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Attorney for Petitioners:

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

LEGAL SERVICES FOR PRISONERS WITH CHILDREN and THE CENTER FOR CHILDREN OF INCARCERATED PARENTS to vindicate the public interest and ANN MARIE TAYLOR; VERONICA BRISCOE; AUDRA KETTLEWELL, aka AUDRA WADDELL; DARLENE ROBINSON; and PAT CAETANO; on behalf of themselves and all others similarly situated,

Petitioners,

vs.

DEBRA BOWEN, California Secretary of State, STEPHEN L. WEIR, Registrar of Voters of Contra Costa County, CONNY MCCORMACK, Registrar of Voters of Los Angeles County, M. STEPHEN JONES, Registrar of Voters of Merced County, and JILL LAVINE, Registrar of Voters of Sacramento County, in their official capacities and as representatives of all other officials in charge of the registration of voters in a California county,

Respondents,

_____/

PETITION FOR WRIT OF MANDATE
(Service on the California Attorney General required by Rule 8.29(c)).

California Supreme Court

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Name of Case: ***Legal Services for Prisoners with Children v. Debra Bowen***

There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 14.5(d)(3).

John R. Cosgrove

October 2, 2007

John R. Cosgrove
295 East Creek Drive
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The above-named attorney represents all petitioners.

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

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OTHER AUTHORITIES

The organizational Petitioners are LEGAL SERVICES FOR PRISONERS WITH CHILDREN and THE CENTER FOR CHILDREN OF INCARCERATED PARENTS. The remaining Petitioners are individuals who are denied the vote by Respondents. Petitioners respectively request that this Court issue a Writ of Mandate and in support of their Petition allege as follows:

I

INTRODUCTION

1. The Petition is filed under Article VI, § 10 of the California Constitution and Code of Civil Procedure § 1085 to obtain redress pursuant to 42 U.S.C. § 1983 for denial of the vote to California parolees and the consequent failure to accord them the equal protection of the laws in violation of the Fourteenth Amendment.

2. The individual Petitioners are parolees released from prison who seek the right to vote in California under two separate theories, neither of which has previously been considered by any court.

3. The unusual nature of the claims being asserted requires a more detailed statement in this Petition than would ordinarily be the case.

4. The plight of the individual Petitioners is described by Judge Henry Wingate in *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S. D. Miss. 1995):

> Disenfranchisement is the harshest civil sanction imposed by a democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box the disenfranchised, the disinherited must sit idly by while others elect his civil leaders and while others choose the fiscal

> and governmental policies which will govern him and his family. Such a shadowy form of citizenship must not be imposed lightly; rather, only when the circumstances and the law clearly direct.

The individual Petitioners seek relief from this plight for themselves and the members of the classes they represent.

5. The disenfranchisement of parolees does not serve a compelling governmental interest. To the contrary, denial of the right to vote hinders rehabilitation efforts and the conversion of parolees into law abiding and productive citizens, thus impeding efforts to reduce recidivism and prison overcrowding.

6. The individual Petitioners would be entitled to vote if California honored the principle of no taxation without representation that gave birth to the American Revolution.[1] The exclusion of the individual Petitioners from the voting process is self-perpetuating because the government of California is structured to prevent them from

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1. *Slaughter-House Cases*, 83 U.S. 36, 115 (1873) (Bradley, J., dissenting, stated that "the principle that...regards taxation without representation as subversive of free government, was the origin of our own revolution"). In the Fourteenth Amendment debates, Senator Howard quotes from the fourth volume of Madison's writings regarding "the vital principle of free government that those who are to be bound by the laws ought to have a voice in making them." Cong. Globe, 39th Cong., 1st. Sess. 2767 (1866). During these same debates, Senator Henderson affirmed that the Virginia convention, on June 12, 1776 "proclaimed the true theory of republican government, when it declared that 'all men...have the right of suffrage and cannot be taxed...without their own consent or that of their [elected] representatives...nor bound by any law to which they have not in like manner assented....' " *Id.* at 3033. "[T]he republican doctrine that all governments must be founded on the consent of the governed" was urged by Senator Sherman in his successful effort to prevent the inclusion of a provision in the Reconstruction Act that would have mandated the exclusion of ex-Confederates from voting. Cong. Globe, 39th Cong., 2d. Sess. 1564 (1867).

having any voice. Petitioners challenge the basic assumption that the institutions of state government in California represent fairly all of the people. *See Kramer v. Union School District*, 395 U.S. 621, 628 (1969).

II

STATEMENT OF THE CASE

First Claim

7. The First Claim is made by the organizational Petitioners and Petitioners, ANN MARIE TAYLOR, VERONICA BRISCOE, and AUDRA KETTLEWELL (hereafter collectively called the First Claim Petitioners). These Petitioners contend that the term "other crime," as that term is used in the exception for "participation in rebellion, or other crime" to the penalty of loss of representation and electoral votes in § 2 of the Fourteenth Amendment,[2] is limited to common law felonies. The common law felonies are treason, murder, manslaughter, mayhem, rape, arson, burglary, robbery, larceny, and sodomy. Drug and many other offenses which California classifies as felonies were misdemeanors, or nonexistent, at common law. These "noncommon law" felonies are sometimes referred to herein as "statutory" felonies.

8. LEGAL SERVICES FOR PRISONERS WITH CHILDREN (LEGAL SERVICES) and Petitioners' attorney estimate that as of August 31, 2007 there were 118,250 citizens on parole in California who would be entitled to vote if they were not on parole.[3,4] An estimated 75.1 % of these, or approximately 88,806 persons, are on

2. *See infra* paragraph 34 for the text of the Fourteenth Amendment.
3. The estimate of 118,250 may include a negligible number of persons under the age

parole for an offense other than a common law felony and will be entitled to vote if the First Claim is successful.[5]

9. "The exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment...." *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).[6]

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of 18 years. The Department of Corrections has advised Petitioners' attorney that there were only three such persons as of June 30, 2007.

4. Table 2 published by the Data Analysis Unit of the Department of Corrections (DOC) on September 5, 2007 reported a total of 124,474 persons on parole as of August 31, 2007. LEGAL SERVICES and Petitioners' attorney estimate that not less than 95% of these persons are voting age U.S. citizens who will be entitled to register to vote and vote if the Second Claim is successful. Noncitizens, whether legal or illegal, are generally delivered to Immigration and Customs Enforcement (ICE) upon completion of imprisonment and deported from the United States.

In theory, the percentage of parolees who are not citizens should be extremely low. However, DOC publishes no statistics concerning the percentages of noncitizens in prison or on parole. Neither LEGAL SERVICES nor Petitioners' attorney are aware of any readily available estimates of these percentages. In the absence of information or estimates form the DOC or other reliable sources, LEGAL SERVICES and Petitioners' attorney estimate that the percentage in question is not less than 95%. 124,474 x 95% = 118,250 (estimated number of citizens on parole as of August 31, 2007).

5. The number of citizens currently on parole who will be entitled to vote if the First Claim is successful is estimated to be 88,806. This estimate is arrived at by Petitioners' attorney in the following manner: (a) Table 50 on page 80 of *California Prisoners and Parolees 2005*, which Table is attached to this Petition as Exhibit D, shows "California Felon Parolees...by Offense and Sex"; (b) Table 50 states that there were 115,184 parolees under the supervision of the California Department of Corrections in 2005; (c) Table 50 shows that 28,729 of the 88,806 parolees in 2005 were on parole for a common law felony, that is for murder and manslaughter, including vehicular manslaughter (1796), rape, including penetration with object (784), arson (372), burglary (10,463), robbery (5,993), grand theft, including vehicle theft (9,243), and sodomy (78); (d) 28,729 divided by 115,184 is 24.9% (percentage of parolees on parole for a common law felony in 2005); (e) It is assumed that the percentage of citizens currently on parole for a common law felony is also 24.9%; (f) 24.9% x 118,250 (the number of citizens on parole as of August 31, 2007 per note 4) = 29,444, which is the estimated number of citizens on parole in 2007 for a common law felony; and (g) 100% - 24.9% = 75.1% x 118,250 = 88,806, which is the estimated number of citizens on parole in 2007 for an offense which is not a felony at common law.

6. *Richardson* is the only U.S. Supreme Court decision sustaining disenfranchisement

Petitioners contend this sanction does not authorize the disenfranchisement of persons on parole for an offense other than a common law felony, since the exception for "other crime," from which the sanction is derived, is limited to felonies at common law.

Petitioners, ANN MARIE TAYLOR, VERONICA BRISCOE, and AUDRA KETTLEWELL, who are on parole for an offense other than a common law felony, claim the right to vote under the decision of this Court in *Ramirez v. Brown* (1973) 9 Cal. 3d 199.

