United States Court of Appeals

for the

Fifth Circuit

Case No. 19-60632

ROY HARNESS: KAMAL KARRIEM,

Plaintiffs-Appellants,

v.

MICHAEL WATSON, Secretary of State of Mississippi,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON IN CASE NO. 3:17-CV-791 HONORABLE DANIEL P. JORDAN, III, CHIEF JUDGE

BRIEF FOR AMICI CURIAE 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 and EARNEST WILLHITE, individually and on behalf of a class of all others similarly situated, IN SUPPORT OF PLAINTIFFS-APPELLANTS

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SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

In accordance with Federal Rule of Appellate Procedure 29(a) and Fifth Circuit Rule 29.2, the undersigned counsel hereby certifies that, in addition to the persons and entities listed in the Certificate of Interested Persons submitted by Plaintiffs-Appellants in their Opening Brief on Rehearing En Banc, the following persons or entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amici:

Amici are the named plaintiffs in *Hopkins v. Hosemann*, No. 3:18-cv-188-DPJ-FKB (S.D. Miss.):

Dennis Hopkins,
Herman Parker, Jr.,
Walter Wayne Kuhn, Jr.,
Byron Demond Coleman,
, and
Earnest Willhite,

ny

person who (a) is or becomes disenfranchised under Mississippi state law by reason of a conviction of a disenfranchising offense, and (b) has completed the term of incarceration, supervised release, parole, and/or probation for each such

conviction. 1

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compl ⁸ Section 253

⁹ Dr. Pratt researched the restoration of voting rights pursuant to Section 253 in the first three decades after the 1890 Constitution was enacted, and determined that the Mississippi Legislature restored voting rights to at least 101 individuals during this time.¹⁰ Dr. Pratt found no evidence that even a single African-American individual regained the right to vote between 1890 and 1920.¹¹

The criminal disenfranchisement provision of Section 241 and the legislative re-enfranchisement provision of Section 253 together comprised a cohesive racially discriminatory scheme that remains almost completely intact today. All but

⁷ *Id.* at ¶ 54.

⁸ *Id*.

⁹ *Id.* at ¶ 53.

¹⁰ Declaration of Dorothy O. Pratt, Ph.D., Dkt. 77-3, *Harness v. Hosemann*, No. 3:17-cv-00791-DPJ-FKB, then consolidated with *Hopkins v. Hosemann*, No. 3:18-cv-00188-DPJ-FKB (S.D. Miss.), at ¶ 11.

¹¹ *Id.* at ¶¶ 11-16.

argument in *Hopkins* was held before a panel of this Court on December 3, 2019 nearly seven months before a different panel of this Court heard oral arguments in *Harness*. ¹⁸ The *Hopkins* panel has yet to issue its decision.

ARGUMENT

I. THE QUESTIONS RAISED BY THE HOPKINS PLAINTIFFS ARE NOT BEFORE THE EN BANC COURT AND WILL NOT BE

plaintiffs, the legal questions raised by the *Hopkins* Plaintiffs are not before the en banc Court and, respectfully, should not be addressed in the en banc opinion.

Moreover, even if this Court rules in favor of the *Harness* Plaintiffs, decision will not dispose of the *Hopkins*

II. MISSISSIPPI'S CRIMINAL DISENFRANCHISEMENT SCHEME RETAINS ITS ORIGINAL DISCRIMINATORY TAINT

As the Secretary of State has acknowledged,

be invalidated if its challengers prove that racially discriminatory intent motivated the enactment of the law and the

Chen v. City of Houston, 206 F.3d 502, 518

Court recently made this commonsense principle clear in *Ramos v. Louisiana*, which struck down a racially motivated Louisiana law permitting nonunanimous verdicts for the convictions of serious crimes.²⁰ Louisiana originally adopted the

. There

was no dispu

Id.

untainted by racism. Id. at 1401 n.44; see also id. at 1426 (Alito, J., dissenting)

narrower [non-unanimous jury] rule, and its stated purpose was judicial

court incorrectly looked to

mend Section

, and

incorrect

²³ The district court also erroneously considered

the 1980s

Dated: July 29, 2021

By: /s/ Jonathan K. Youngwood

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CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2021, an electronic copy of the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit and served on all counsel using the appellate CM/ECF system.

Dated: July 29, 2021

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief complies with the type-volume

limitation of Federal Rule of Appellate Procedure 29(a)(5) and Fifth Circuit Rule

29 because this brief contains 3,031 words, excluding the parts of the brief

exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule

32.2.

Undersigned counsel certifies that this brief complies with the typeface

requirements of Federal Rule of Appellate Procedure 32(a)(5) and Fifth Circuit

Rule 32.1 and the type style requirements of Federal Rule of Appellate Procedure

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equivalent to 14 points or larger.

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