

No. 19-60662

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DENNIS HOPKINS, *individually and on behalf of a class of all others similarly situated*; HERMAN PARKER, JR., *individually and on behalf of a class of all others similarly situated*; WALTER WAYNE KUHN, JR., *individually and on behalf of a class of all others similarly situated*; BRYON DEMOND COLEMAN, *individually and on behalf of a class of all others similarly situated*; JON O'NEAL, *individually and on behalf of a class of all others similarly situated*; EARNEST WILLHITE, *individually and on behalf of a class of all others similarly situated*,

Plaintiffs-Appellees,

v.

SECRETARY OF STATE MICHAEL WATSON, *in his official capacity*,

Defendant-Appellant.

CONSOLIDATED WITH

Case No. 19-60678

DENNIS HOPKINS, *individually and on behalf of a class of all others similarly situated*; HERMAN PARKER, JR., *individually and on behalf of a class of all others similarly situated*; WALTER WAYNE KUHN, JR., *individually and on behalf of a class of all others similarly situated*; JON O'NEAL, *individually and on behalf of a class of all others similarly situated*; EARNEST WILLHITE, *individually and on behalf of a class of all others similarly situated*; BRYON DEMOND COLEMAN, *individually and on behalf of a class of all others similarly situated*,

Plaintiffs-Appellees Cross-Appellants,

v.

SECRETARY OF STATE MICHAEL WATSON, *in his official capacity*,

Defendant-Appellant Cross-Appellee.

**On Appeal from the United States District Court
for the Southern District of Mississippi, No. 3:18-CV-188**

**EN BANC BRIEF OF *AMICI CURIAE*
FAITH-BASED ORGANIZATIONS AND RELIGIOUS LEADERS
IN SUPPORT OF PLAINTIFFS-APPELLEES**

Patrick Berry
Sean Morales-Doyle
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-8310
berryp@brennan.law.nyu.edu
morales-doyles@brennan.law.nyu.edu

December 6, 2023

Matthew W. Walch
LATHAM & WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, Illinois 60611
(312) 876-7700
matthew.walch@lw.com

*Counsel of Record for Amici
Curiae Texas Impact, et al.*

CERTIFICATE OF INTERESTED PARTIES¹

Hopkins, et al., v. Watson, No. 19-60662

The undersigned counsel of record certifies that, in addition to the persons and entities identified in the Parties' and *amici*'s certificates of interested persons, the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made so that Judges of this Court may evaluate possible disqualification or recusal.

1. *Amici Curiae* in Support of Plaintiffs-Appellees

Texas Impact
Clergy for Prison Reform
Mount Helm Baptist Church
Rev. Deacon Cathy Halford
Sister Madeline Kavanagh
Pastor Elnora Littleton
Rev. CJ Meaders
Working Together Mississippi
Central Louisiana Interfaith
Immaculate Conception Church
North Louisiana Interfaith
Together Baton Rouge
Together Louisiana
Westside Sponsoring Committee
Faith Commons
Friendship-West Baptist Church
Interfaith Alliance of Texas
African Methodist Episcopal Church Social Action Commission
African Methodist Episcopal Zion Church
General Board of Church and Society of the United Methodist Church

¹ All *amici curiae* are individuals or nonprofit corporations that have no parent companies, subsidiaries, or affiliates, and do not issue shares to the public.

Interfaith Alliance
National Council of Jewish Women
National Council of Jewish Women Greater Orleans Section
National Council of Jewish Women Austin Section
National Council of Jewish Women Dallas Section
National Council of Jewish Women Greater Houston Section
NETWORK Lobby for Catholic Social Justice
Sisters of Mercy of the Americas Justice Team
Sojourners
Unitarian Universalists for Social Justice

2. Latham & Watkins LLP, counsel for *amici curiae*. (Matthew Walch)
3. Brennan Center for Justice at NYU School of Law, counsel for *amici curiae*. (Patrick Berry, Sean Morales-Doyle)

Dated: December 6, 2023

Respectfully submitted,

s/ Matthew W. Walch

Matthew W. Walch

*Counsel of Record for Amici
Curiae Texas Impact, et al.*

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PARTIES	iii
TABLE OF CONTENTS.....	v
TABLE OF AUTHORITIES	vii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Religious Values Support the Panel’s Finding That Section 241 Offends Society’s Evolved Standards of Decency in Violation of the Eighth Amendment.....	4
A. The Views of the Religious Community Have Long Informed Contemporary Standards of Decency	5
B. <i>Amici’s</i> Faiths Share a Common Belief in Mercy, Forgiveness, Compassion, and Redemption.....	7
C. When Section 241 Was Enacted, Racism Warped the Application of These Religious Values	8
D. Modern Rejection of Permanent Disenfranchisement Represents an Unwarped Application of These Religious Values.....	10
II. Religious Teachings Confirm that Permanent Disenfranchisement Advances No Legitimate Penological Goal.....	15
A. The Opportunity for Redemption and Rehabilitation is a Centerpiece of Religious Teachings and the Modern Penological Approach.....	15
B. Section 241’s Permanent Punishment Forecloses any Chance of Redemption without Moral or Penological Justification.	17
C. Retribution Cannot Justify Section 241’s Arbitrary and Excessive Disenfranchisement.....	20

CONCLUSION.....21
CERTIFICATE OF COMPLIANCE.....23
CERTIFICATE OF SERVICE24
APPENDIX.....25

TABLE OF AUTHORITIES

Page(s)