10. Two issues are presented by the First Claim. *First*, is the term "other crime" in § 2 of the Fourteenth Amendment limited to felonies at common law? *Second*, if the term is so limited, is the disenfranchisement of persons on parole for an offense other than a common law felony necessary to protect a compelling state interest? Since the absence of a compelling state interest is evident in regard to the disenfranchisement of persons who have been released from prison,[7] the outcome of the First Claim appears to depend entirely on whether the term "other crime" in § 2 of the Fourteenth Amendment is limited to common law felonies.

11. The most obvious inquiry in regard to the First Claim is whether § 2 of the Fourteenth Amendment was designed to harmonize with the provisions of the Reconstruction Act and the ten enabling acts which prohibit disenfranchisement except

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for crime against an equal protection challenge.

7. Fifteen States, including Illinois, Indiana, Michigan, Pennsylvania, Ohio, Massachusetts, and Connecticut do not disenfranchise parolees. These states find it possible to protect against election fraud and to punish offenders by means other than disenfranchising persons after their release from prison. *See Phoenix v. Kolodzieski*, 399 U.S. 204, 212-213 (1970).

for common law felonies. Despite the important consequences which follow, resolution of this inquiry in favor of Petitioners presents little difficulty. Justice Rehnquist in *Richardson* declares that these provisions are "convincing evidence of the historical understanding of the Fourteenth Amendment...." *Richardson*, 418 U.S. at 53. The following language of the Reconstruction Act is italicized by the Court: "*except such as may be disfranchised for participation in the rebellion or for felony at common law*." *Id.* at 49.

Second Claim

12. Two issues are presented by the Second Claim. The *first* is the *threshold* question presented under *Richardson* of whether the disenfranchisement of California parolees is exempt from the operation of the Equal Protection Clause. *Second*, if the disenfranchisement is not exempt, is the disenfranchisement necessary to protect a compelling state interest and therefore not a violation of the Equal Protection Clause? As previously noted, the absence of a compelling state interest is evident in the case of all persons released from prison. Consequently, the outcome of the Second Claim depends entirely on the threshold question of whether the disenfranchisement of California parolees is exempt from the operation of the Equal Protection Clause.

13. All Petitioners join in the Second Claim. Denial of the vote to parolees results in the disproportionate loss of voting rights by the black population – the very population which § 2 was designed to enfranchise. Neither the exception for "other crime" in § 2 nor the decision in *Richardson* were intended to remove the protections afforded by the Equal Protection Clause against otherwise unconstitutional laws which

produce results that undermine the purpose of § 2. Whether a similar argument based on the disproportionate disenfranchisement of a different ethnic group, such as Hispanics or Native Americans, would have merit even though § 2 was not designed to protect their voting rights is not an issue in the present case and need not be considered.

14. If successful, the Second Claim will result in the enfranchisement of all persons who are denied the vote in California solely because they are on parole. LEGAL SERVICES and Petitioners' attorney estimate that such persons number approximately 118,250 and that this number includes 88,806 persons who will be entitled to vote if the First Claim is successful plus an additional 29,444 persons who will be entitled to vote only if the Second Claim is successful.[8]

15. According to statistics provided by the California Department of Corrections and the United States Census Bureau, *California Quick Facts 2005*,[9] African-Americans are 6.7% of the California population and 25% of the California parole population. The percentage of African-Americans who were on parole in California in 2005 was 4.6 times the percentage of nonAfrican-Americans who were on parole.[10] An African-American residing in California in 2005 was 4.6 times more likely to be disenfranchised because of parole than was a nonAfrican-American.

16. As a result of the disenfranchisement of parolees in California, the percentage of the African-American population which is eligible to vote in California is reduced 4.6 times as much as the percentage of the nonAfrican-American population

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8. *Supra* notes 4 and 5.
9. *Infra* Exhibit B.
10. *Infra* Exhibit C.

which is eligible to vote. The ratio of the reduction of the African-American population eligible to vote to the reduction of the nonAfrican-American population eligible to vote is 4.6 to 1.

17. The disproportionate loss of voting rights suffered by the African-American population as a result of California's laws denying the vote to parolees punishes all African-Americans. Their vote is diminished in comparison to other groups, thus reducing voter support for African-American candidates for public office and for programs which benefit African-Americans. African-American candidates for public office are especially penalized, since they generally receive more support from black voters than do other candidates. The penalty of loss of representation was intended to enfranchise black Americans, not to facilitate a disproportionate loss of voting rights which punishes an entire race.

18. California laws disqualifying parolees from voting conflict with the purpose of the penalty of loss of representation in the Fourteenth Amendment, which is to establish and maintain black voting rights. The "primary purpose" of the penalty was "to provide a remedy against the exclusion of the newly freed slaves from the vote." *Oregon v. Mitchell*, 400 U.S. 112, 169 (1970) (Harlan, J., dissenting). It was "adopted to deprive the South of representation until it should enfranchise the freedmen...." *Id.* at 170 (Harlan, J., dissenting). Laws disenfranchising parolees have the effect in California of disproportionately reducing the voting rights of African-Americans.

19. *Richardson* carved out an exemption from the Equal Protection Clause for laws which disenfranchise persons convicted of "other crime." The decision in *Hunter v.*

Underwood, 471 U.S. 222 (1985), also written by Justice Rehnquist, in turn carved out an exception to the *Richardson* exemption in order to avoid a result contrary to the intent of the framers of the Fourteenth Amendment. The Court in *Hunter* struck down a disenfranchisement provision in the Alabama Constitution "[w]ithout again considering the implicit authorization of § 2 to deny the vote 'for participation in rebellion, or other crime'...." *Id.* at 233. The Court brushed aside Alabama's contention that its law was exempted from "the operation of the Equal Protection Clause of § 1 of the Fourteenth Amendment by the 'other crime' provision of § 2 of that Amendment." *Id.* The Court was "confident that § 2 was not designed to permit the purposeful racial discrimination attending the enactment and operation [of the Alabama law]...." *Id.* This confidence justified an exception to the Richardson exemption, which, but for this exception, would have affirmatively sanctioned the Alabama law and immunized it from equal protection attack. "[N]othing in [its] opinion in *Richardson*...suggest[ed] the contrary." *Id.*

20. *Hunter* stands for the proposition that an exception to the Richardson exemption is required whenever a court is "confident that § 2 was not designed to permit" disenfranchisement in the circumstances of the case before it. The "implicit" exemption from equal protection attack should not be applied out of context in disregard of variant controlling facts not considered in *Richardson*.

21. "[T]he "understanding of those who adopted the Fourteenth Amendment...is of controlling significance...." *Richardson*, 418 U.S. at 54. The immunity from equal protection attack which was granted to the states in *Richardson* should not be extended beyond the facts of that case to authorize laws which defeat the

purposes of § 2. Such an extension would be contrary to the "understanding of those who adopted the Fourteenth Amendment" and therefore contrary to *Richardson* as well.

22. The Court in *Richardson* rested on the "demonstrably sound proposition" (the Richardson proposition) that an exception to a less drastic remedy creates a presumption that a more drastic remedy is subject to the same exception. *Id.* at 55. Justice Rehnquist in *Hunter* recognized that the Richardson proposition was a rule of construction that should not be followed if it would produce results contrary to those intended by the framers of the Amendment.

23. *Hunter* shows that the Richardson proposition does not give rise to a conclusive presumption which a court is powerless to disregard. Rather, it is a rule of construction, *i.e.* a logical inference that may be useful in determining legislative intent but, as is the case with the Richardson proposition, it is a long way from being infallible. Rules of construction are servants which aid in determining legislative intent, not the masters of the courts.

24. The courts may not abandon their duty to ascertain legislative intent simply because a logical proposition points in a certain direction. A judicially created presumption that conclusively determines the meaning of an amendment to the Constitution would be an impermissible encroachment into the domain of Congress and the states, who have the sole power to amend the Constitution.

25. The *Hunter* limitation upon the implicit exemption was intended to effectuate the Constitutional purpose of § 1 to prohibit purposeful racial discrimination.

The Constitutional purpose of § 2 is to enfranchise African-Americans. "[W]e cannot rightly prefer of the possible meanings of [the Constitution] that which will defeat rather than effectuate the Constitutional purpose." *United States v. Classic*, 313 U.S. 299, 316 (Stone, J., 1941). "[W]e read its words…as the revelation of the great purposes which were intended to be achieved…." *Id.*

26. The ruling in *Richardson* is based on the exception for "other crime" in § 2. If, as held in *Hunter*, there is an exception to the ruling in *Richardson* to avoid a result which conflicts with the prohibition against purposeful racial discrimination in § 1 of the Amendment, there must also be an exception to the ruling in *Richardson* to avoid a result which conflicts with the purposes of § 2. If the purposes of § 1 are to be protected from § 2, *a fortiari* the purposes of § 2 must be protected from § 2. Section 2 should not be interpreted so as to defeat itself.

