

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

STATE OF LOUISIANA

NO. 771, 665

DIVISION "26"

**VOICE OF THE EXPERIENCED AND RACHAEL DAY, Petitioners,**

**VERSUS**

**THE STATE OF LOUISIANA, NANCY LANDRY, in her official capacity as Secretary of State of Louisiana, and STEVE RABORN, in his official capacity as East Baton Rouge Registrar of Voters, Defendants.**

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

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

**MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

In Louisiana, as elsewhere, people in pretrial detention and people convicted of misdemeanor sentences retain their fundamental right to vote. But the State of Louisiana has nevertheless disenfranchised an entire category of these eligible voters: first-time voters who are in jail. That is because, under state law:

- Jailed voters may only vote absentee, La. R.S. § 18:1303; but
- First-time voters must vote in person. La. R.S. § 18:562.

Voice of the Experienced ("VOTE") and Rachael Day (hereinafter "Petitioners"), hereby move this Honorable Court pursuant to Louisiana Code of Civil Procedure article 3601 for entry of summary judgment against the State of Louisiana, the Honorable Nancy Landry, in her official capacity as Secretary of State of Louisiana, and Steve Raborn, in his official capacity as East Baton Rouge Registrar of Voters (hereinafter "Defendants") to prevent them from denying eligible first-time voters who are jailed their fundamental right to vote.

Petitioner Rachael Day is an eligible, registered Louisiana voter who has never cast a ballot in Louisiana before. Petitioner Day is also currently jailed pre-trial in East Baton Rouge Parish Prison. The fact that Petitioner Day is currently jailed does not affect her voter eligibility because the Louisiana Constitution only suspends the right to vote for justice-involved individuals who are "under an order of imprisonment for conviction of a felony" and who are incarcerated pursuant to that order. Petitioner Day, who is currently being held pre-trial, is under no such order. La. Const. art. I, § 10. But Petitioner Day has nevertheless been precluded from exercising her right to vote

because compounding provisions of Louisiana’s Election Code (hereinafter “the Jail Voting Provisions”)<sup>1</sup> deny her—and all other eligible, jailed first-time voters—any way to cast a ballot. This disenfranchisement is unconstitutional.

None of the material facts in this case are contestable. The Jail Voting Provisions facially disenfranchise eligible first-time voters in Louisiana jails, and the State concedes that these voters have no means by which they can cast a ballot. The only question, then, is whether the Jail Voting Provisions as enacted by the Louisiana legislature are constitutional. This is a pure question of law, and the answer is no: the legislature cannot, by statute, disenfranchise a group of voters that Louisiana’s Constitution has granted the right to vote.

As outlined herein, Petitioners are entitled to Summary Judgment, and the declaratory and injunctive relief they seek. Petitioners now move this Honorable Court for such relief to remedy the ongoing violation of these eligible voters’ constitutional rights.

#### STATEMENT OF THE CASE

##### **I. The Jail Voting Provisions Facialy Deny Eligible, First-Time Voters Any Way to Cast Their Ballots**

Louisiana’s Jail Voting Provisions deny eligible, first-time voters in jails any way to exercise their constitutionally guaranteed right to vote. The Louisiana Constitution provides that “[e]very 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.” La. Const. art. I, § 10. Thus, in Louisiana, many people who are incarcerated in jails—for example, those who are detained pretrial or for a misdemeanor conviction—retain their right to vote. *See* La. R.S. § 18:2 (stating a person is not “under an order of imprisonment” unless they are convicted of a crime). These individuals are also eligible to register to vote according to state statute. *See* La. R.S. § 18:102.

Several provisions within the Election Code lay out the process for voting while jailed. The Election Code states that eligible jailed voters “may only” vote absentee, La. R.S. § 18:1303(G), and does not allow election officials to operate polling places on the grounds of a jail or penal institution, La. R.S. § 18:533(C)(2). When jailed voters apply for an absentee ballot, state law requires them to obtain a certification from the sheriff, which informs the appropriate registrar that the individual who is currently seeking to vote is both incarcerated and not under an order of

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<sup>1</sup> These compounding statutory provisions are La. R. S. §§ 18:115(F), 18:115.1(F), 18:533(C)(2), 18:1303(G).

imprisonment for a felony conviction. La. R.S. § 18:1303(G). Once the registrar processes and accepts the voter's absentee ballot application and sheriff's certification, state law requires that the registrar mail the voter a ballot. La. R.S. § 18:1308(A)(1)(a). State law then contemplates that jailed voters will vote absentee by returning their ballots through the mail. La. R.S. § 18:1303(G).