CASES

Atkins v. Virginia,
536 U.S. 304 (2002).....6, 11

Bowen v. Kendrick,
487 U.S. 589 (1988).....6

Estelle v. Gamble,
429 U.S. 97 (1976).....4

Furman v. Georgia,
408 U.S. 238 (1972).....18, 20, 21

Graham v. Florida,
560 U.S. 48 (2010).....4, 18, 21

Kennedy v. Louisiana,
554 U.S. 407 (2008).....18, 20

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

Stanford v. Kentucky,
492 U.S. 361 (1989).....6

Trop v. Dulles,
356 U.S. 86 (1958).....20

STATUTES

Colo. Rev. Stat. § 1-2-103 (2019).....11

Conn. Gen. Stat. § 9-46(a) (2021).....11

D.C. Code § 1-1001.02 (2020).....11

La. Rev. Stat. tit. 18, § 2(8) (2011).....13

La. Rev. Stat. tit. 18 § 102(A)(1)(b) (2018).....13

La. Stat. § 18:102 (2018)11
 Minn. Stat. § 201.014, Subd. 2a (2023).....11
 N.J. Stat. § 19:4-1 (2019).....11
 N.M. Stat. Ann. § 1-4-27.1 (2023).....11
 N.Y. Elec. Law § 5-106 (2021).....11
 Nev. Rev. Stat. § 213.157 (2019).....11
 Tex. Election Code tit. 2, § 11.002(4) (2011).....14
 Wash. Rev. Code § 29A.08.520 (2021).....11

CONSTITUTIONAL PROVISIONS

1974. La. Const. of 1921 art. VII, § 6 (1921)13
 Cal. Const. art. II, §§ 2, 4 (amended 2020).....11
 California Constitution.....12
 La. Const. art. 1, § 10 (1974)13
 United States Constitution Eighth Amendment.....*passim*

OTHER AUTHORITIES

2021 Legislative Successes, Faith Action Network, <https://fanwa.org/advocacy/legislative-agenda/2021-legislative-successes/> (last visited Dec. 6, 2023).....12
 David R. Loy, *Healing Justice: A Buddhist Perspective*, in *THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE*, 81 (Michael L. Hadley ed., 2001)5
 Erin Kelly, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice (May 9, 2017), https://www.brennancenter.org/sites/default/files/publications/disenfranchisement_history.pdf.....9
Faith Organizations, Yes On 17, <https://web.archive.org/web/20201022060021/https://yeson17.vote/endorsements-3/faith-organizations/> (last visited Dec. 6, 2023)12

Letter from Clergy and Faith Leaders to Members of the Minnesota House and Senate (Feb. 7, 2023), https://www.senate.mn/committees/2023-2024/1007_Committee_on_Finance/Fin_20230207_SF26-Clergy-Support.pdf12

Letter from Religious Organizations and Faith Leaders, to the Honorable Benjamin L. Cardin (April 19 2021), <https://www.brennancenter.org/sites/default/files/202104-/Faith%20Leaders%20Letter.pdf>..... 12

Measuring Religion in Pew Research Center's American Trends Panel, Pew Research Center (Jan. 14, 2021), <https://www.pewresearch.org/religion/2021/01/14/measuring-religion-in-pew-research-centers-american-trends-panel/>5

Michael L. Hadley, *Introduction: Multifaith Reflection on Criminal Justice*, in *THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE*, 8 (Michael L. Hadley ed., 2001).17

Mohamed S. El Awa, *Punishment in Islamic Law* 96, (Indianapolis: American Trust Publication, 1982)17

Panel Opinion.....*passim*

Religious Action Center of Reform Judaism, *Jewish Values and Criminal Justice*, <https://rac.org/jewish-values-and-criminal-justice> 17

Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Punishment, Catholic Bishops of the United States (Nov. 15, 2000), <https://www.usccb.org/resources/responsibility-rehabilitation-and-restoration-catholic-perspective-crime-and-criminal>12, 13

Rev. Lennox Yearwood Jr. & Myrna Pérez, *CT Needs to Restore Voting Rights to Formerly Incarcerated People*, Connecticut Post (June 6, 2021).....12

Ryan S. King, *A Decade of Reform: Felony Disenfranchisement Policy in the United States*, The Sentencing Project (Oct. 2006), https://www.prisonpolicy.org/scans/sp/fd_decade_reform.pdf.....13

Senator J.Z. George, *He Addresses a Large Audience at His Old Home*, *The CLARION-LEDGER* (Jackson) 1 (Oct. 24, 1889).....9

Vincent Bacote & Nathaniel Perrin, *Redemptive Rehabilitation: Theological Approaches to Criminal Justice Reform*, Christian Scholar’s Review (2019), <https://christianscholars.com/redemptive-rehabilitation-theological-approaches-to-criminal-justice-reform/>.....16, 18

THEOLOGICAL MATERIALS

Aèvaghòuà, *The Buddha-Carita, or The Life of Buddha*, Book IX: 17 (Edward B. Cowell, ed. & trans., New Delhi 1977)8

Bible*passim*

Ethics of the Fathers7

FRANCIS, RESCRIPTUM “EX AUDENTIA SS . MI” (Aug. 2, 2018).....10

Maimonides, Yad Hachazakah.....7

Qur’an.....8

INTEREST OF *AMICI CURIAE*²

Amici are a diverse coalition of thirty faith-based organizations and religious leaders that uniformly agree Mississippi’s antiquated practice of prohibiting citizens who have completed the terms of their sentence from voting for their entire life is morally indefensible. Despite their differences, the various religions represented by *amici* recognize the importance of mercy, forgiveness, compassion, redemption, and restorative justice, for all people, including those convicted of crimes. These values both inform and guide society’s evolving moral framework and are thus relevant to this Court’s assessment of whether Mississippi’s lifetime voting ban violates the Eighth Amendment’s prohibition of cruel and unusual punishment.