27. The framers of the Amendment considered § 2 to be just as important as § 1. Thaddeus Stevens,[11] when he presented the revised version of the Fourteenth Amendment to the House on May 8, 1866 on behalf of the Joint Committee of Fifteen on Reconstruction, stated as follows:

> The second section I consider the most important in the article. It fixes the basis of representation in Congress….If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal

11. "Old Thad," who at age 73 "dominated House Republicans with his wit and sarcasm" was the leader of the Representatives who with six Senators formed the Joint Committee of Fifteen on Reconstruction, which drafted the Fourteenth Amendment. Joseph B. James, *The Framing of the Fourteenth Amendment* 41-42 (1956).

> suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives. Thus shorn of their power, they would soon become restive. Southern pride would not long brook a hopeless minority. True it will take two, three, possibly five years before they conquer their prejudices sufficiently to allow their late slaves to become their equals at the polls.

Cong. Globe, Thirty-ninth Congress, 1st Sess. 2459 (1866).

28. The penalty was not intended as a boomerang to authorize laws disproportionately reducing the voting rights of black Americans. A major purpose of § 2 was to increase these rights. The "pervading spirit" and "purpose" of the Civil War Amendments was to establish the freedom, citizenship, and equality of African-Americans and their right to vote. *Slaughter-House Cases*, 83 U.S. 36, 71-72 (1873).

29. The twin objectives of § 2 of the Fourteenth Amendment were to establish the voting rights of black Americans and to ensure that the "new representational power resulting from the Thirteenth Amendment's abolition of slavery did not redound to the old Southern leadership." Earl Bonfield, *The Right to Vote and Judicial Enforcement of Section Two of the Fourteenth Amendment,* 46 Cornell L. Q. 108, 109 (1960). [12] The penalty was intended to "protect" the right to vote, *McPherson v. Blacker*, 146 U.S. 1, 39 (1892) and *Lassiter v. Northampton*, 360 U.S. 45, 51 (1959), not to remove protection afforded by the Equal Protection Clause.

30. The few cases involving § 2 of the Fourteenth Amendment have dealt with

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12. The provisions of §§ 3 and 4 of the Fourteenth Amendment were also intended to curb the power of the old Southern leadership.

the exception to the penalty, not with the penalty or its purposes. Ingrained thought patterns with regard to § 1 should not be permitted to stifle recognition of the purposes of the penalty.

31. Whether California laws were ever intended to produce disparate racial effects or there could be discrimination on some occasions in the California criminal justice system is immaterial in the present case. The laws of California are having an effect which is at loggerheads with the intended purpose of the penalty.

32. A version of § 2 of the Fourteenth Amendment which provided for loss of representation if a state disenfranchised persons on account of "race or color" was rejected by the Thirty-ninth Congress. Cong. Globe, 39th Cong., 1st. Sess. 1289 (1866). *Richardson*, 418 U.S. at 47-48. The framers of § 2 were concerned about laws which would have a disparate effect upon the freedmen's right to vote. The Senate voted down a penalty which would be triggered only by purposeful racial discrimination. *Any* law which resulted in a reduction of black voting rights without a corresponding loss of representation threatened a return to power of the old Southern leadership that instigated the rebellion. Consequently, Congress adopted a penalty that, except "for rebellion, or other crime" would be triggered by *any* law which resulted in denial of the right to vote. Cong. Globe, 39th Cong., 1st Sess. 2767 (Senator Howard 1866) ("No matter what may be the ground of exclusion, whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the category of voters, and the states loses representation in proportion."); *See* also the remarks of Senator Henderson concerning § 2. Cong. Globe, Thirty-ninth Congress, 1st

Sess. 3033 (1866) ("The States under the former proposition [which provided for loss of representation whenever the vote was denied "on account of race or color"] might have excluded the negroes under an educational test and yet retained their power in Congress. Under this they cannot."). *Richardson*, 418 U.S. at 47-48.

33. The threshold question presented by the Second Claim is whether voting age citizens not in prison who are "removed from being counted in determining whether a state [is] subject to the penalty of subdivision 2" should, by the process of implication, surmise, and conjecture referred to as the Richardson proposition, be removed "from the protections afforded by § 1" *when such removal defeats the purposes of § 2. See League of Women Voters v. McPherson* (2006) 154 Cal. App. 4th 1469, 1478, n. 6. The resolution of this threshold exemption question in favor of Petitioners opens the door to the final question of whether the disenfranchisement of parolees is necessary to serve a compelling state interest.

III

CONSTITUTIONAL AND STATUTORY PROVISIONS

34. The Fourteenth Amendment was proposed by the Thirty-ninth Congress in June, 1866 and ratified by the states in 1868. It provides:

Section 1. *No state shall* make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor *deny to any person within its jurisdiction the equal protection of the laws*. (Emphasis added.)

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime,* the basis of representation therein *shall be reduced* in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. (Emphasis added.)

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

35. The 1867 Reconstruction Act was enacted by the same Thirty-ninth Congress, composed of the same men, that proposed the Fourteenth Amendment. It established the conditions for readmission of the ex-Confederate states to representation in Congress. Section 5 of the Reconstruction Act provided:

> That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, *except such as may be disfranchised for participation in the rebellion* or *for felony at common law*, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates and when such constitution shall have been submitted to Congress for examination and approval and Congress shall have approved the same [and when said State shall have ratified the Fourteenth Amendment and the Amendment shall have become part of the constitution] said State shall be declared entitled to representation in Congress. (Emphasis added.)

Act of March 2, 1867, c. 153, 14 Stat. 428; *Richardson,* 418 U.S. at 49.

36. Congress enacted a series of acts (the enabling acts) in 1868 and 1870 which readmitted ten ex-Confederate states to representation in Congress. The enabling act for Arkansas, the first state to be readmitted under these acts, provides:

> [T]he State of Arkansas is entitled and admitted to representation in Congress as one of the States of the Union upon the following *fundamental condition*: That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, *except as a punishment for such crimes as are now felonies at common law*, whereof they shall have been duly convicted, under laws equally applicable to all the inhabitants of said State....(Emphasis added.)

Act of June 22, 1868, c. 69, 15 Stat. 72; *Richardson*, 418 U.S. at 51. The same

"fundamental condition" with only slight variations in language was included in nine additional enabling acts readmitting nine other ex-Confederate states to representation in Congress. *Richardson*, 418 U.S. at 52.

37. Article II, § 4 of the California Constitution provides:

> The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Formerly Art. II, § 3, added Nov. 7, 1972. Amended Nov. 5, 1974.

38. California Elections Code § 2101 provides:

> A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

39. California Elections Code § 2106 provides that certain printed literature and media announcements encouraging the registration of electors shall contain the following statement:

> "A person entitled to register to vote must be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election."

40. Elections Code § 2300, subdivision (a)(1)(B) identifies a "valid registered voter" as "a United States citizen who is...not in prison or on parole for the conviction of a felony."

IV

THE LEADING ROLE PLAYED BY THIS COURT IN THE ESTABLISHMENT OF VOTING RIGHTS IN CALIFORNIA

41. Commencing in the 1960's, an avalanche of U.S. Supreme Court decisions firmly established the doctrine that the Equal Protection Clause prohibits denial or abridgment of the right to vote of any person or group of persons, unless the denial or abridgment is necessary to support a compelling state interest that can be protected in no other way. *Ramirez v. Brown*, (1973) 9 Cal. 3d at 207-111.[13]

42. This Court has been in the vanguard of the courts promulgating equal voting rights for all citizens. It has not failed to assert the voting rights of California citizens or been timid about their affirmation.

43. In *Otsuka v. Hite* (1966) 64 Cal. 2d 596, 602, 604, 615, this Court, after asserting that "the right of suffrage in this and every other state of the union flows from the wellsprings of our national political heritage" and that "no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning," held that the violation of the Selective Service Act by plaintiff, a Quaker classified as a conscientious objector, was not an "infamous crime" as that phrase was used in former Article II, § 1 of the California Constitution. The Court of Appeals in *League of Women Voters v. McPherson* (2006) 145 Cal. App. 4th 1469, 1477, recently observed with respect to *Otsuka*:

> The court rejected the argument that the purpose of denying

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13. Fourteen U.S. Supreme Court decisions in support of this doctrine are listed in note 7 of the Memorandum of Points and Authorities filed herewith.

> offenders the right to vote was to impose an additional punishment on them, finding instead that "[t]he manifest purpose is to preserve the purity of the ballot box, which is the only sure foundation of republican liberty, and which needs protection against the invasion of corruption, just as much as against that of ignorance, incapacity, or tyranny."

44. In *Ramirez v. Brown* (1973) 9 Cal. 3d 199 (an original proceeding), this Court unanimously ruled that, as applied to ex-felons whose terms of incarceration and parole had expired, the provisions of the California Constitution denying the right of suffrage to persons convicted of an infamous crime violated the Equal Protection Clause. The Court declined the request of the California Secretary of State that it affirm the constitutionality of the California statutes denying the suffrage to felons who were incarcerated or on parole. *Id.* at 217, n. 18.