The Election Code also imposes a distinct set of requirements on first-time voters who registered to vote online or by mail and who have never voted in Louisiana before (hereinafter "first-time voters"). *See* La. R.S. §§ 18:115(F)(1), 18:115.1(F). These voters must vote in-person at an early voting location, or at their precinct on Election Day. *See id.* There, they will be required to present a Louisiana driver's license, special identification card, other form of picture identification card, or, if they do not have one, complete an affidavit attesting to their identity on a form that includes their date of birth and mother's maiden name. *See* La. R.S. § 18:562(A)(2)(a). First-time voters may also avoid the first-time in-person voting requirement if they appear in person at the parish registrar of voters before the early voting period to provide the registrar with "documentation which reasonably and sufficiently establishes the applicant's identity, age, and residency." La. R.S. §§ 18:105, 18:115(F)(2)(c).

Louisiana law provides several exceptions to the first-time voter in-person appearance requirement. These exceptions allow certain first-time voters, including students, disabled voters, elderly voters, and hospitalized voters to verify their identity and cast absentee ballots without appearing in person. La. R.S. § 18:115. But there is no such exception for first-time voters who are incarcerated in jails.

In sum, Louisiana law both requires jailed first-time voters to vote by mail because they are jailed and prohibits them from doing so because they are voting for the first time. La. R.S. §§ 18:1303(G), 18:115(F)(1), 18:115.1(F). These provisions operate together to deny ballot access to eligible, first-time voters in jails despite their unquestionable eligibility guaranteed by the Louisiana Constitution. Furthermore, because they are incarcerated, first-time voters in jails cannot appear in person at the parish registrar of voters to establish their identity. *See* Ex. 1, Day Aff., at ¶ 13; Ex. 2, VOTE Aff., at ¶ 12. Despite jailed first-time voters' inability to meet the "in-person" voting requirement, Louisiana law provides no exception for these eligible jailed first-time voters akin to the existing exceptions for other groups for whom compliance with the in-person requirement would prove difficult. Thus, these eligible Louisiana voters, like Petitioner Day, are left with no means by which they can cast a ballot.

This is not a hidden or unknown issue to Defendant State of Louisiana. The State has consistently recognized that the Jail Voting Provisions deny these eligible voters any means by which they can cast their ballots. *See* La. Att’y Gen. Op. No. 07-0173 (Aug. 3, 2007); *see also* La. Att’y Gen. Op. No. 02-0335 (Sep. 18, 2002). In 2007, for example, the Louisiana Attorney General opined that although first-time jailed voters meet the qualifications to vote outlined by the Constitution of the State of Louisiana and retain their fundamental right to vote, they are “statutorily barred” from exercising their rights because the legislature failed to provide them a means by which they could do so. *See* La. Att’y Gen. Op. No. 07-0173 at 3. In 2002, the Registrar of Voters for Calcasieu Parish asked the Attorney General for an opinion providing “instructions” on how Mr. Wilbert Rideau, a properly registered voter in Calcasieu Correctional Facility, “may vote since he used the mail application procedure to register.” La. Att’y Gen. Op. No. 02-0335 at 1. The Attorney General concluded that Mr. Rideau could not vote “unless he has previously voted in the Parish.” *Id.* at 5.

Thus, even though Louisiana’s Constitution guarantees the right to vote for jailed individuals, like Petitioner Day, by enacting the Jail Voting Provisions, the legislature has enacted a statutory ban that denies this class of eligible voters access to the ballot.