Not only does permanent disenfranchisement stand in stark contrast to the fundamental values and beliefs shared by *amici*, it tells members of our community that they are beyond redemption and irretrievably unworthy of forgiveness or equality—in some cases, for transgressions as minor as passing a bad check for \$100 or stealing less than \$250 worth of timber. This punishment, executed by our government on our communal behalf, is a moral outrage to the many who share *amici*’s beliefs.

² No counsel for any party authored any part of this brief and no person contributed money to fund the preparation or submission of this brief. All Parties have consented to the filing of this brief, which is accompanied by a motion for leave of court to file the brief.

Individual statements of interest by *amici* are provided in the Appendix to this Brief.

SUMMARY OF ARGUMENT

Since 1890, Section 241 of Mississippi’s constitution (“Section 241”) has permanently disenfranchised the state’s citizens who have been convicted of a morally arbitrary subset of crimes, even after the completion of their sentences. This practice was poorly justified in 1890; it is untenable today. As the Panel correctly found, during the intervening 133 years, a national consensus has developed against this practice, such that it now constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

The Panel reached this decision, and reversed the district court’s entry of summary judgment against the Plaintiffs-Appellees on their Eighth Amendment claim, based on, *inter alia*: (1) political and social evolution since 1890; and (2) an independent judicial determination that Mississippi’s continued utilization of this archaic punishment is cruel and unusual. The Panel’s decision that Section 241 is at odds with society’s evolved standards of decency is reaffirmed by the values central to the religious traditions represented by *amici*—values that have shaped the moral foundation of our society and which Section 241 offends. To that end, *amici* offer the Court additional context and perspective in support of both of those bases.

First, as to societal standards of decency, the Supreme Court has acknowledged that contemporary moral standards are informed by religious values. The religions *amici* represent are united in their moral objection to the permanent disenfranchisement of those convicted of felonies who have otherwise been fully rehabilitated and reintegrated into society. While the faith traditions represented by *amici* have always recognized the importance of values like mercy and forgiveness, state lawmakers across the country—especially in the south—often used religion to justify Jim Crow-era practices that did not apply religious morals evenly to all people. Since then, however, our nation has moved away from the warped view that only certain people are deserving of mercy and forgiveness, and towards an unwarped approach to punishment that is aligned with the tenets of *amici*'s faiths. This increased fidelity to the moral principles shared across *amici*'s faiths has driven the parallel societal evolution in standards of decency, which has reached a sufficient nationwide consensus today that the cruelty of Section 241 is unusual.

Second, the Panel's independent judicial determination that Section 241 is cruel and unusual punishment involved consideration of legitimate penological purposes. Religious values have guided penological philosophy since the nation's founding. The religious emphasis on opportunities for atonement and self-betterment translates into the modern criminal justice system and its primary penological goal of rehabilitation. Section 241 not only fails to advance that goal—

or any of the other traditional justifications for punishment—it directly undermines it. As the Panel correctly recognized, the Eighth Amendment was enacted to protect against the kind of cruelty manifest in Section 241.

Based on the foregoing, as explained in more detail below, and for the other reasons advanced by Plaintiffs-Appellees, *amici* respectfully request that this Court embrace the Panel’s decision and reverse the district court’s grant of summary judgment against Plaintiffs-Appellees on their Eighth Amendment claim.

ARGUMENT

I. Religious Values Support the Panel’s Finding That Section 241 Offends Society’s Evolved Standards of Decency in Violation of the Eighth Amendment.

The Eighth Amendment’s prohibition against cruel and unusual punishment would provide little protection in an enduring republic if it were limited to the prevailing morals at the time of its ratification in 1791. Instead, the Supreme Court has clarified that the Eighth Amendment’s protection is based on the “the evolving standards of decency that mark the progress of a maturing society.” *Graham v. Florida*, 560 U.S. 48, 58 (2010) (citing *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). When “there is a national consensus” against a practice, the Eighth Amendment no longer tolerates it. *Graham*, 560 U.S. at 61.

Although the state legislative trend the Panel identified is itself legally sufficient to establish a national consensus against this punishment, *see* Panel Op. at

34-39, further religious context for and evidence of this moral evolution are available to the Court to aid its deliberation. The established trend towards restoring the right to vote to those who have completed all the terms of their sentence is aligned with, and reflects closer adherence to, values central to the religions of all *amici*.

Religious values have long guided society's evolving standards of decency. And the religions that *amici* represent are united in their firm belief in the importance of mercy, forgiveness, compassion, and redemption—values that Section 241 tells Plaintiffs-Appellees they are unworthy of. Forever depriving someone of the fundamental and precious right to vote, as Section 241 does, is irreconcilable with modern standards of morality and decency, and stands in direct contrast to the teachings and values of the religions that *amici* represent. It is cruel and unusual.

A. The Views of the Religious Community Have Long Informed Contemporary Standards of Decency

Religion has always played a special role in articulating and influencing the moral frameworks that guide American society and, by extension, its laws. Indeed, “[f]or the vast majority of humankind, crime, punishment, and reform are still inextricably bound up with religious views about sin, judgment, and forgiveness.” David R. Loy, *Healing Justice: A Buddhist Perspective*, in *THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE*, 81 (Michael L. Hadley ed., 2001). The same is true today. As of 2020, at least seventy percent of adults in the United States self-identified as being religious. *Measuring Religion in Pew Research Center's American Trends*

Panel, Pew Research Center (Jan. 14, 2021), <https://www.pewresearch.org/religion/2021/01/14/measuring-religion-in-pew-research-centers-american-trends-panel/>.

Thus, the vast majority of Americans' views on morality and criminal punishment are informed, at least in part, by the views of the faith traditions represented by *amici*.