45. The U.S. Supreme Court overruled this Court in *Richardson*, 418 U.S. at 54, on a ground not discussed in this Court's opinion, namely, that the "exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment...." The ruling in *Richardson* is described in *League of Women Voters v. McPherson*, 145 Cal. App. 4th at 1478 in note 6 as follows:

> [T]he United States Supreme Court did *not* conclude that disenfranchising all persons convicted of infamous crimes was consistent with the equal protection guarantees set forth in section 1 of the Fourteenth Amendment to the United States Constitution. It instead construed section 2 of the Fourteenth Amendment to except the disenfranchisement of felons from the protections afforded by section 1....In brief, section 2 imposes a penalty on states that deny the vote to male citizens 21 years or older, except for those who participated in rebellion or crime, by reducing that state's congressional delegation. The Supreme Court construed the phrase [" except for participation in

> rebellion, or other crime"] so that it not only removed a class of persons from being counted in determining whether a state was subject to the penalty of subdivision 2, but also removed the same class from the protections afforded by section 1.[14]

46. The California Legislature responded to the *Ramirez* decision by adopting a proposal, which the voters approved in November, 1974, "to conform the laws of the state to the decision in *Ramirez*...." *League of Women Voters v. McPherson*, 145 Cal. App. 4th at 1478. Moreover, the *Ramirez* decision remains as good law in the following respects: *first,* the purpose of disenfranchisement for crime in California is to deter election fraud (9 Cal. 3d at 211-212); *second,* disenfranchisement for crime which is not exempt from equal protection attack by virtue of the exception for "other crime" violates the Equal Protection Clause unless it is necessary to support a compelling state interest; *third,* the disenfranchisement of ex-felons is not necessary to support a compelling state interest; and *fourth,* vote denial cases fall within the limited category in which this Court will exercise original jurisdiction.

V

THE PRESENT CASE FALLS WITHIN THAT LIMITED CATEGORY IN WHICH PRECEDENT, TRADITION, AND JUSTICE REQUIRE THAT THIS COURT EXERCISE ORIGINAL JURISDICTION

47. The *Ramirez* case fell within the limited category of vote denial cases in which this Court has deemed it proper to exercise original jurisdiction. The present case also falls squarely within that limited category.

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14. Petitioners do not challenge the decision in *Richardson*. Indeed, much of Justice Rehnquist's reasoning in this case supports Petitioners' claims.

48. A presidential primary in which California may play a decisive role in the selection of the nominee of either or both of the major parties is scheduled on February 5, 2008. Further primary elections are scheduled on June 3, 2008. A general election at which the Forty-fourth President of the United States will be elected is scheduled on November 4, 2008. The last day to register to vote in these elections, respectively, is January 21, 2008, May 19, 2008, and October 20, 2008. In addition, local elections are scheduled in many counties on November 6, 2007. In San Francisco, voters will elect a Mayor, District Attorney, and Sheriff on November 6, 2007. The last day to register to vote in the November 6, 2007 elections is October 22, 2007.

49. It is possible to resolve the voting rights of California parolees in time to enable approximately 118,250 Californians who are currently disenfranchised to participate in the presidential election in November, 2008 and perhaps to participate in the February and June 2008 primary elections, but the chances that these citizens will be able to vote in these elections will be greatly diminished if this Court does not accept original jurisdiction. This is so even if the matter is referred to the Court of Appeals.

50. A case commenced in the Superior Court or the Federal District Court could not possibly result in the enfranchisement of Petitioners in time for the 2008 elections. "[B]ypassing normal procedures of trial and appeal" is warranted in a vote denial case. *Jolicoeur v. Mihaly* (1971) 5 Cal. 3d 565, 570, note 1.[15] "Cases affecting the right to vote...are obviously of great public importance." *Id.*

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15. See also *Young v. Gnoss* (1972) 7 Cal. 3d 18, 21, in which the California Supreme Court accepted original jurisdiction and held that the cutting off of registration 54 days before an election was unnecessary and therefore unconstitutional.

51. The number of those incarcerated for a felony conviction has grown by leaps and bounds since the *Richardson* decision in 1974.[16] The national incarceration rate, which was below 130 per 100,000 in the late 1970's, reached 645 per 100,000 in 1997. The California incarceration rate, which was 96.3 per 100,000 in 1979, reached 467.3 per 100,000 in 1997 and was 455.9 per 100,000 in 2005. The number of those on parole in California increased from 23,737 in 1984 to 115,184 in 2005.

52. The exercise of original jurisdiction is justified in the present case. What could be entitled to greater priority than the determination before a looming presidential election of the right to vote of 118,250 Californians?

VI

PARTIES

Petitioners

53. Petitioner LEGAL SERVICES FOR PRISONERS WITH CHILDREN (LEGAL SERVICES) is a nonprofit organization that promotes the interests of parents who are incarcerated, on parole, or at risk for incarceration, and their children. LEGAL SERVICES seeks the reintegration of persons convicted of felonies into society. It believes that voting is an essential part of the reintegration process and that there is a direct correlation between the right to vote and lower rates of recidivism.

54. LEGAL SERVICES sponsors a project which is called "ALL OF US OR NONE" (ALL OF US), which promotes registration and voting by the family members

16. The sources from which the information in this paragraph was obtained are stated in III, P of the Memorandum of Points and Authorities filed herewith.

of prisoners and the enfranchisement of parolees. ALL OF US seeks to enfranchise all persons released from prison so that they can combat employment and housing discrimination against them with their votes. The ultimate purpose of ALL OF US is to facilitate the reentry of prisoners into the outside world as productive citizens unlikely to reoffend.

55. Petitioner THE CENTER FOR CHILDREN OF INCARCERATED PARENTS (THE CENTER) is a private, nonprofit, public benefit corporation founded in 1989 with the mission of preventing intergenerational crime and incarceration. THE CENTER provides services, conducts research, and produces publications about and for children of criminal offenders and their families. A majority of its staff are former prisoners who believe it essential to the success of their mission that *all* formerly incarcerated parents be given the opportunity to vote for governmental representatives who support policies that will further the interests of the children of criminal offenders.

56. Petitioners, ANN MARIE TAYLOR and VERONICA BRISCOE are denied the right to vote because they are on parole for a conviction of a provision of the California Health and Safety Code which was a felony but not a felony at common law. Each of them is scheduled to remain on parole until 2010. ANN MARIE TAYLOR resides in Los Angeles and wishes to vote in Los Angeles. VERONICA BRISCOE resides in Sacramento and wishes to vote in Sacramento.

57. Petitioner AUDRA KETTLEWELL is on parole for the conviction of an offense which was a felony but not a felony at common law. She is scheduled to remain on parole until February, 2008. She resides in Sacramento and wishes to vote in

Sacramento.

58. Petitioners ARLENE ROBINSON and PAT CAETANO are on parole for the conviction of a common law felony. They reside and wish to vote in Contra Costa and Merced Counties, respectively. Petitioner ROBINSON was convicted by a federal court and has been placed on parole until 2012. Petitioner CAETANO was convicted by a California state court and has been placed on parole for the rest of her life.

59. The individual Petitioners are citizens of voting age who would be entitled to register to vote and vote in California if they were not on parole. They wish to vote and will register to vote and vote in the country where they reside as soon as this Court renders its decision in their favor or their parole is favorably completed.

60. Petitioners are beneficially interested in issuance of the writ. LEGAL SERVICES and THE CENTER bring this action to vindicate the public interest by obtaining a ruling of this Court that no citizen who has been released from prison and is otherwise entitled to vote may be excluded from voting by reason of being on parole.

Respondents

61. Respondent DEBRA BOWEN is sued in her official capacity as the Secretary of State of California. She is the Chief Election Officer of the State of California and is charged with the responsibility of implementing California laws disenfranchising parolees.

62. Respondents STEPHEN L. WEIR, CONNY MCCORMACK, M. STEPHEN JONES, and JILL LAVINE are sued in their official capacities as the Registrars of Voters of Contra Costa, Los Angeles, Merced and Sacramento counties,

respectively. They do not allow persons on parole to register to vote or vote.

VII

CLASS ACTION ALLEGATIONS

63. The present proceeding consists of two class actions under CCP § 382. The first class action is brought by the First Claim Petitioners on behalf of Petitioners ANN MARIE TAYLOR, VERONICA BRISCOE, and AUDRA KETTLEWELL and all persons similarly situated, or who during the pendency of this action become similarly situated, including all citizens of voting age who are now on, or who are during the pendency of this action are placed on, parole for a felony other than a common law felony, but excluding all persons who are disqualified from voting in California for a reason other than parole (Class 1).

64. The second class action is brought by all Petitioners on behalf of the individual Petitioners and all persons similarly situated, or who during the pendency of this action become similarly situated, including all citizens of voting age who are now on, or who during the pendency of this action are placed on, parole for a felony of any kind, but excluding all persons who are disqualified from voting in California for a reason other than parole (Class 2).

