. Const. art. VI, § 1(a) (emphasis added).

⁴³ Tenn. Const. art. IV, § 2 (emphasis added).

rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, is declared to be a qualified elector, except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefor and is otherwise a qualified elector.⁴⁴

By categorically excluding individuals convicted of the disqualifying crimes from the definition of qualified electors, this provision precludes legislation to restore voting rights broadly. Only a constitutional amendment could create such a pathway back to the franchise.

The Mississippi Constitution does allow two, narrow, discretionary, and arduous paths to voting rights restoration: gubernatorial restoration or a bill of suffrage.⁴⁵ In order to receive gubernatorial restoration, a disenfranchised person must seek an individualized pardon or apply for an Executive Order Restoring Civil Rights directly from the Governor.⁴⁶ Even more onerously, to obtain a bill of suffrage the state legislature must pass an act, “by a two-thirds vote of both houses, of all members elected, [to] restore the right of suffrage to *any person* disqualified by reason of crime.”⁴⁷ No other state’s rights restoration

⁴⁴ Miss. Const. art. XII, § 241 (emphasis added).

⁴⁵ Miss. Const. art. XII, § 253.

⁴⁶ Miss. Code Ann. § 47-7-41.

⁴⁷ Miss. Const. art. 12, § 253 (emphasis added).

process relies on *individual* state legislative approval. This provision makes it impossible for Mississippi to legislatively delegate rights restoration to an administrative process.

Only three state constitutions in addition to Mississippi similarly deny their legislatures the ability to create a pathway to rights restoration—Virginia, Iowa, and Kentucky.⁴⁸ But, as discussed above, in each of those states, governors have taken broad executive action to restore voting rights.⁴⁹ Mississippi stands alone in both denying its legislature the ability to take systematic action and failing to do so on an executive level.

Compounding these issues, Mississippi's constitutional amendment process makes it remarkably difficult to change. There are only two paths to do so. The first is a legislatively conferred amendment, which requires a two-thirds vote of both houses of the state legislature to include a proposed amendment on the ballot, followed by a majority vote

⁴⁸ Iowa Const. art. 2, § 5 (“A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector”); Ky. Const. § 145 (“1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon”); Va. Const. art. 2, § 1 (“No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”)

⁴⁹ See *supra* note 38 and accompanying text.

to pass the amendment.⁵⁰ The second is a voter-initiated amendment,⁵¹ but that option is now defunct. Because of the reduction in Mississippi's congressional representation from five to four, this option is now entirely foreclosed. Under Section 273, a voter-initiated amendment requires the collection, within one calendar year, of a number of petition signatures equal to 12 percent of the votes cast for governor in the previous election, *but* the signatures must be gathered such that no more than one-fifth can be from a single congressional district.⁵² Since Mississippi lost a congressional district in the 2000 reapportionment and now has only four districts, this requirement is impossible to meet.⁵³ Each district can only provide 20 percent of the initiative petition signatures required to place the proposal on the ballot, totaling 80 percent of the required signatures and making it “mathematically impossible to satisfy the requirements of Section 273 using just four districts.”⁵⁴ The Supreme Court of Mississippi has affirmed that this renders Section 273 ineffective.⁵⁵

Due to Mississippi's outlier constitution, the voting rights restoration rate for people with convictions is staggeringly low. From 2000 to 2015, only 335 of 166,494 disenfranchised persons who

⁵⁰ Miss. Const. art. XV, § 273(2).

⁵¹ *Id.* § 273(3).

⁵² *See id.*

⁵³ *See Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 615 (Miss. 2021).

⁵⁴ *See id.* at 608 (*quoting* Miss. Attorney Gen. Op. No. 2009-00001, 2009 WL 367638, at *3 (Jan. 9, 2009)).

⁵⁵ *Id.*

completed their sentences had their rights restored.⁵⁶ From 2016 to 2020, the state restored the voting rights of just 26 people.⁵⁷ And from 2020 to mid-2022, Mississippi reported an addition 100 restorations, leaving an estimated 180,810 post-sentence Mississippians disenfranchised.⁵⁸

II. The Extreme and Disparate Impact of Mississippi’s Disenfranchisement System Is also an Outlier.

The extreme nature of Mississippi’s felony disenfranchisement provision is confirmed by its impact on Black Mississippians. Mississippi disenfranchises a higher percentage of voting-eligible people than any other state in the nation, including an exceptionally high and disproportionate percentage of otherwise eligible Black Mississippians.

Indeed, Mississippi incarcerates “a higher percentage of its people than any democracy on

⁵⁶ *Felony Disenfranchisement in Mississippi*, One Voice, Mississippi NAACP, & The Sentencing Project, at 2 (Feb. 2018), <https://www.sentencingproject.org/app/uploads/2022/08/Felony-Disenfranchisement-in-Mississippi.pdf>.

⁵⁷ See Christopher Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, The Sentencing Project, at 14 (Oct. 2020), <https://www.sentencingproject.org/app/uploads/2022/08/Locked-Out-2020.pdf>.

⁵⁸ See Uggen et al., *supra* note 8, at 19.

earth.”⁵⁹ The high incarceration rate combined with the state’s maximalist disenfranchisement provision results in Mississippi having one of the largest disenfranchised populations in the country. As of 2022, an estimated 239,209 Mississippians are disenfranchised.⁶⁰ This constitutes 10.69% of Mississippi’s voting eligible population, a higher percentage than any other state in the nation.⁶¹ That means more than one out of every ten voting-eligible persons in the state have had their voting rights permanently stripped.

The impact is even worse for Black voters. As of 2022, Mississippi disenfranchises an estimated 15.74% of its Black citizen voting age population, which is more than one in every seven voting eligible Black persons.⁶² Mississippi is second only to Tennessee in percentage disenfranchisement of Black voters.⁶³ But in Tennessee, many disenfranchised individuals are eligible to receive a mandatory

⁵⁹ See Emily Widra and Tiana Herring, *States of Incarceration: The Global Context 2021, State Profiles: Mississippi*, Prison Policy Initiative (September 2021), <https://www.prisonpolicy.org/profiles/MS.html>.

⁶⁰ See Uggen et al., *supra* note 8, at 16.

⁶¹ See *id.* at 6, 16.

⁶² See *id.* at 17; see also Gina Castro, *More Than 15% of Black Mississippi Residents Permanently Barred From Voting*, Center for Public Integrity, at 9, 17 (Oct. 6, 2022), <https://publicintegrity.org/politics/elections/who-counts/more-than-15-of-black-mississippi-residents-permanently-barred-from-voting/>.

⁶³ See Uggen et al., *supra* note 8, at 17.

Certificate of Restoration (COR).⁶⁴ While most eligible Tennesseans have not received a COR because the application process is complex and opaque,⁶⁵ disenfranchised Mississippians do not even have the option to seek a nondiscretionary restoration of voting rights.

Given the realities of how Mississippi's system of felon disenfranchisement operates, *amicus* submits that it is particularly important for the Court to grant review and correct the Fifth Circuit's egregious error in concluding that the taint of racial discrimination at the time of the enactment of the relevant constitutional provision was cleansed through later irrelevant and minor constitutional amendments.

CONCLUSION

The petition for a writ of certiorari should be granted.

⁶⁴ See Tenn. Code Ann. § 40-29-201, et seq.

⁶⁵ See First Am. Compl., ECF No. 102 at ¶¶ 15-28, *Tenn. Conf. of the NAACP v. Lee*, No. 3:20-cv-01039 (M.D. Tenn. Oct. 20, 2022).

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