Due to the pervasiveness of religious beliefs in American society, religious guidance buttresses contemporary standards of decency and informs what constitutes ethical treatment of people convicted of crimes. There are no other institutions that have a greater tradition of delving into the human conscience and contemplating questions of morality, blame, and punishment, than those of the religious community. For that reason, the Supreme Court has recognized that the views of religious communities can help “lend[] further support to our conclusion that there is a consensus” against a particular punishment within the Eighth Amendment analysis. *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) (citing amicus briefs filed by religious organizations as “evidence” of a broad “social and professional consensus” against the execution of people with intellectual disabilities); *see also Bowen v. Kendrick*, 487 U.S. 589, 606-07 (1988) (noting the role of religious organizations in addressing secular problems in society); *Stanford v. Kentucky*, 492 U.S. 361, 388 n.4 (1989) (Brennan, J. joined by Marshall, Blackmun, and Stevens, JJ., dissenting) (noting the views of the religious community when analyzing the constitutionality of the juvenile death penalty). The

views of the religious community regarding permanent disenfranchisement contribute in the same way here.

B. *Amici*'s Faiths Share a Common Belief in Mercy, Forgiveness, Compassion, and Redemption

Scripture and teachings across the represented religions—including Christianity, Judaism, Islam, and Buddhism—repeatedly emphasize the importance of mercy, forgiveness, compassion, and redemption.

For example, Christians believe that “[Jesus] saved us, not because of righteous things we had done, but because of his mercy.” *Titus* 3:5. Jesus likewise implored his followers to “[b]e merciful, just as your Father is merciful. Do not judge, and you will not be judged; do not condemn, and you will not be condemned. Forgive, and you will be forgiven.” *Luke* 6:36-37; *see also Matthew* 5:7 (“Blessed are the merciful, for they shall obtain mercy.”). This mercy begets forgiveness: “Then came Peter to Jesus, and said, Lord, how oft shall my brother sin against me, and I forgive him? till seven times? Jesus saith unto him, I say not unto thee, Until seven times: but, Until seventy times seven.” *Matthew* 18:21-22.

In the Jewish faith, “the purpose of the laws of the Torah is to promote compassion, loving-kindness and peace in the world.” *Maimonides*, *Yad Hachazakah*, *Hilchot Shabbat* 2:3. God is “merciful and gracious, long-suffering, and abundant in goodness and truth.” *Exodus* 34:6. Indeed, “deeds of loving-kindness” sustain the world. *Ethics of the Fathers* 1:2 (“On three things the world

is sustained: on the Torah, on the (Temple) service, and on deeds of loving kindness.”).

In the Muslim tradition, God’s “mercy encompasses all things.” *Qur’an* 7:156; see also *Qur’an* 6:54 (“Your Lord hath inscribed for Himself (the rule of) mercy. ... He is Oft-Forgiving, Most Merciful.”). In imitation of God, Muslims are taught to “[h]old to forgiveness, enjoin what is right, and turn away from the ignorant.” *Qur’an* 7:199.

Similarly, Buddhists are taught to “not show disregard for thy unhappy kindred” because “compassion for all creatures is the true religion.” Aèvaghòuà, *The Buddha-Carita, or The Life of Buddha*, Book IX: 17 (Edward B. Cowell, ed. & trans., New Delhi 1977).

C. When Section 241 Was Enacted, Racism Warped the Application of These Religious Values

While the faiths *amici* represent have always believed in mercy, forgiveness, compassion, and redemption, our nation’s moral compass was warped in the late Eighteenth and Nineteenth Centuries by bigotry and racism. And those warped values, which were sadly often justified by reference to religion, resulted in inhumane criminal justice policies, like permanent disenfranchisement, which disproportionately impacted Black Americans and other minorities.

As the Panel laid out, when Section 241 was enacted in 1890, “Mississippi’s white political leadership” sought “a home government, under the control of white

people of the State.” Panel Op. at 4 (quoting *Senator J.Z. George, He Addresses a Large Audience at His Old Home*, *The CLARION-LEDGER* (Jackson) 1 (Oct. 24, 1889)). And as enacted, Section 241 advanced this goal by permanently “disenfranchising offenses only those ‘to which its weaker’—by which the court meant ‘black’—‘member were prone.’” *Id.* at 5 (quoting *Ratliff v. Beale*, 20 So. 865, 868–69 (Miss. 1896)).³

Mississippi was not unique in this respect. After the Civil War, many states—especially in the South and including Louisiana and Texas—enacted a range of criminal laws designed to target Black citizens, while also adopting broad laws revoking the right to vote for anyone convicted of any felony. Erin Kelly, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice (May 9, 2017), https://www.brennancenter.org/sites/default/files/publications/disenfranchisement_history.pdf. Thus, by law, Black Americans were deemed

³ The two subsequent amendments to Section 241, first removing burglary in 1950, and then adding murder and rape in 1968—crimes that the Panel observed have “historically [been] excluded because they were not considered crimes a black person was prone to commit,” Panel Op. at 6 (citation omitted)—do more to emphasize how arbitrary the application of this punishment is than address its moral flaws. And even if those amendments can be viewed as correcting some of the original racial intent behind Section 241 (which they should not be), such improvements would not rescue that section from the instant *Eighth Amendment* claim, which is not based on race. Section 241’s racist origins are relevant as moral context and with respect to potential penological value.

unworthy of forgiveness and incapable of redemption; mercy and equality was reserved for white society.

D. Modern Rejection of Permanent Disenfranchisement Represents an Unwarped Application of These Religious Values

As the Panel discussed, permanent disenfranchisement like that implemented in Section 241 is a dying breed, once common, but subsequently condemned by a national consensus reflected in a clear and consistent trend among state legislatures abolishing the practice. *See* Panel Op. at 34. This trend was driven and is supported by an unwarped application of the fundamental values represented by *amici*'s faith traditions.