65. The number of citizens who are members of Class 1 and of Class 2 is so numerous that joinder of all members is impractical.

66. The ultimate question of law in the case of both claims is whether denial of the right to vote violates the Equal Protection Clause. The First Claim presents two questions of law: *First,* is the term "other crime" in § 2 of the Fourteenth Amendment

limited to common law felony? *Second,* is the disenfranchisement of parolees not convicted of a common law felony necessary to safeguard a compelling state interest which cannot be protected in any other way? These questions are common to all members of Class 1.

67. The Second Claim presents two questions of law: *First*, was § 2 of the Fourteenth Amendment designed to remove from the operation of the Equal Protection Clause laws which are destructive of the purposes of § 2? *Second,* is the disenfranchisement of parolees necessary to safeguard a compelling state interest which cannot be protected in any other way?

68. Petitioners are not seeking monetary relief that would require the consideration of individual circumstances. The claims of the Petitioners representing the members of Classes 1 and 2 are the same as the claims of the class members and are therefore typical and representative.

69. Petitioners can and will fairly and adequately represent the interests of the members of Classes 1 and 2. Petitioners are represented by counsel who is familiar with the applicable law, has the resources necessary to pursue this litigation, and is experienced in voting rights litigation, class actions, and original writs.

70. Certification of Classes 1 and 2 is justified, because the respondents have acted and failed to act on grounds applicable to all members of Classes 1 and 2. A writ of mandate is appropriate with respect to Class 1 as a whole and Class 2 as a whole.

71. Respondents DEBRA BOWEN, STEPHEN L. WEIR, CONNY MCCORMACK, M. STEPHEN JONES, and JILL LAVINE are sued under CCP § 382

on behalf of all officials in charge of the registration of voters in a California county (Class A).

72. It is impractical to bring the supervisors of elections and registrars of voters of every county in California before the Court. The claims against respondents WEIR, MCCORMACK, JONES, and LAVINE are identical to the claims against all other registrars of voters. Any defense available to any one of them is equally available to all of them.

73. The members of Classes 1 and 2 reside in every California county. Every member of Class A exercises control over the ability to vote of some members of Class 1 and of some members of Class 2.

74. Respondents BOWEN, WEIR, MCCORMACK, JONES, and LAVINE can and will fairly and adequately represent the interest of all registrars of voters. The certification of Class A is justified.

VIII

NO PRECEDENT PRECLUDES CONSIDERATION OF PETITIONERS' CLAIMS

75. With the exception of *Baker v. Pataki*, 85 F. 3d 919, 933 (2d Cir. 1996), the question of whether the term "other crime" in the Fourteenth Amendment includes noncommon law felonies has not been considered or discussed in any reported case. The question of whether a law which defeats the purposes of § 2 is exempted from the operation of the Equal Protection Clause by the exception for "other crime" in § 2 has likewise not been considered or discussed in any case.

76. "Questions which merely lurk in the record, neither brought to the attention of the court, nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U.S. 507, 511 (1925). The questions raised by Petitioners lay hidden in *Richardson* and were not so decided in *Richardson* as to constitute precedent. There is no barrier to a decision awarding voting rights to Petitioners under either of their claims. *See* the opinion of Justice Rehnquist in *Texas v. Cobb*, 532 U.S. 162, 169 (2001). ("Constitutional rights are not defined by inference from opinions which do not address the question at issue").

77. The ruling in *Richardson* is to be considered in light of Justice Frankfurter's remarks in *Gormillion v. Lightfoot*, 364 U.S. 339, 343-344 (1960).

> Particularly in dealing with claims under broad provisions of the Constitution, which derive content by an interpretive process of inclusion and exclusion, it is imperative that generalizations, based on and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts.

IX

HISTORICAL UNDERSTANDING OF THE FOURTEENTH AMENDMENT

78. The provisions of the Reconstruction and enabling acts prohibiting disenfranchisement except for common law felonies are "convincing evidence of the historical understanding of the Fourteenth Amendment...." *Richardson*, 418 U.S. at 48-53. These provisions support "a construction of the term 'other crime' as equating to common law felonies." *Baker v. Pataki*, 85 F. 3d 919, 933 (2d Cir. 1996). "[T]he 'rebellion, or other crime' language of § 2 does not encompass misdemeanors."

McLaughlin v. City of Canton, 947 F. Supp at 974.

79. When the Fourteenth Amendment was adopted, the word *crime* was popularly understood to mean *felony* as opposed to misdemeanor, and the word *felony* was the equivalent of *felony at common law. Schick v. United States*, 195 U.S. 65, 69-70 (1904); *Bannon v. United States*, 156 U.S. 464, 467-468 (1895); *State v. Murphy*, 24 A. 473, 474, 17 R.I. 698 (R. I. 1892); 4 Blackstone's *Commentaries** 5, *94 (1769); and Webster's American Dictionary of the English Language, 283 (1854 ed.) and 312-313 (1867 ed.).

80. Terms and phrases in the Fourteenth Amendment are to be construed in accordance with the common law. *Schick*, 195 U.S. at 69; *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898); and *Minor v. Happersett*, 88 U.S. 162, 167 (1874). Whether the word crime is construed according to its popular understanding at the time of enactment or in light of the common law, as is required by *Schick*, *Wong Kim Ark*, and *Minor*, it can refer only to common law felonies.

X

EVENTS FROM 1865 TO 1872

81. The following events occurred during the period from January, 1865 through February, 1872:

Thirteenth Amendment proposed by Thirty-Eighth Congress.....January 31, 1865

Lee surrenders to Grant at Appomattox Courthouse.....April 9, 1865

Assassination of President Lincoln.....April 15, 1865

Formation of the Joint Committee of Fifteen on Reconstruction.....December 13, 1865

Ratification of the Thirteenth Amendment.....December 18, 1865

Mississippi and South Carolina adopt black codes.....November, 1865

Black Codes adopted by other southern states.....November, 1865-April, 1866

Antiblack Riot in Memphis.....May 1-3, 1866

Fourteenth Amendment is proposed by the Thirty-Ninth Congress. Section 1 provides that no state shall deny equal protection or due process to any person. Section 2 provides for reduction of representation for the disenfranchisement of adult males "except for participation in rebellion, or other crime".....June 13, 1866

Tennessee is readmitted to representation in Congress.....July 24, 1866

The Reconstruction Act of March 2, 1867 is enacted by the Thirty-Ninth Congress. It provides that ex-Confederate states seeking readmission must prohibit disenfranchisement "except for participation in the rebellion, or for felony at common law".....March 2, 1867

The Fortieth Congress enacts six enabling acts providing for the readmission to Congress of six ex-Confederate states subject to a "fundamental condition" prohibiting amendment to the state constitution depriving persons of the right to vote "except as a punishment for such crimes as are now felonies at common law".....June 22 and 25, 1868

Ratification of the Fourteenth Amendment.....July 21, 1868

Fifteenth Amendment proposed by the Fortieth Congress.....February 26, 1869

The Forty-first Congress enacts four enabling acts providing for the readmission to Congress of four more ex-Confederate states subject to a "fundamental condition" prohibiting amendment to the state constitution depriving persons of the right to vote "except as a punishment for such crimes as are now felonies at common law".....Jan. 26, Feb. 23, March 30, and July 15, 1870

Ratification of the Fifteenth Amendment.....March 30, 1870

The Forty-second Congress enacts a statute which provides for reduction of representation in accordance with § 2 of the Fourteenth Amendment.....February 2, 1872

XI

THE INTENT OF THE FRAMERS

82. In the Congressional debates regarding the Fourteenth Amendment, Republican congressmen estimated that the ex-Confederate states would be entitled to thirteen additional representatives and electoral votes due to the abolition of slavery by the Thirteenth Amendment. There were no longer any persons who were not free, and consequently there were no persons who for purposes of representation counted only as three-fifths of a person. Article I, § 2, ¶ 3. The penalty of loss of representation in § 2 of the Fourteenth Amendment was the response of Congress to the fact that the old Southern leadership would enjoy more power than before the Civil War if the ex-Confederate states could disenfranchise black Americans without loss of representation. The penalty is the structural successor to the Three-fifths Clause. *Hayden v. Pataki*, 449 F. 3d 305, 351 (2d Cir. 2006) (Parker, J., dissenting). It provides that the Congressional representation of a state "shall be reduced" to the extent adult males are disqualified from

voting for any reason other than "participation in rebellion, or other crime." Cong. Globe, 39th Cong., 1st Sess., 2767 (Senator Howard of Michigan 1866).

