

No. 05-
In the Supreme Court of the United States
MARYLAND STATE BOARD OF ELECTIONS
ET AL., PETITIONERS,
v.
JEFFREY COOLIDGE,
PLAINTIFF-RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

**PETITION FOR A WRIT OF CERTIORARI
RECORD
AMERICAN CONSTITUTION SOCIETY
MOOT COURT COMPETITION**

Team 10811

Questions Presented

1. Is a statutory provision that permanently denies the right to vote only to persons who have committed a second or subsequent violent felony a voting qualification or prerequisite subject to § 2 of the Voting Rights Act, 42 U.S.C. § 1973, because it results in a denial of the right to vote on account of race?

2. Is Maryland's disfranchisement of a violent felon, predicated on his prior conviction of an infamous crime, a cruel and unusual punishment in violation of the Eighth Amendment.

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

FEDERAL

U.S. Const. amend. VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATUTORY

Voting Rights Act of 1965, 42 U.S.C. § 1973

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

STATE OF MARYLAND

Md. Const. art. I, § 4.

The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability.

Md. Code Ann., Election Law § 3-102 (Bender 2005)

(b) Exceptions.- An individual is not qualified to be a registered voter if the individual:

(1) has been convicted of theft or other infamous crime, unless the individual:

(i) has been pardoned; or

(ii) 1. in connection with a first conviction, has completed the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines; or

2. in connection with a subsequent conviction, has completed the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines, and at least 3 years have elapsed since the completion of the court--ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines;

(2) is under guardianship for mental disability; or

(3) has been convicted of buying or selling votes.

(c) Same-Second or subsequent crime of violence- Notwithstanding subsection (b) of this section, an individual is not qualified to be a registered voter if the individual has been convicted of a second or subsequent crime of violence, as defined in § 14-101 of the *Criminal Law Article*.

Md. Code Ann., Criminal Law § 14-101(a) (Bender 2005)

"Crime of violence" defined. ---- In this section, "crime of violence" means:

(1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code; (7) murder; (8) rape; (9) robbery under § 3--402 or § 3--403 of this article; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) an attempt to commit any of the crimes described in items (1) through (14) of this subsection; (16) assault in the first degree; (17) assault with intent to murder; (18) assault with intent to rape; (19) assault with intent to rob; (20) assault with intent to commit a sexual offense in the first degree; and (21) assault with intent to commit a sexual offense in the second degree.

Statement of the Case

Pursuant to Respondent Jeffrey Coolidge submits this memorandum of law against the defendant's motion to dismiss, brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint filed in this action by Maryland State Board of Elections, *et al.* The Respondent submits that this court should deny the defendant's motion to dismiss because even assuming for purposes of this motion the truth of the statements in the Complaint, Mr. Coolidge has stated a claim upon which relief can be granted. The Maryland State Board of Election ("MBE") failed to show that the State Board acted in a manner pursuant to §2 of the Voting Rights Act, 42 U.S.C. § 1973, when they denied Mr. Coolidge the right to vote. MBE also failed to show that the Eighth Amendment was not violated when the disenfranchisement of a felon predicated on his prior conviction of an infamous crime occurred. It is for these reasons that the motion to dismiss should not be granted.

Summary of the Argument

Respondent Jeffrey Coolidge is a forty-two year old African American male from Baltimore, Maryland. In 1982, he was detained by Baltimore County police in Pikesville, Maryland. The Baltimore County local police had been investigating reports of an unrelated robbery by an African American, and Coolidge was stopped but never charged with the reported robbery. Coolidge was found to be in possession of cocaine after the police finished searching his car and was indicted under Maryland law with possession and intention to distribute a controlled substance.

The Respondent was released from Baltimore City Correctional Center in 1984 to begin his probationary period. He was subsequently indicted and convicted for a misdemeanor possession charge for six months in prison. Under Maryland law, this was not an infamous crime. Upon his release in 1985, Coolidge registered to vote in 1992 and successfully voted in the 1992, 1996, and 2000 presidential elections. In April 2004, Coolidge robbed a convenience store in Baltimore. He did not display nor possess a weapon, and the clerk handed over \$150 cash. He was indicted and convicted of robbery, a crime of violence under Md. Code Ann., Criminal Law § 14-101(a) (Bender 2005).