Modern religious practice—which decries past racist application of religious values—has helped drive society's evolved moral standards, particularly with respect to punishment. For example, Pope Francis noted that, even though extreme punishments were considered an “appropriate response” in the past, “[t]oday, however, there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state,” and there are means of punishment that “do not definitively deprive the guilty of the possibility of redemption.” FRANCIS, RESCRIPTUM “EX AUDENTIA SS . MI” (Aug. 2, 2018) (CATECHISM OF THE CATHOLIC CHURCH, pt. 3, ch. 2, art. 5 ¶ 2267),

<https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/08/02/180802a.html>.

As the nation has worked to overcome its shameful past embrace of racism, we have come closer to a moral approach towards punishment that is better aligned with the tenets of the represented faiths. *See Atkins*, 536 U.S. at 316 n. 21 (acknowledging the impact of religion on contemporary moral standards). The result is an observable trend in state legislatures moving away from harsh, punitive policies like Section 241.

This trend is even broader than the Panel observed. Indeed, in the last five years alone, ten states and Washington, D.C. have changed their laws to restore voting rights to Americans with past convictions even before they completed all terms of their sentences.⁴ And this momentum was driven, in part, by the consensus

⁴ *See* Cal. Const. art. II, §§ 2, 4 (amended 2020) (automatically restoring voting rights to all citizens who are not incarcerated for a felony conviction); Colo. Rev. Stat. § 1-2-103 (2019) (same); Conn. Gen. Stat. § 9-46(a) (2021) (same); Minn. Stat. § 201.014, Subd. 2a (2023) (same); Nev. Rev. Stat. § 213.157 (2019) (same); N.J. Stat. § 19:4-1 (2019) (same); N.M. Stat. Ann. § 1-4-27.1 (2023) (same); N.Y. Elec. Law § 5-106 (2021) (same); Wash. Rev. Code § 29A.08.520 (2021) (same); La. Stat. § 18:102 (2018) (automatically restoring voting rights to all citizens on probation or parole who have not been incarcerated during the last five years); D.C. Code § 1-1001.02 (2020) (ending felony disenfranchisement entirely). The national consensus the Panel documented is independently sufficient to establish permanent disenfranchisement violates the Eighth Amendment, but these newer state laws suggest much of the country has gone beyond what the Panel found the national consensus to be.

view of the religious community that restoring voting rights is the moral thing to do. *See, e.g.*, Letter from Religious Organizations and Faith Leaders, to the Honorable Benjamin L. Cardin (April 19 2021), <https://www.brennancenter.org/sites/default/files/2021-04/Faith%20Leaders%20Letter.pdf> (noting faith community's support for legislation that would automatically restore voting rights upon release from prison); Letter from Clergy and Faith Leaders to Members of the Minnesota House and Senate (Feb. 7, 2023), https://www.senate.mn/committees/2023-2024/1007_Committee_on_Finance/Fin_20230207_SF26-Clergy-Support.pdf (same); *2021 Legislative Successes*, Faith Action Network, <https://fanwa.org/advocacy/legislative-agenda/2021-legislative-successes/> (last visited Dec. 6, 2023) (same); Rev. Lennox Yearwood Jr. & Myrna Pérez, *CT Needs to Restore Voting Rights to Formerly Incarcerated People*, Connecticut Post (June 6, 2021), <https://www.ctpost.com/opinion/article/Opinion-CT-needs-to-to-restore-voting-rights-to-16228659.php>; *Faith Organizations, Yes On 17*, <https://web.archive.org/web/20201022060021/https://yeson17.vote/endorsements-3/faith-organizations/> (last visited Dec. 6, 2023) (listing faith organizations that supported amending the California Constitution to allow those on parole to vote); *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Punishment*, Catholic Bishops of the United States (Nov. 15, 2000), <https://www.usccb.org/resources/responsibility-rehabilitation-and-restoration->

catholic-perspective-crime-and-criminal (noting “we must welcome ex-offenders back into society as full participating members, to the extent feasible, and support their right to vote”).

Although the only issue before the Court concerning Plaintiffs-Appellees Eighth Amendment claim is the constitutionality of permanent disenfranchisement in Section 241, *see* Panel Op. at 39–40, this context reveals just how antiquated and contrary to modern moral standards Section 241 really is. Even focusing only on the Fifth Circuit, Mississippi stands alone. Louisiana had a law similar to Section 241 until it was repealed in 1974. La. Const. of 1921 art. VII, § 6 (1921). Under the new law, those convicted of a felony could vote as long as they were not “under an order of imprisonment for conviction of a felony.” La. Const. art. 1, § 10 (1974). In 2011, the Legislature enacted a law defining “under an order of imprisonment” to include probation and parole. La. Rev. Stat. tit. 18, § 2(8) (2011). But then, in 2018, the Legislature amended the law again to allow even those on probation or parole to vote if they have been out of prison for five years. La. Rev. Stat. tit. 18 § 102(A)(1)(b) (2018). Similarly, Texas repealed its permanent disenfranchisement law in 1983. Ryan S. King, *A Decade of Reform: Felony Disenfranchisement Policy in the United States*, The Sentencing Project (Oct. 2006), https://www.prisonpolicy.org/scans/sp/fd_decade_reform.pdf. Under the new law, a person convicted of a felony could vote five years after completing the terms of

their sentence. *Id.* This time period was successively reduced over the following years until it reached zero in 1997. *Id.*; *see also* Tex. Election Code tit. 2, § 11.002(4) (2011). Currently, those convicted of felonies in Texas can vote immediately after completing the terms of their sentence, including probation and parole. *Id.* Both Louisiana and Texas, including many of the religious communities *amici* represent and help guide, have made clear that permanent disenfranchisement conflicts with the values those communities hold dear. Mississippi’s Section 241 is the outlier both in the Fifth Circuit and nationwide.