83. Congress was relying on the penalty of loss of representation to prevent the new representational power of the former slave states from redounding to the old Southern leadership. Bonfield, 46 Cornell L.Q. at 109; Joseph James, *The Framing of the Fourteenth Amendment* 33 (1956). ("Of all the movements influencing the Fourteenth Amendment which developed prior to the first session of the Thirty-ninth Congress, *that for Negro suffrage was the most outstanding*....The cry for a changed basis of representation was, in reality, subsidiary to this, and was meant by the Radicals to secure in another way what Negro suffrage might accomplish for them: removal of the danger of Democratic dominance as a consequence of Southern restoration"). (Emphasis added.)

84. An exception to the penalty for disenfranchisement for noncommon law felonies and misdemeanors, if allowed, would have enabled the former slave states to disenfranchise large numbers of black men without a corresponding loss of representation. Such an exception would not have been acceptable to Congress.

85. Those who adopted the Fourteenth Amendment never would have given the states *carte blanche* to escape the penalty through the disenfranchisement of their citizens for whatever misdemeanors or newly created felonies the states choose to enact. The power of the states to enact criminal laws was not curtailed by the First Amendment until 1925. *Gitlow v. New York*, 268 U.S. 652 (1925); *The Oxford Companion to the Supreme Court of the United States* 426-427 (Oxford University Press 1992). Vagrancy laws were not struck down for vagueness by the U.S. Supreme Court until 1972.

Papachristou v. Jacksonville, 405 U.S. 156 (1972).

86. The Congressional record demonstrates an intent to draw a noose as tightly as possible around Southern creativity in order to eliminate any room to wiggle out of reach of the penalty. Cong. Globe, 39th Cong., 1st Sess. 2897 (1866) (Senate approval of amendment to penalty "to prevent a state from saying that although a person is a citizen of the United States, he is not a citizen of the State."); Cong. Globe, 39th Cong., 1st Sess. 3039-3040 (1866) (proposed amendments to limit the penalty to elections for the most numerous branch of the state legislature and to strike the words "or in any way abridged" from the penalty defeated in the Senate.)

87. The absence of discussion in the Congressional record regarding the terms "other crime" in the Fourteenth Amendment and "felony at common law" in the Reconstruction Act strongly suggests that both terms meant felony at common law. There would have been some discussion in Congress if the Fourteenth Amendment had been intended to sanction penalty free disenfranchisement for newly created felonies. Congress would not without any discussion have affirmatively sanctioned penalty free disenfranchisement in § 2 for misdemeanors and noncommon law felonies and nine months later have prohibited disenfranchisement for these same offenses. Opponents of the Reconstruction Act would have argued that the Act should not prohibit disenfranchisement sanctioned by the Amendment. Finally, Representatives Stevens and Farnsworth, Senator Sumner, and many others would have vigorously objected if they had believed there was any possibility that the penalty would authorize laws that resulted in the disproportionate reduction of the black population that was entitled to vote.

88. Only Congress can enforce the penalty. The framers of the penalty realized that its enforcement would be possible only if its supporters controlled Congress and that a Congress which favored enforcement would reject any claim that the exception permitted disenfranchisement for noncommon law felonies or misdemeanors without loss of representation. No circumstance was foreseen in which the Courts would rule on the meaning of the term "other crime" in the Fourteenth Amendment.

89. Unlike the penalty of loss of representation, the suffrage provisions of the Reconstruction and enabling acts could have been the subject of litigation. Consequently, Senator Williams, good lawyer that he was, substituted "felony at common law" in the Reconstruction Act in place of the term "other crime" that had been used in the Fourteenth Amendment. His apparent purpose in making this change was to avoid a spurious court claim that the word *crime* included offenses other than common law felonies. The legislative history shows that no change in meaning was intended by Senator Williams or Congress.

90. The penalty is triggered by any denial or abridgment of the right to vote except for "rebellion, or other crime." It specifies that the representation of the state "shall be reduced." Congress and its members failed for decades to perform their duty of upholding this provision of the Constitution. The registration of voting age blacks was 4.4% in Mississippi in 1954 and 14.2% in Alabama in 1959. *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966). Yet the penalty was never enforced. It would be unconscionable after more than a century of nonenforcement of the penalty to claim that

the penalty by implication validates an otherwise unconstitutional law that harms the class of citizens the penalty was designed to help.

XII

LOGICAL PROPOSITIONS BEARING ON THE MEANING OF § 2

91. The *Richardson* decision was based in large part on the "demonstrably sound proposition" that the Equal Protection Clause was not meant to bar outright denial of the vote for "other crime," because denial of the vote is "expressly exempted from the less drastic remedy of diminished representation...." *Richardson*, 418 U.S. at 55. This proposition does not answer the question of whether the term "other crime" includes offenses which were not felonies at common law.

92. The converse of the Richardson proposition is that the less drastic remedy of loss of representation was meant to penalize denial of the vote for noncommon law felonies because denial of the vote for these offenses is prohibited outright by the Reconstruction and enabling acts. The converse proposition must be true if the Richardson proposition is true. The acts are "convincing evidence of the historical understanding of the Fourteenth Amendment...." and were italicized by the Court in Richardson. *Richardson*, 418 U.S. at 53, 49.

XIII

IMPLICIT EXEMPTIONS FROM COMPREHENSIVE CONSTITUTIONAL PROVISIONS

93. No exemption from the plain and obvious import of a comprehensive

constitutional provision ought to be admitted "unless the inference be irresistible." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 339 (1816) ("all cases" in Article III, § 1 means all cases; thus the judicial power of the Supreme Court, which includes appellate power, extends to cases decided by state courts). The provisions of the Equal Protection Clause are just as comprehensive and all-inclusive as the provisions of Article III.

94. The exemption from the Equal Protection Clause for disenfranchisement is "implicit....." *See Hunter*, 471 U.S. at 233. Implicit exemptions which do not meet the exacting criteria of *Martin v. Hunter's Lessee, supra; Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 722 (1838); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 378-380 (1821); *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317 (1820); *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) and *Wesberry v. Sanders*, 371 U.S. 1 (1964), are not allowed. Implicit exemptions from the all-inclusive provisions of the Equal Protection Clause for disenfranchisement for noncommon law felonies or pursuant to laws resulting in the disproportionate disenfranchisement of the group the penalty was designed to enfranchise do not meet these criteria. By no stretch of the imagination are such exemptions "irresistible."

95. In *Rhode Island v. Massachusetts*, 37 U.S. at 722, it was declared that "in construing the constitution as to the grants of powers to the United States and the restrictions upon the states, [the Court has] laid it down as a general rule, that where no

exception is made in terms, none will be made by mere implication or construction."[17] Exemptions from comprehensive terms must not be based on "conjecture, supposition, or *mere reasoning* on the meaning or intention of the writing." *Id.* (emphasis added). The decision in *Richardson* skates on thin ice indeed.

96. An implicit exemption can only be sustained on the "spirit and true meaning of the Constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed." *Cohens v. Virginia*, 19 U.S. at 379 (Marshall, C. J.). The "spirit and true meaning" of §§ 1 and 2 do not support an implicit exemption from the Equal Protection Clause for a disenfranchisement law which is destructive of the purposes of § 2. This is particularly so because the exemption is not expressed in § 2 and conflicts with the plain meaning of the Equal Protection Clause in § 1.

XIV

THE RECONCILIATION OF CONFLICTING ENACTMENTS

97. It is the duty of the courts to reconcile seeming repugnancies in the Constitution. *Cohens v. Virginia*, 19 U.S. at 393 (Marshall, C.J. 1821). The language of

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17. Accord (1) *Export Group v. Reef Industries*, 54 F. 3d 1466, 1473-1474 (9th Cir. 1995) (generally an exception is considered a limitation only on the matter which directly precedes it and is not to be implied; in addition, there is a presumption under the maxim "*expressio unius est exclusio alterius*" that "Congress would not enumerate specific exemptions [in one section] but leave the exemptions in another section to judicial identification."); (2) *Shook v. District of Columbia*, 964 F. Supp. 416, 428 (D.D.C. 1997) ("The phrase 'any' department or agency is all-inclusive....As a rule, where a broad term is used, inferring an exception or exclusion is not favored."); (3) *WWW Machinery v. Werkzeugmaschinehandel*, 960 F. Supp. 734, 742, n. 7 (S.D.N.Y. 1997) ("Established canons of statutory construction...instruct that ' '[g]enerally an exception is considered a limitation only upon the matter which directly precedes it' and that 'exceptions are not to be implied.' ' ").

the Equal Protection Clause is unqualified in its scope. In order to minimize the repugnancy between the Equal Protection Clause and the implicit exception, the exception should be made as small as possible. It should be confined to disenfranchisement for common law felonies. In addition, it should be limited to laws which do not disproportionately deny the vote to African-Americans. This makes the repugnancy as small as possible.