## **II. The Jail Voting Provisions Have and Will Continue to Deprive Eligible First-Time Voters of Access to the Ballot**

Petitioner Day is an eligible first-time voter who has been and will continue to be unable to cast a ballot because of the Jail Voting Provisions. Petitioner Day is eligible to vote under Louisiana law: she is over 18 years of age, she is a citizen of both the United States and the State of Louisiana, she has not been interdicted after a judicial declaration of incompetency, and she is not currently under an order of imprisonment for conviction of a felony. *See* Ex. 1, Day Aff., at ¶¶ 3, 5; *see also* La. Const. art. I, § 10; La. R.S. § 18:2. Petitioner Day has been held in pretrial detention at East Baton Rouge Parish Prison since September 5, 2019. Ex. 1 at ¶ 4. Petitioner Day is a first-time voter who registered at a VOTE registration drive at East Baton Rouge Parish Prison on October 22, 2024. Ex. 1 at ¶¶ 7-8. Petitioner Day wishes to exercise her constitutional right to vote. *Id.* at ¶¶ 15-16. Since registering, she has not been able to do so, because she is a jailed first-time voter and the Jail Voting Provisions make it impossible for her to cast a ballot. *See supra* I. If Petitioner Day remains jailed pretrial for the next election, as she expects she will, Ex. 1 at ¶ 14, she will yet again have no way to cast her ballot, *see* La. R.S. §§ 18:1303(G), 18:115(F)(1), 18:115.1(F).

Other people in Louisiana jails are similarly eligible to vote because they are over 18 years of age, are citizens of both the United States and the State of Louisiana, have not been interdicted after a judicial declaration of incompetency, and are not currently under an order of imprisonment for conviction of a felony. Volunteers, with Petitioner VOTE, regularly go into jails to conduct voter registration drives and often encounter similarly situated eligible individuals, like Petitioner Day, who would be voting for the first time while in jail. *See* Ex. 2, VOTE Aff., at ¶¶ 7-8. State law has not afforded these first-time would-be voters with any way to cast their ballots. *See* La. R.S. §§ 18:1303(G), 18:115(F)(1), 18:115.1(F); *see also* La. Att’y Gen. Op. No. 07-0173 (Aug. 3, 2007).

### LEGAL STANDARD

A party is entitled to summary judgment when there is no genuine issue as to a material fact. La. Code Civ. Proc. art. 966(A)(3). A motion for summary judgment will 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.” *Id.* A “material” fact is a fact that would be of consequence at a trial on the merits. *Smith v. Our Lady of the Lake Hosp., Inc.*, 1993-2512, p. 27 (La. 07/05/94), 639 So. 2d 730, 751.

The party seeking summary judgment carries the burden of affirmatively showing the absence of a genuine issue of material fact. La. Code Civ. Proc. art. 996(D)(1). The opponent to a properly supported motion for summary judgment may not rest on mere allegations or denials but must respond by setting forth specific facts showing that there exists a genuine issue of material fact for trial. La. Code. Civ. Proc. art. 967(B); *Dejoie v. Medley*, 2008-2223 (La. 05/05/09), 9 So. 3d 826, 832.

### LAW AND ARGUMENT

The Jail Voting Provisions are facially unconstitutional. Because Petitioners’ claims implicate the fundamental right to vote, this Honorable Court should review this matter with a strict scrutiny lens. But even if the Court determines that strict scrutiny standard does not apply, the Jail Voting Provisions are still unconstitutional under the basic principle that “when a statute conflicts with a constitutional provision, the statute must fall.” *City of Baton Rouge v. Short*, 345 So. 2d 37, 40 (La. 1977).

## **I. The Jail Voting Provisions Are Subject to and Cannot Survive Strict Scrutiny.**

Under Louisiana law, “when a statute infringes upon a fundamental right . . . , the state bears a ‘heavy burden’ of proving the law’s validity under the strict-scrutiny standard.” *State v. Spell*, 2021-00876, p. 5 (La. 05/13/22), 339 So. 3d 1125, 1131; *see also Bazley v. Tortorich*, 397 So. 2d 475, 483 (La. 1981); *State v. Brennan*, 1999-2291 (La. 05/16/00), 772 So. 2d 64, 69. “This rigorous standard is imposed because fundamental rights are ‘so essential to the structure of our society’ and are ‘deeply rooted in this Nation’s history and tradition.’” *Spell*, 339 So. 3d at 1130-31.

To analyze these claims, courts undertake a two-step strict scrutiny inquiry: first, they determine whether the challenged law impinges on the exercise of a fundamental right; then, they consider whether the law is narrowly tailored to further a compelling state interest. *See, e.g., Brennan*, 772 So. 2d at 69; *Rudolph v. Massachusetts Bay Ins. Co.*, 472 So. 2d 901, 904 (La. 1985).

The Jail Voting Provisions cannot survive a strict scrutiny review because they deny eligible jailed first-time voters their fundamental right to vote and are not narrowly tailored to advance a compelling state interest. Consequently, under the two-step strict scrutiny inquiry, the Jail Voting Provisions are unconstitutional.