In short, Section 241 codifies an obsolete standard of decency contrary to the standards of modern American society, standards molded in large part by an unwarped application of the moral frameworks of *amici*’s faith traditions. Because Section 241 imposes a harsh punishment inconsistent with contemporary standards of decency, it violates the Eighth Amendment. The Panel was correct when it found that “the objective indicia of society’s standards demonstrate that a consensus exists against meting out this sanction as punishment.” Panel Op. at 39. To find otherwise would be to embrace an overly harsh and outlier punishment with roots in racism that flies against the modern morality drawn from the nation’s faiths and espoused by the majority of Americans.

II. Religious Teachings Confirm that Permanent Disenfranchisement Advances No Legitimate Penological Goal.

Religious teachings focus on the importance of an opportunity for rehabilitation and restorative justice. This belief informs the Eighth Amendment analysis of legitimate penological goals in two ways. First, punishment should be tailored to facilitate rehabilitation wherever possible. Second, and relatedly, punishments which are permanent should be avoided if possible because they inherently fail to afford an opportunity for redemption. Section 241 stands in stark contrast to these religious beliefs and serves no legitimate penological goal; as a result, it is a cruel and unusual punishment.

A. The Opportunity for Redemption and Rehabilitation is a Centerpiece of Religious Teachings and the Modern Penological Approach.

The Panel correctly exercised its independent judgment to determine Section 241 lacks any legitimate penological purpose. Although the traditional justifications for punishment are incapacitation, rehabilitation, deterrence, and retribution, the goal of the modern criminal justice system has shifted to focus on rehabilitation more than any other. This evolution within the criminal justice system does not just draw from contemporary religious mores, it was born from them:

The modern penitentiary developed out of a Quaker experiment in the 1790s to provide a humane alternative to brutal, corporal punishment. By designating a place of isolation, the Quakers hoped that the criminal sinner would be brought to repentance through meditation and prayer (hence the name “penitentiary”). For the Quakers, incarceration was not primarily punitive but was designed to provide opportunities for the

criminal's repentance and redemption. This is one product of the humanitarian impulses of the new American Republic, codified by the constitutional ban on "cruel and unusual punishment," which led to the institutionalization of the penitentiary throughout the nation.

Vincent Bacote & Nathaniel Perrin, *Redemptive Rehabilitation: Theological Approaches to Criminal Justice Reform*, Christian Scholar's Review (2019), <https://christianscholars.com/redemptive-rehabilitation-theological-approaches-to-criminal-justice-reform/>. However, as above, this early, faith-based emphasis on penological rehabilitation was then lost for a large portion of our nation's history. *See id.* ("But with its increasingly widespread implementation, incarceration became bureaucratized, and the rehabilitative impulse which had initially guided the mission of the penitentiary slowly dissipated.").

Within this context, the Panel accurately analyzed what penological purpose Section 241 might serve, if any, and concluded there is none. *See* Panel Op. at 41-44. In fact, as discussed above, permanent disenfranchisement is actually *contrary* to the ascendant goal of the modern criminal justice system: rehabilitation. This goal is particularly resonant with the faith community.

The faiths *amici* represent embrace restorative justice—a concept that, like rehabilitation, is concerned with promoting healthy reintegration into the community. Restorative justice involves a criminal justice system "that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity

and destructiveness to healing, forgiveness, and mercy.” Michael L. Hadley, *Introduction: Multifaith Reflection on Criminal Justice*, in *THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE*, 8 (Michael L. Hadley ed., 2001). For example, Reform Judaism “reaffirm[s] the Biblical concept that the criminal is a human being capable of reshaping his or her life.” See Religious Action Center of Reform Judaism, *Jewish Values and Criminal Justice*, <https://rac.org/jewish-values-and-criminal-justice> (last visited Dec. 6, 2023). Jewish law states that the purpose of the judicial system is not merely to punish or exact revenge, but to facilitate human development and *t’shuvah* (“returning from bad deeds” or “repentance”). Similarly, the Islamic concept of *ta’zir* punishment is concerned with not only deterrence, but also reforming and rehabilitating those with past convictions. See Mohamed S. El Awa, *Punishment in Islamic Law* 96, (Indianapolis: American Trust Publication, 1982). And one of the most important stories within the Buddhist tradition emphasizes “the only reason Buddhism accepts for punishing an offender: to help reform his or her character.” Loy, *supra*, at 81.

B. Section 241’s Permanent Punishment Forecloses any Chance of Redemption without Moral or Penological Justification.

The Eighth Amendment’s interest in protecting human dignity is particularly acute where the punishment is permanent. The Supreme Court has recognized, for example, that the death penalty “differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its

rejection of rehabilitation of the convict as a basic purpose of criminal justice.” *Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring); *see also Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) (the punishment of people convicted of crimes “must embrace and express respect for the dignity of the person”).

Section 241 is similarly unique in its “rejection of rehabilitation” as a basic goal of the criminal justice system. Permanent disenfranchisement impedes an individual’s ability to seek redemption through interaction with the society against which the individual has transgressed by severing them from the body politic forever. This is not in accord with the religious beliefs of *amici* nor any legitimate penological goal. “True rehabilitation restores the person, through addressing their individual needs, giving them the right tools to participate in the larger community.” *Bacote & Perrin, supra*. But “[b]y denying [Mississippians convicted of a disqualifying felony] the right to reenter the community, the State makes an irrevocable judgment about that person’s value and place in society.” *Graham*, 560 U.S. at 74.