98. "[T]he exclusion of felons [convicted of "other crime"] from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment...." *Richardson*, 418 U.S. at 54. The Reconstruction and enabling acts are in direct conflict with the Fourteenth Amendment if § 2 of the Amendment affirmatively authorizes disenfranchisement prohibited by the acts. *See Rhode Island v. Massachusetts*, 37 U.S. at 723. If this conflict exists, the provisions of the Reconstruction and enabling acts prohibiting disenfranchisement for misdemeanors and noncommon law felonies were nullified upon ratification of the Fourteenth Amendment. Such nullification is preposterous. If it occurred, ten ex-Confederate states were readmitted to Congress without an enabling act. The Court is "bound to give to the constitution and the laws such a meaning as will make them harmonize...." *Rhode Island*, 37 U.S. at 723.

PRAYER FOR RELIEF

WHEREFOR Petitioners pray that:

1. An alternative writ of mandate be issued commanding Respondents to register and permit to vote all persons released from prison who are on parole and who upon application demonstrate that except for parole they are entitled to vote, or to show

cause before this Court why such persons are not permitted to register to vote and vote;

2. For certification of Classes 1 and 2 and Class A;

3. On a hearing of this Petition and the return thereto, this Court issue its peremptory writ of mandate commanding Respondents to register and permit to vote all persons released from prison who are on parole and who upon application demonstrate that except for parole they are entitled to vote;

4. If the relief prayed for is not granted in favor of all persons on parole, that it be granted in favor of such of these persons as are not on parole for a common law felony;

5. If it is decided that the circumstances do not render it proper that the writ of mandate should issue originally from this Court, the Petition be transferred to the Court of Appeals, First Appellate District, Division One;[18]

6. For costs of suit and attorneys' fees under CCP § 1021.5 and 42 U.S.C. § 1988 and for the conferral of a substantial nonpecuniary benefit upon the State of California and its people; and

7. For such other and further relief as to the Court seems proper and just.

October 2, 2007

Respectfully submitted,

John R. Cosgrove

John R. Cosgrove
Attorney for Petitioners

18. Division One of the First Appellate District issued its opinion in a related disenfranchisement case in December, 2006. *League of Women Voters v. McPherson* (2006) 145 Cal. App. 4th 1469.

EXHIBIT A
TO PETITION

40

TABLE 52
CALIFORNIA FELON PAROLEES
SUPERVISED BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
BY RACIAL/ETHNIC GROUP AND SEX
DECEMBER 31, 1984 THROUGH DECEMBER 31, 2005

DECEMBER 31	TOTAL	MALE						FEMALE					
		TOTAL	PERCENT	WHITE Percent	HISPANIC Percent	BLACK Percent	OTHER Percent	TOTAL	PERCENT	WHITE Percent	HISPANIC Percent	BLACK Percent	OTHER Percent
1984	23,737	22,197	100.0	32.8	28.0	36.5	2.7	1,540	100.0	36.8	20.3	36.1	6.8
1985	27,315	25,338	100.0	32.5	29.4	34.6	3.5	1,977	100.0	37.5	22.2	31.8	8.6
1986	30,832	28,479	100.0	32.2	30.2	33.7	3.9	2,353	100.0	36.3	24.9	30.6	8.3
1987	39,188	35,990	100.0	30.4	31.5	33.9	4.2	3,198	100.0	35.3	25.8	29.9	8.0
1988	47,289	43,479	100.0	30.1	32.3	33.2	4.3	3,810	100.0	35.7	25.8	29.5	8.0
1989	55,386	50,696	100.0	29.3	31.8	34.6	4.3	4,690	100.0	35.2	25.7	31.4	7.7
1990	65,420	59,537	100.0	29.3	32.1	34.3	4.4	5,883	100.0	34.7	24.2	34.6	6.5
1991	77,120	69,758	100.0	29.3	33.4	32.8	4.5	7,362	100.0	34.1	24.8	35.8	5.4
1992	80,815	73,177	100.0	28.5	34.2	32.5	4.7	7,638	100.0	34.3	24.2	36.8	4.6
1993	79,804	72,397	100.0	28.3	35.3	30.6	4.7	7,107	100.0	35.8	25.0	35.3	4.0
1994	83,775	76,610	100.0	28.0	36.3	29.0	4.8	7,166	100.0	37.0	25.1	33.8	4.1
1995	90,450	82,462	100.0	28.1	36.5	27.8	4.6	7,988	100.0	36.2	24.4	33.0	4.4
1996	95,531	86,804	100.0	28.0	41.3	26.1	4.7	8,727	100.0	36.7	23.9	31.8	5.5
1997	100,926	91,286	100.0	27.9	41.7	25.5	4.9	9,640	100.0	36.7	24.1	31.5	5.8
1998	107,545	96,888	100.0	29.0	41.8	24.8	4.8	10,657	100.0	39.0	24.2	31.5	5.3
1999	113,720	101,967	100.0	28.8	41.5	24.9	4.8	11,753	100.0	38.3	24.9	32.3	4.4
2000	117,377	105,037	100.0	28.4	41.6	25.2	4.8	12,340	100.0	38.6	24.8	32.9	4.2
2001	117,675	104,893	100.0	28.4	41.4	25.4	4.7	12,782	100.0	37.8	25.3	33.1	4.0
2002	112,992	100,931	100.0	28.4	41.3	25.4	4.9	12,061	100.0	38.0	25.6	32.7	3.7
2003	114,255	101,948	100.0	30.1	39.2	25.7	4.9	12,307	100.0	39.6	25.5	31.1	3.8
2004	113,994	101,777	100.0	30.4	39.0	25.5	5.1	12,217	100.0	40.9	26.6	29.0	3.5
2005	115,184	102,654	100.0	30.4	39.9	24.7	5.1	12,530	100.0	41.5	27.5	27.1	3.9

NOTE: Components may not add to totals due to independent rounding.

EXHIBIT A
TO PETITION

EXHIBIT B
TO PETITION

California People QuickFacts from the U.S. Census Bureau

State & County QuickFacts

California

People QuickFacts	California	USA
Population, 2005 estimate	36,132,147	296,410,404
Population, percent change, April 1, 2000 to July 1, 2005	6.7%	5.3%
Population, 2000	33,871,648	281,421,906
Persons under 5 years old, percent, 2005	7.4%	6.8%
Persons under 18 years old, percent, 2005	26.9%	24.8%
Persons 65 years old and over, percent, 2005	10.7%	12.4%
Female persons, percent, 2005	50.1%	50.7%
White persons, percent, 2005 (a)	77.0%	80.2%
Black persons, percent, 2005 (a)	6.7%	12.8%
American Indian and Alaska Native persons, percent, 2005 (a)	1.2%	1.0%
Asian persons, percent, 2005 (a)	12.2%	4.3%
Native Hawaiian and Other Pacific Islander, percent, 2005 (a)	0.4%	0.2%
Persons reporting two or more races, percent, 2005	2.4%	1.5%
Persons of Hispanic or Latino origin, percent, 2005 (b)	35.2%	14.4%
White persons not Hispanic, percent, 2005	43.8%	66.9%
Living in same house in 1995 and 2000, pct 5 yrs old & over	50.2%	54.1%
Foreign born persons, percent, 2000	26.2%	11.1%
Language other than English spoken at home, pct age 5+, 2000	39.5%	17.9%
High school graduates, percent of persons age 25+, 2000	76.8%	80.4%
Bachelor's degree or higher, pct of persons age 25+, 2000	26.6%	24.4%
Persons with a disability, age 5+, 2000	5,923,361	49,746,248
Mean travel time to work (minutes), workers age 16+, 2000	27.7	25.5
Housing units, 2005	12,989,254	124,521,886
Homeownership rate, 2000	56.9%	66.2%
Housing units in multi-unit structures, percent, 2000	31.4%	26.4%
Median value of owner-occupied housing units, 2000	$211,500	$119,600
Households, 2000	11,502,870	105,480,101
Persons per household, 2000	2.87	2.59
Median household income, 2003	$48,440	$43,318

http://web.archive.org/web/20070210004012/http://quickfacts.census.gov/qfd/states/06000.html

EXHIBIT B
TO PETITION

EXHIBIT C *
TO PETITION

	Total Persons	Blacks		Others
		Number	%	Number
Male Parolee Population	102,654 (EX. A)	25,355 (24.7% of 102,654)	24.7 (EX. A)	77,299 (102,654 less 25,355)
Female Parolee Population	12,530 (EX. A)	3,395 (27.1% of 12,530)	27.1 (EX. A)	9,135 (12,530 less 3,395)
Total Parolee Population		**28,750** (25,355 plus 3,395)		**86,434** (77,299 plus 9,135)
California Population	36,132,147 (EX. B)	**2,420,853** (6.7% of 36,132,147)	6.7 (EX. B)	**33,711,294** (36,132,147 less 2,420,853)

33,711,294 / 2,420,853	=	**13.9**	The ratio of the nonblack population of California to the black population of California is 13.9 to 1.0.
86,434 / 28,750	=	**3.0**	The ratio of nonblacks on parole in California to blacks on parole in California is 3.0 to 1.0.
13.9 / 3.0	=	**4.6**	The percentage of blacks on parole in California is 4.6 times the percentage of nonblacks on parole in California.