In October 2004, Coolidge received a sentence of five years in prison and 5 years of probation. Under Md. Code Ann., Election Law § 3-102 (Bender 2005), Coolidge became ineligible to vote when he was sentenced because he had committed than infamous crime followed by a crime of violence. Defendant Maryland State Board Of Elections then removed the plaintiff's name from the registry of voters pursuant to Md. Code Ann., Election Law § 3-501 (Bender 2005), and he could not vote in the 2004 Presidential election. Coolidge is now permanently ineligible to vote under § 3-102(c) because he has been convicted of a crime of violence and was previously convicted of an infamous crime.

The plaintiff brought an action in U.S. District Court for the District of Maryland, at Baltimore. Plaintiff alleged that by removing his name from the registry of voters, the defendants wrongfully denied him his right to vote pursuant to the Voting Rights Act of 1965 and The Eighth Amendment to the U.S.

Constitution. Defendants Maryland State Board of Elections, et. al. moved to dismiss the case under Fed. R. Civ. Pro. Rule 12(b)(6). The District Court judge granted the motion and entered a judgment for the defendants on the grounds that its actions did not violate the Fourteenth Amendment, Fifteenth Amendment, the Voting Rights Act of 1965 or the Eighth Amendment. Plaintiff appealed the judgment and it was brought before the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the dismissal of the Fourteenth and Fifteenth Amendment claim, but reversed on the other two counts, holding that §2 of the Voting Rights Act was applicable to felon disenfranchisement law and that if the pleadings were true, the punishment could be found to be "cruel and unusual" under the Eighth Amendment. The Fourth Circuit Court remanded the case back to the District Court. Presently Respondent Coolidge urges that the ruling of the Fourth Circuit, denying the defendants' motion to dismiss, be affirmed by this court so that he can receive a fair trial proving his allegations of racial discrimination, under the totality of circumstances, to be true.

Argument

Respondent Jeffrey Coolidge seeks to affirm the decision of the U.S. Court of Appeals for the Fourth Circuit declaratory and injunctive relief pursuant to the Voting Rights Act, 42 U.S.C. § 1973 ("VRA") and U.S. Const. amend. VIII ("The Eighth Amendment"). The defendants, Maryland State Board of Election et al., alleged that there was no violation of the VRA when it denied Coolidge, a disenfranchised felon, from voting because it

was not on account of race. They also alleged that there was no violation of the Eighth Amendment by disenfranchising a felon based on his prior conviction of an infamous crime. While the District Court affirmed the claims of the Maryland State Board of Elections ("MBE"), the Fourth Circuit Court of Appeals reversed and remanded the case back to the District Court. The Fourth Circuit Court of Appeals decision should be affirmed; Maryland's election statute §3-102 violates both §2 of the VRA and the Eighth Amendment.

- I. **A statutory provision that permanently denies the right to vote only to persons who have committed a second or subsequent violent is subject to § 2 of the Voting Rights Act, 42 U.S.C. § 1973 because it results in a denial of the right to vote on account of race.**

The Fourth Circuit Court decided correctly that § 2 of the Fourteenth Amendment does not foreclose an application of §2 of the VRA. §2 of the Fourteenth Amendment "stipulates that a State that infringes the right to vote will be subject to reduction of its representation. However, the provision provides an exemption for denial of the right to vote to those engaged in rebellion, or other crime.'" U.S. Const. amend. VIII. The Fourth Circuit Court correctly points out that while "the Second and Eleventh Circuits have ruled that § 2 of the Fourteenth Amendment immunizes felon disfranchisement laws from Voting Rights Act challenges in the absence of specific and clear evidence of intentional racial discrimination", Judge Barkett of the U.S. Court of Appeals for the Eleventh Circuit has a more convincing argument that felon disfranchisement laws clearly fall under the plain meaning of § 2 of the Act. *Muntaqim v. Coombe*, 366 F.3d 102, 122 (2d Cir. 2004),

cert. denied, 160 L.Ed.2d 356, 125 S.Ct. 480 (2004), vacated pending reh'g, 396 F.3d 95 (2d Cir. 2004); *Johnson v. Bush*, 405 F.3d 1214 (11th Cir. 2005). "Judge Barkett correctly distinguishes felon disfranchisement laws 'generally and those that result in racial discrimination,' as the Act would have no effect on state disfranchisement laws unless they resulted in discrimination on account of race." *Johnson v. Bush*, 405 F.3d 1214 (11th Cir. 2005).