For example, Section 241 tells Mr. Coleman that receiving stolen property on account of buying refurbished appliances is an *unforgiveable* offense—specifically and solely when it comes to voting—despite Mr. Coleman having been forgiven and deemed rehabilitated in all other respects. Section 241 similarly tells Mr. Hopkins,

Mr. Parker, Mr. Kuhn (a U.S. Army veteran), Mr. O’Neal, and Mr. Willhite that, despite having committed a crime decades ago and then serving the complete sentence for that crime, their voices are forever unwelcome in American democracy—purportedly equal citizenship notwithstanding. Thus, Mississippi’s permanent disenfranchisement effectively disallows civic repentance. It tells those who have stumbled, like Plaintiffs-Appellees, that they are incapable of rehabilitation and that their voices do not—and will never—matter, no matter how upstanding a life they lead over the decades to come, even though they have finished serving their time and have been judged fit to live and work in the community.

Plaintiffs-Appellees, and those similarly situated, are no less worthy of forgiveness and the opportunity for redemption than the rest of us. As Paul reminds Christians in *Romans* 3:23, “all have sinned and fall short of the glory of God.” But despite our faults—and we all have faults—faith teaches us that we are worthy of mercy. *See, e.g., 1 John* 1:9 (“If we confess our sins, he is faithful and just to forgive us our sins and to cleanse us from all unrighteousness.”). Yet while the national consensus on permanent disenfranchisement has evolved over time to embrace this morality, Section 241 still reaches forth from a dark past to punish present-day Mississippians according to the warped morals of Jim Crow-era Mississippi.

C. Retribution Cannot Justify Section 241’s Arbitrary and Excessive Disenfranchisement

Finally, *amici* note that the traditional penological goal of retribution offers Section 241 no refuge from immorality or the Eighth Amendment. The Eighth Amendment, enacted to protect the “dignity of man,” is the codification of the country’s collective belief that there are limits to just punishment. *See Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion); *see also id.* (“While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.”); *Kennedy*, 554 U.S. at 420 (the punishment of those convicted of crimes “must embrace and express respect for the dignity of the person”). The Eighth Amendment bars punishment that is “excessive” as “[t]he infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering.” *Furman*, 408 U.S. at 279 (Brennan, J., concurring). Religious morality buttresses these legal limits.

The Panel correctly determined that, even if one were to argue Section 241 advances the penological goal of retribution, that potential justification fails because “the punishment Section 241 inflicts is wholly unrelated to the moral culpability of the diverse class of felons it applies to.” Panel Op. at 43. The faithful *amici* represent agree.

The religions represented by *amici* generally find the goal of retribution to be morally reprehensible. While *amici* understand that the Supreme Court has found that retribution is a “legitimate reason to punish,” *Graham*, 560 U.S. at 71, Section 241 nonetheless imposes an overly harsh punishment—the relegation of Mississippians who have completed their sentences to permanent second-class citizenship. Such a punishment does not fit the morally arbitrary subset of crimes to which it applies. Section 241 is unjust not just for targeting only people who have already served *all of the time* deemed appropriate for that offense under Mississippi law, but even more so for targeting *only an arbitrary subset* of those people, while sparing others. Thus, even if the purported goal is retribution, Section 241’s morally arbitrary outcomes reveal its punishment as immoral—*i.e.*, cruel and unusual.

Ultimately, Section 241 serves no other purpose than “the pointless infliction of suffering.” *Furman*, 408 U.S. at 279 (Brennan, J., concurring). Accordingly, for this additional reason, Section 241 is cruel and unusual.

CONCLUSION

For the foregoing reasons, *amici* join Plaintiff-Appellees in their request that the *en banc* Court reverse the district court’s grant of summary judgment against Plaintiffs-Appellees on their Eighth Amendment claim.

Respectfully submitted,

Dated: December 6, 2023

s/ Matthew W. Walch

Matthew W. Walch

Counsel of Record

LATHAM & WATKINS LLP

330 North Wabash Avenue

Suite 2800

Chicago, Illinois 60611

(312) 876-7700

matthew.walch@lw.com

Patrick Berry

Sean Morales-Doyle

BRENNAN CENTER FOR

JUSTICE AT NYU SCHOOL OF

LAW

120 Broadway, Suite 1750

New York, NY 10271

(646) 292-8310

berryp@brennan.law.nyu.edu

morales-

doyles@brennan.law.nyu.edu

Counsel for Amici Curiae

Texas Impact, et al.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 5(c) because this brief contains 4763 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). The brief's type size and type face comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word using 14-point Times New Roman font.

s/ Matthew W. Walch

Matthew W. Walch

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2023, *amici curiae* Texas Impact, et al. caused the foregoing brief to be filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and that service will be accomplished on all counsel of record by the appellate CM/ECF system.

s/ Matthew W. Walch

Matthew W. Walch

APPENDIX

List of *Amici Curiae*

Texas Impact is a council of the state’s religious organizations whose members include individuals, congregations, and governing bodies of Christian, Jewish, Muslim, and other faiths. Texas Impact exists to advance state public policies that are consistent with the shared values of Texas faith communities.

Clergy for Prison Reform (“CPR”) is a group of faith leaders in Mississippi who believe our criminal justice system is in desperate need of reform. CPR’s members include faith leaders of different races, denominations, and ideologies.

Mount Helm Baptist Church (“Mount Helm”) is a historically Black urban Baptist church in Downtown Jackson, Mississippi. As a flagship church, Mount Helm exists to demonstrate and provide transformative Christian leadership in our city, our state, and our world through the power of the Spirit.

Rev. Deacon Cathy Halford is the Deacon of St. Columb’s Episcopal Church, a parish in the Episcopal Diocese of Mississippi that has served the greater Jackson area for nearly 80 years.

Sister Madeline Kavanagh is the Co-Founder of Mississippi Association for Returning Citizens, a nonprofit organization created for the purpose of providing a support system for formerly incarcerated people to help them break the cycles of incarceration and poverty through accountability, collaboration, building resources, and learning opportunities.

Pastor Elnora Littleton is the Founder and Pastor of Changing Your World Ministries in Rosedale, Mississippi.