* All figures are for California in 2005.

EXHIBIT D
TO PETITION

TABLE 50
CALIFORNIA FELON PAROLEES
SUPERVISED BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
BY OFFENSE AND SEX
DECEMBER 31, 2005

	TOTAL		MALE		FEMALE	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL OFFENSE DATA	115,184		102,654		12,530	
CRIMES AGAINST PERSONS	30,220	26.2	28,606	27.9	1,614	12.9
Homicide	1,796	1.6	1,635	1.6	161	1.3
Murder 1st	29	0.0	20	0.0	9	0.1
Murder 2nd	594	0.5	564	0.5	30	0.2
Manslaughter	786	0.7	716	0.7	70	0.6
Vehicular Manslaughter	387	0.3	335	0.3	52	0.4
Robbery	5,993	5.2	5,629	5.5	364	2.9
Assault and Battery	15,739	13.7	14,764	14.4	975	7.8
Assault Deadly Weapon	6,305	5.5	5,932	5.8	373	3.0
Other Assault/Battery	9,434	8.2	8,832	8.6	602	4.8
Sex Offenses	6,341	5.5	6247	6.1	94	0.8
Rape	613	0.5	610	0.6	3	0.0
Lewd Act with Child	2,958	2.6	2,922	2.8	36	0.3
Oral Copulation	260	0.2	249	0.2	11	0.1
Sodomy	78	0.1	78	0.1		
Penetration with Object	171	0.1	168	0.2	3	0.0
Other Sex Offenses	2,261	2.0	2,220	2.2	41	0.3
Kidnapping	351	0.3	331	0.3	20	0.2
PROPERTY CRIMES	34,383	29.9	28,996	28.2	5,385	43.0
Burglary	10,463	9.1	9,251	9.0	1,212	9.7
Burglary 1st	3,706	3.2	3,442	3.4	264	2.1
Burglary 2nd	6,757	5.9	5,809	5.7	948	7.6
Theft	13,293	11.5	10,987	10.7	2,306	18.4
Grand Theft	3,362	2.9	2,779	2.7	583	4.7
Petty Theft with Prior	5,908	5.1	4,751	4.6	1,157	9.2
Receiving Stolen Property	4,023	3.5	3,457	3.4	566	4.5
Vehicle Theft	5,881	5.1	5,355	5.2	526	4.2
Forgery/Fraud	3,756	3.3	2,561	2.5	1,205	9.6
Other Property	980	0.9	844	0.8	136	1.1
DRUG CRIMES	35,442	30.8	30,686	30.1	4,576	36.5
CS Possession	16,633	14.4	14,178	13.8	2,455	19.6
CS Possession for Sale	11,226	9.7	9,880	9.6	1,346	10.7
CS Sale	3,356	2.9	2,965	2.9	391	3.1
CS Manufacturing	1,676	1.5	1,506	1.5	170	1.4
CS Other	721	0.6	593	0.6	128	1.0
Hashish Possession	48	0.0	45	0.0	3	0.0
Marijuana Possession for Sale	1,164	1.0	1,110	1.1	54	0.4
Marijuana Sale	444	0.4	422	0.4	22	0.2
Marijuana Other	174	0.2	167	0.2	7	0.1
OTHER CRIMES	15,139	13.1	14,184	13.8	955	7.6
Escape	139	0.1	126	0.1	13	0.1
Driving Under the Influence	3,088	2.7	2,884	2.8	184	1.5
Arson	372	0.3	323	0.3	49	0.4
Possession of Weapon	5,532	4.8	5,409	5.3	123	1.0
Other Offenses	6,028	5.2	5,442	5.3	586	4.7

NOTE: Components may not add to totals due to independent rounding.

CALIFORNIA PRISONERS AND PAROLEES 80

EXHIBIT D
TO PETITION

VERIFICATION

I am the attorney for the Petitioners in this action. This verification is made by me for the reasons that, apart for paragraphs 53-59, all of the facts alleged in the Petition are true of my own personal knowledge and all of the Petitioners are absent from San Mateo County where I have my office. I have read the above Petition for Writ of Mandate and know its contents. All facts alleged in the Petition, other than those in paragraphs 53-59, are true of my own personal knowledge. The facts alleged in paragraphs 53-59 are true according to my information and belief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Menlo Park, California.

John R. Cosgrove

VERIFICATION OF LEGAL SERVICES FOR PRISONERS WITH CHILDREN

I am an officer of LEGAL SERVICES FOR PRISONERS WITH CHILDREN (LEGAL SERVICES) and am authorized to execute and have executed this Declaration on behalf of LEGAL SERVICES.

LEGAL SERVICES is a nonprofit organization that promotes the interests of parents who are incarcerated, on parole, or at risk for incarceration, and their children. LEGAL SERVICES seeks the reintegration of persons convicted of felonies into society. It believes that voting is an essential part of the reintegration process and that there is a direct correlation between the right to vote and lower rates of recidivism.

LEGAL SERVICES sponsors a project which is called "ALL OF US OR NONE" (ALL OF US), which promotes registration and voting by family members of prisoners and ~~offenders eligible to vote~~ and the enfranchisement of parolees. ALL OF US seeks to enfranchise all ~~offenders~~ prisoners released from prison so that they can combat employment and housing discrimination against them with their votes. The ultimate purpose of ALL OF US is to facilitate the reentry of ~~offenders~~ prisoners into the outside world as productive citizens unlikely to reoffend.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at San Francisco, California.

Karen Shain

Co. Directo

Title

Co- Director

VERIFICATION OF THE CENTER FOR CHILDREN OF INCARCERATED PARENTS

I am an officer of THE CENTER FOR CHILDREN OF INCARCERATED PARENTS (THE CENTER) and am authorized to execute and have executed this Declaration on behalf of THE CENTER.

THE CENTER is a private, nonprofit, public benefit corporation founded in 1989 with the mission of preventing intergenerational crime and incarceration. THE CENTER provides services, conducts research, and produces publications about and for children of criminal offenders and their families. A majority of its staff are former prisoners who believe it essential to the success of their mission that *all* formerly incarcerated parents be given the opportunity to vote for governmental representatives who support policies that will further the interests of the children of criminal offenders.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Eagle Rock, California.

Denise Johnston

DIRECTOR

Title

VERIFICATION OF ANN MARIE TAYLOR

I am one of the Petitioners in this action. I am presently denied the vote because I am on parole for a conviction of a provision of the California Health and Safety Code which was a felony but not a felony at common law. I am scheduled to remain on parole until 2010. I reside in Los Angeles County and wish to vote in that County.

I am a citizen of voting age who would be entitled to vote in Los Angeles County but for my status as a parolee. I wish to vote and will register to vote and vote as soon as I am lawfully entitled to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Los Angeles, California.

Ann Marie Taylor

VERIFICATION OF VERONICA BRISCOE

I am one of the Petitioners in this action. I am presently denied the vote because I am on parole for a conviction of a provision of the California Health and Safety Code which was a felony but not a felony at common law. I am scheduled to remain on parole until 2010. I reside in Sacramento County and wish to vote in that County.

I am a citizen of voting age who would be entitled to vote in Sacramento County but for my status as a parolee. I wish to vote and will register to vote and vote as soon as I am lawfully entitled to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Sacramento, California.

/S/ Veronica Briscoe
Veronica Briscoe

VERIFICATION OF AUDRA KETTLEWELL

I am one of the Petitioners in this action. I am presently denied the vote because I am on parole for a conviction of a felony which was not a felony at common law. I am scheduled to remain on parole until February 4, 2008. I reside in Sacramento County and wish to vote in that County.

I am a citizen of voting age who would be entitled to vote in Sacramento County but for my status as a parolee. I wish to vote and will register to vote and vote as soon as I am lawfully entitled to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Sacramento, California.

Audra Kettlewell

Audra Kettlewell
aka Audra Waddell

VERIFICATION OF DARLENE ROBINSON

I am one of the Petitioners in this action. I am presently denied the vote because I am on parole for a conviction of a felony at common law. I am scheduled to remain on parole until 2010. I reside in Contra Costa County and wish to vote in that County.

I am a citizen of voting age who would be entitled to vote in Contra Costa County but for my status as a parolee. I wish to vote and will register to vote and vote as soon as I am lawfully entitled to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at San Francisco, California.

/s/ Darlene Robinson
Darlene Robinson

VERIFICATION OF PAT CAETANO

I am one of the Petitioners in this action. I am presently denied the vote because I am on parole for a conviction of a felony at common law. I am scheduled to remain on parole for the rest of my life. I reside in Merced County and wish to vote in that County.

I am a citizen of voting age who would be entitled to vote in Merced County but for my status as a parolee. I wish to vote and will register to vote and vote as soon as I am lawfully entitled to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on October 2, 2007 at Merced, California.

/s/ Pat Caetano

Pat Caetano