### ***a. The Jail Voting Provisions deny eligible jailed first-time voters their fundamental right to vote***

The Jail Voting Provisions infringe on a fundamental right: the right to vote. There is no question that in Louisiana the right to vote is fundamental. *See, e.g., Adkins v. Huckabay*, 1999-3605, p. 7 (La. 02/25/00), 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.”); *Bazley*, 397 So. 2d at 483 (explaining that the “[r]ight to vote and participate in the electoral process” has “been found to be fundamental”). Louisiana’s Constitution expressly protects this right in the Right to Vote clause in Article 1, Section 10, and impliedly protects it in the Due Process and Equal Protection provisions in Article 1, Sections 2 and 3. *See* La. Const. art. I, §§ 2, 3, & 10; *see also Bazley*, 397 So. 2d at 483 (explaining that the fundamental right to vote is protected by both equal protection and substantive due process). Likewise, the right to vote is a fundamental right protected by the U.S. Constitution. *See* U.S. Const. amend. I, XIV; *see, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (explaining that the right to vote “is regarded as a fundamental political right” because it is “preservative of all rights”).

In denying eligible jailed first-time voters any means by which they can cast a ballot, the Jail Voting Provisions do not just impinge on these first-time voters' fundamental rights to vote—they deny these rights entirely. Thus, Petitioners' claims warrant a strict scrutiny review by this Honorable Court. See *Louisiana Voter Registration/Educ. Crusade, Inc. v. Off. of Registrar of Voters for Orleans Par.*, 511 So. 2d 1190, 1194 (La. App. 4 Cir. 1987), writ denied, 512 So. 2d 854 (La. 1987) (recognizing that state actions “must be subjected to strict scrutiny insofar as they affect the fundamental right to vote”); see also *O'Brien v. Skinner*, 414 U.S. 524, 530 (1974) (applying strict scrutiny to a denial of access to the ballot for eligible voters in jails).

The State has taken the contrary position that even though the Jail Voting Provisions wholly “preclude” jailed first-time voters from casting a ballot, “[t]his does not mean that such persons do not have a ‘right’ to vote.” La. Att’y Gen. Op. No. 07-0173 at 2. This reasoning is at odds with both common sense and constitutional doctrine. See La. Const. art. I, § 10 (stating that the right to vote protects individuals’ ability to “register *and* vote”) (emphasis added). The right to vote is meaningless if it cannot be exercised. State and federal courts have repeatedly affirmed this principle for over a hundred years. See *United States v. Classic*, 313 U.S. 299, 315 (1941) (“Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted”); see also, e.g., *State ex rel. Powell v. Montgomery*, 71 So. 768, 769 (La. 1916) (holding a voter must be permitted to register because “to deny his right to register would be to deny his right to vote”); *United States v. Mosley*, 238 U.S. 383, 386 (1915) (explaining that “the right to have one’s vote counted is as open to protection . . . as the right to put a ballot in a box”); *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (“There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted.”). Here, the right to vote is illusory for jailed first-time voters, because the Jail Voting Provisions deny them any way to actually exercise their fundamental right to vote.

Louisiana’s Constitution and long-standing judicial precedent are clear that voting is a fundamental right. Given both the nature of the right at stake and the nature of the deprivation in this case, there is no question that strict scrutiny should be employed when reviewing Petitioners’ constitutional claims.

***b. The Jail Voting Provisions are not narrowly tailored to advance a compelling state interest***

The Jail Voting Provisions cannot survive strict scrutiny because they are not “necessary to serve a compelling state interest [or] narrowly drawn to achieve that end.” *City of New Orleans v. Clark*, 2017-1453 (La. 09/07/18), 251 So. 3d 1047, 1053 (quoting *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987)).

The Jail Voting Provisions are not necessary to serve any compelling state interest in voter identification. State officials have acknowledged that jailed people are some of the most identifiable people in the state. *See Hearing on H.B. 519 Before the H. Comm. on H. and Gov’t Affs.*, La. State Leg., 2023 Reg. Sess. (La. 2023) (statement of Rep. John Stefanski, Member of H. Comm. on H. and Gov’t Affs.; statement of Rep. Barry Ivey, Member of H. Comm. on H. and Gov’t Affs.). Correctional officers regularly confirm incarcerated people’s identities during their incarceration. Jailed voters have all been fingerprinted, booked, and processed into a sheriff’s custody by the same law enforcement officials who must submit certifications on jailed non-first-time voters’ behalf before they can cast a ballot. *See* La. R.S. § 18:1303 (stating a jailed voter may only vote absentee upon “certification to the appropriate registrar by the sheriff of the parish where the person is incarcerated”).