Rev. CJ Meaders is the Rector of St. Columb’s Episcopal Church, a parish in the Episcopal Diocese of Mississippi that has served the greater Jackson area for nearly 80 years.

Working Together Mississippi is an emerging coalition of more than 270 congregations, parishes, synagogues, mosques, and nonprofits that reflect the religious, racial, and geographic diversity of the state. Working Together Mississippi seeks to build relationships with diverse institutions around the state to build the power to effect political change in a non-partisan way, while

strengthening the institutions we engage with to help them execute their institution's mission and priorities.

Central Louisiana Interfaith is a broad-based community organization made up of congregations, nonprofits, and civic organizations that cut across race, belief, and economics. The mission of Central Louisiana Interfaith is to build relational power in order to take action on issues that affect the common good of our communities.

Immaculate Conception Church ("Immaculate Conception") is a vibrant Catholic parish of the Roman Catholic Diocese of Baton Rouge that is anchored in the heart of Scotlandville, near Southern University and A&M College. Immaculate Conception is staffed by the Society of Jesus (Jesuits), with a special mission to serve the African American Catholic community.

North Louisiana Interfaith is a broad-based coalition of congregations and community-based organizations in North Louisiana. North Louisiana Interfaith is part of the Industrial Areas Foundation, the nation's oldest and largest broad-based organizing network.

Together Baton Rouge is a broad-based coalition of congregations and community-based organizations in the Greater Baton Rouge area. Together Baton Rouge is deliberate about crossing the lines of race, religion, neighborhood, and political affiliation to build the power to address issues affecting families and communities.

Together Louisiana is a statewide network of more than 250 religious congregations and civic organizations across Louisiana, representing more than 200,000 people. The mission of Together Louisiana is to give faith and community-based organizations an opportunity to develop the leadership capacity of their members and affect change on a larger scale than they could alone.

Westside Sponsoring Committee is a broad-based coalition of congregations and community-based organizations in West Baton Rouge, Iberville, and Pointe Coupee Parishes. Westside Sponsoring Committee works on issues affecting families and communities.

Faith Commons is a Dallas, Texas-based, inclusive-faith organization committed to promoting the common good. Recognizing that diversity will provoke

disagreements over definitions of justice, freedom, and the common good, Faith Commons models how to work together amid differences.

Friendship-West Baptist Church (“Friendship-West”) is a nonpartisan religious organization in Dallas County, Texas that serves a predominately Black congregation of more than 12,000 members. Through its social justice ministry, Friendship-West organizes around issues such as fair lending practices, criminal justice reform, environmental justice, acceptable zoning, voting rights, and more.

Interfaith Alliance of Texas is an organization dedicated to building a resilient, inclusive Texas, which respects the inherent dignity of all people, affords each person the freedoms of belief and religious practice, and guarantees that all have the opportunity to thrive.

African Methodist Episcopal Church Social Action Commission is the social justice arm of the African Methodist Episcopal Church (“AME”). AME Social Action Commission’s work is representative of the ongoing fight for Civil Rights, Equity, and Social Justice in the world, and ongoing efforts to uplift and educate throughout all of our endeavors.

African Methodist Episcopal Zion Church is a Christian denomination with over 1.4 million members in the United States, with member churches on five continents with the mission to increase love for God and to help meet the needs of humankind by “Loving God with all our heart, with all our soul, and with our entire mind, and to love our neighbor as ourselves.”

General Board of Church and Society of the United Methodist Church (“Church and Society”) is dedicated to the work of living faith, seeking justice, and pursuing peace. Addressing more than 30 social issues on which the United Methodist Church has claimed a position, Church and Society communicates with policymakers and leaders around the world with the mission of transforming the world.

Interfaith Alliance is a national organization committed to forging powerful alliances among people of diverse faiths and beliefs. Through advocacy, mobilization, and education, we forge powerful alliances among people of diverse faiths and beliefs to build a resilient, inclusive democracy and fulfill America’s promise of religious freedom and civil rights not just for some, but for all. The Interfaith Alliance network includes 13 local affiliates with hundreds of member congregations and strong state and local networks, over 60,000 interfaith

supporters and activists around the country, many of whom are leaders in their own congregations, and our leadership network.

National Council of Jewish Women (“NCJW”) is a national grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. **NCJW Greater New Orleans Section, NCJW Austin Section, NCJW Greater Dallas Section, and NCJW Greater Houston Section** are affiliates of the national NCJW.

Founded by Catholic Sisters in 1972, in the spirit of the Second Vatican Council, **NETWORK Lobby for Catholic Social Justice** (“NETWORK”) is an inclusive, national, Catholic advocacy organization open to all who share our values, working to achieve equity and justice for everyone. Grounded in Gospel values and the Catholic social justice tradition, NETWORK transforms our society by shaping federal policies that achieve racial, economic, and social justice; serve the common good; and honor the dignity of all.

Sisters of Mercy of the Americas Justice Team (“Mercy”) is the justice arm of a congregation of religious women that serve over 3,000 sisters in the United States, Latin America, Guam, and the Philippines. Mercy is committed to serving the poor and to addressing the root causes of systemic injustices.

Sojourners is an ecumenical Christian media and advocacy organization that follows the Biblical call towards social and racial justice. Sojourners publishes an award-winning monthly magazine, produces daily news and commentary on sojo.net, and mobilizes people of faith for social justice through its advocacy initiative, SojoAction.

Unitarian Universalists for Social Justice (“UUSJ”) is a nonprofit, nonpartisan religious and educational advocacy organization whose members include individuals and congregations across the United States. UUSJ’s congregations affirm and promote seven Principles, the first of which is “the inherent worth and dignity of every person,” and the second is “justice, equity, and compassion in human relations.”