The Jail Voting Provisions are also not narrowly tailored to achieve any legitimate state interest related to confirming a voter’s identity, because other less restrictive means of verifying first-time voters’ identities are plainly available. *See Spell*, 339 So. 3d at 1137 (“To be narrowly tailored, the law must be the least restrictive means available to achieve the compelling state interest.”). Indeed, the fact that the State already provides a myriad of exceptions to the in-person appearance rule for other groups of first-time voters who cannot appear in-person demonstrates that the State’s interests can be advanced through other means. For example, a student voter can provide “a copy of his student identification or fee bill showing current enrollment” alongside their application to vote by mail. La. R.S. § 18:115(F)(2)(b). Individuals with disabilities can provide “current proof of disability from a physician” or similarly qualified individual, a “certification” from the qualified individual that their disability prevents them from voting in person, and proof of identity. La. R.S. § 18:115(F)(2)(a)(iii). If the State has been able to find ways to confirm the identities of other first-time voters who cannot appear in-person, it can do the same for first-time voters in jails who, as noted above, already have their identities verified by correctional authorities.

This kind of accommodation could be as effective for jailed voters as it is for other voters who are excepted under the statute. *See* La. R.S. § 18:115(F)(2)(a)(iii); *Cf. Spell*, 339 So. 3d at 1137 (finding COVID-19 restrictions on public assembly were not narrowly tailored because the State failed to show that the prohibited gatherings put people at more risk than the gatherings entitled to exceptions).

To prevail, the State must show that it cannot effectively advance its asserted interests unless it completely disenfranchises this group of eligible voters. To the extent the State asserts an interest in election integrity, as discussed *supra*, it cannot meet that burden. Jailed first-time voters are in custody of a Sheriff's office. Their identity is known; their actions are controlled and supervised due to their incarceration; and anyone voting from jail (first time voter or not) is already required to submit sheriff certifications before voting. The State could accept the jail certification already required by law as sufficient proof of identity. And if additional documentation is needed, the State could request jail documents that include the name and photograph of the would-be voter. Alternatively, the state could send election staff to jails to confirm a first-time voter's identity in person. While the State has discretion over what method of voting it provides to jailed first-time voters, it cannot decline to provide any method because doing so may require some expenditure of time or resources. *See Manuel v. State*, 95-2189 (La. 03/08/96), 692 So. 2d 320, 332-33 (“[I]t is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them.”) (quoting *Watson v. Memphis*, 373 U.S. 526, 537 (1963)).

In sum, the Jail Voting Provisions operate as a total bar of a class of voters from exercising their fundamental right to vote despite their eligibility under the Louisiana Constitution. Because these provisions do not serve a compelling government interest and are not narrowly tailored, they cannot survive strict scrutiny.

## **II. Even If Strict Scrutiny Does Not Apply, the Louisiana Constitution Prohibits the Legislature from Statutorily Disenfranchising Eligible First-Time Voters in Jails.**

Even if strict scrutiny does not apply, the Jail Voting Provisions still run afoul of the Louisiana State Constitution because the relevant constitutional text prohibits the Legislature from disenfranchising eligible first-time voters in jails by statute. “The constitution is the supreme law, to which all legislative acts and all ordinances, rules, and regulations of creatures of the legislature must yield.” *Caddo-Shreveport Sales & Use Tax Comm’n v. Off. of Motor Vehicles Through Dep’t of Pub. Safety & Corr. of State*, 97-2233 (La. 04/14/98), 710 So. 2d 776, 780. And “the state cannot

effect a de facto nullification of a constitutional provision that it is powerless to repeal save by constitutional amendment.” *Id.* Generally, then, “[w]hen a constitutional challenge is made”—if there is no fundamental right at stake—“the question is whether the constitution limits the legislature, either expressly or impliedly, from enacting the statute at issue.” *Id.* at 780. And “[w]hen a statute conflicts with a constitutional provision, the statute must fall.” *Id.*

This analysis is guided by the principles the Supreme Court of Louisiana set forth in *Ocean Energy, Inc. v. Plaquemines Par. Gov’t*, 2004-0066 (La. 07/06/04), 880 So. 2d 1, 7. First, a reviewing Court must start with the constitutional text. *Id.* If the language of the constitutional provision is “plain and unambiguous and its application does not lead to absurd consequences,” then it must be given effect, and the assessment ends. *Id.* If the language is “subject to more than one reasonable interpretation,” however, the Court will then try to discern constitutional intent applying “the same general rules used in interpreting laws and written instruments.” *See Malone v. Shyne*, 2006-2190 (La. 09/13/06), 937 So. 2d 343, 349 (quoting *Ocean Energy, Inc.*, 880 So. 2d at 7).

Here, there is no question that the legislature has disenfranchised eligible first-time voters in jails by statute. These voters are wholly denied any means by which they can exercise their right to vote because of the compounding effects of the Jail Voting Provisions. The State, in its own words, describes the Jail Voting Provisions as affecting a “statutory limitation” or “statutor[y] bar[.]” La. Att’y Gen. Op. No. 07-0173 (Aug. 3, 2007).

The question, then, is whether the legislature can affect this statutory prohibition consistent with the Louisiana Constitution. It cannot. The Constitution’s text clearly and unambiguously prohibits the legislature from statutorily disenfranchising a class of voters—like eligible first-time voters in jails—who have been afforded the right to vote by the Louisiana Constitution. The Louisiana Constitution of 1974 holds that “[e]very 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.” La. Const. art. I, § 10. This text plainly grants the right to vote to first-time voters in jails who, like Petitioner Day, are not incarcerated under an order of imprisonment for a felony conviction and otherwise meet each of the Constitution’s enumerated eligibility criteria. In so doing, this constitutional text also places a “limitation[] on the otherwise plenary power of the people exercised through the legislature” that

prevents the legislature from disenfranchising these voters by statute. *Caddo-Shreveport Sales*, 710 So. 2d at 779.

The Louisiana Supreme Court has interpreted the state constitution's right to vote provision consistent with this principle. In *Crothers v. Jones*, for example, the Court held that the legislature could not statutorily disqualify a voter deemed eligible by the Louisiana Constitution. *Crothers v. Jones*, 120 So. 2d 248, 255 (La. 1960). The relevant issue in that case arose because the defendant had been convicted of a felony out-of-state, served his sentence, and registered to vote upon moving to Louisiana. Petitioners challenged his voter eligibility because he had not obtained a valid pardon. At the time, the Louisiana Constitution's right to vote provision held:

The following persons shall not be permitted to register, [or] vote . . . in this State, to-wit: Those who have been convicted of any crime which may be punishable by imprisonment in the penitentiary, and not afterwards pardoned with express restoration of franchise; . . . those actually confined in any public prison . . . .

La. Const. of 1921, art. VIII, § 6. And the legislature passed a largely identical disqualification statute with one modification:

No person who has been convicted of any crime, *either in any of the courts of Louisiana or in any of the courts of the United States*, which may be punishable by imprisonment in the penitentiary and who has not been afterward pardoned with express restoration of franchise shall be permitted to register, [or] vote . . . .

*Crothers*, 120 So. 2d at 255 (emphasis added).

The *Crothers* Court first established that the Louisiana Constitution granted the defendant the right to vote without a pardon, reasoning that the text of its disqualification provision plainly did not cover out-of-state convictions. *Id.* Then, the Court went on to hold the defendant could not be rendered ineligible by statute, because it was not “within the province of the Legislature to interpret Section 6 of Article VIII, [of the Louisiana Constitution], by adding thereto the words ‘either in any of the Courts of Louisiana or in any of the Courts of the United States’ following the phrase ‘convicted of any crime.’” *Id.* at 256.

At bottom, the legislature cannot “engraft upon [] the Constitution of Louisiana a new and additional restriction upon the right of franchise without benefit of an amendment to the Constitution itself.” *Crothers*, 120 So. 2d at 256 n.7. This limitation not only prevents the legislature from modifying voter eligibility criteria by statute, it also prevents the legislature from enacting procedural requirements that make it impossible for constitutionally qualified voters to cast a ballot. *See State ex rel. Powell v. Montgomery*, 71 So. 768, 768-69 (La. 1916).

Given the unambiguous text of La. Const. art. I, § 10, it is clear that the Louisiana Constitution prohibits the legislature from statutorily denying first-time voters in jails the right to vote. In other words, the legislature lacks the constitutional authority to enact the Jail Voting Provisions as written, because they deny voters who have been afforded the right to vote by the Louisiana Constitution any means by which they can exercise that right.

### **III. Petitioners Meet the Requirements to Prevail on Their Constitutional Claim.**

When ruling on a constitutional question, the trial court must determine “whether the party attacking the statute sustained his or her burden of proof” and whether the statute can be construed “so as to preserve its constitutionality.” *In re Succession of Barthel*, 1999-1573 (La. App. 1 Cir. 06/23/00), 762 So. 2d 740, 745-46, writ denied, 772 So. 2d 652 (La. 2000); see also *State v. Schoening*, 2000-0903 (La. 10/17/00), 770 So. 2d 762, 766. Both of these requirements are in the Petitioners’ favor.

*First*, this case presents a pure question of law wherein the burden of proof is not in question. Even if the burden of proof were at issue in this case, the burden of proof lies with the State because the challenged statutes here impinge on a fundamental right. See *Spell*, So. 3d at 1131 (explaining that the burden of proof ordinarily lies with the party challenging the constitutionality of the statute but shifts to the State if the statute impinges on fundamental rights). In such circumstances, “the state bears a ‘heavy burden’ of proving the law’s validity” under strict scrutiny, and the state is “not entitled to the usual presumption of validity.” *Id.* This “rigorous standard is imposed because fundamental rights are ‘so essential to the structure of our society’ and are ‘deeply rooted in this Nation’s history and tradition.’” *Id.* (citing *State v. Webb*, 2013-1681 (La. 05/07/14), 144 So. 3d 971, 978). For the reasons stated above, the State cannot meet this heavy burden because it has no reason to disenfranchise eligible voters, especially those whom the State can easily identify. See *supra* Part I.

*Second*, the Jail Voting Provisions cannot be construed to preserve their constitutionality. The Jail Voting Statutes—on their face—require jailed first-time voters to cast absentee ballots because they are in jail but simultaneously mandate that they vote in-person because they have never voted before. This catch-22 wholly denies jailed first-time voters any way to cast a ballot. See *supra* Part I. This statutory construction is not only clear from the text, it has also been repeatedly adopted by the State, see La. Att’y Gen. Op. No. 07-0173 (Aug. 3, 2007); see also La. Att’y Gen. Op. No. 02-0335 (Sep. 18, 2002), and there is no vagary in the law that would allow

for an alternative interpretation of the text, *see Arabie v. CITGO Petroleum Corp.*, 2010-2605 (La. 03/13/12), 89 So. 3d 307, 312 (“Unequivocal [statutory] provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.”).

Because the Jail Voting Provisions can only be read one way—to deny eligible first-time voters in jail any way to exercise their right to vote—this Court can and should find that they are unconstitutional as applied to jailed first-time voters.

### CONCLUSION

For the foregoing reasons, Petitioners Rachael Day and VOTE respectfully request that this Court grant its Motion for Summary Judgment.

Respectfully submitted,



Valencia Richardson #39312  
Campaign Legal Center  
1101 14<sup>th</sup> St. NW, Ste. 400  
Washington DC, 20005  
PH: (202) 736-2200  
[Vrichardson@campaignlegalcenter.org](mailto:Vrichardson@campaignlegalcenter.org)

William P. Quigley #7769  
Loyola University New Orleans  
College of Law  
7214 St. Charles Avenue  
New Orleans, LA 70118  
PH: (504) 710-3074  
Fax: (504) 861-5440  
[Quigley77@gmail.com](mailto:Quigley77@gmail.com)

William Most #36914  
201 St. Charles Ave., Ste. 2500, #9685  
New Orleans, LA 70170  
PH: (504) 509-5023  
[Williammost@gmail.com](mailto:Williammost@gmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, February 23, 2026, that the above and foregoing has been filed with the Clerk of the Court using the Court's filing system and has been served on all parties to this proceeding by email.

A handwritten signature in black ink, appearing to read "Valencia Richardson". The signature is written in a cursive style with a large initial "V" and "R".

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Valencia Richardson, #39312  
*Counsel for Plaintiffs*