Once the Fourth Circuit Court came to the conclusion that disenfranchised voters fell under §2 of the VRA, it should subsequently be found by this Court that the Maryland election law has the effect of denying the Respondent the right to vote on account of his race. "It reaches this effect by combining his initial, race-inflected conviction for an "infamous crime" with a second conviction for a violent felony to deprive him forever of the right to vote." Voting Rights Act of 1965, 42 U.S.C. § 1973. According to the VRA, "no voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." *Id.*

To establish a violation of §2 of the VRA, the aggrieved must bear the burden of showing that the government violated the VRA by denying him the right to vote based on race. This is "established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally

open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* As it has been made clear to both the District Court and the Fourth Circuit Court, Mr. Coolidge has shown that MBE, as a result of unfair representation in Maryland's government, has allowed for African Americans to be denied the right to vote on account of race.

As a result of this "totality of the circumstances" test, the Fourth Circuit agreed with the Respondent by contending that Maryland's three-tiered mechanism for felon disenfranchisement interacts with political and social conditions in the State of Maryland to deny his right to vote on account of race. First, the legislature created a list of infamous crimes that allow for a felon to be temporarily disenfranchised. Second, the legislature created a law that required a felon to be permanently disenfranchised if a subsequent violent crime is committed, a crime also defined by the legislature. Statistics bear out that African Americans are committed of both infamous crimes and violent crimes at a rate disproportionate to the population. Compl. ¶ 19.

Third, the process of denying Mr. Coolidge's right to vote on account of his criminal status violated §2 of the VRA because felons in Maryland are overwhelmingly African Americans. The Fourth Circuit asserted that where a prerequisite (like a past conviction) interacts with surrounding circumstances to deny the

right to vote on account of color, that prerequisite is barred by § 2 of the VRA on its face. 2(a) of the VRA "prohibits any voting qualification or prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." *Thornburg v. Gingles*, 478 U.S. 30 (1986).

Because the legislative system is biased towards the apprehension and conviction of African Americans, it follows that more African Americans are felons. More African Americans with felony convictions for infamous crimes and second, subsequent violent crimes are disenfranchised than white people with felony convictions. As a result, more African Americans are being denied the right to vote on account of race.

To establish a violation of the VRA, §2(b) provides that "a denial or abridgment of the right to vote occurs when, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by 42 U.S.C.S. § 1973(a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* MBE is not equally open to the participation of African Americans in the voting process because African Americans are disproportionately represented as disenfranchised voters.

A. Political Process

By enforcing its disenfranchisement laws, MBE perpetuated a racially biased standard consistent with the actions of the police, the prosecution, and the jury in Baltimore County, Maryland. The actions of MBE are likewise consistent with a racially biased political process in which African Americans are disproportionately represented as felons. The Maryland State legislature has drafted statutes that are overly inclusive of African Americans for both infamous crimes and violent crimes. The police and prosecutors are overly willing to accuse and convict African Americans of crime in general, especially of infamous and violent crimes defined in such a manner that they implicate African Americans in a drastically disproportionate manner. Compl. ¶ 18. The juries in Maryland also make convictions disproportionate to Maryland's population, convicting whites far less often than African Americans of infamous and violent crimes. Because of the disparity in convictions of African Americans versus members of other races, more African Americans are ultimately subject to disenfranchisement.

The political process in Maryland is therefore inherently biased. Because conviction for violent crimes and prior convictions of infamous crimes are voting qualifications within the contemplation of §2 of the VRA, MBE has violated §2 of the VRA. This violation occurred because the disenfranchisement of felons convicted of violent crimes and infamous crimes is skewed disproportionately towards African Americans. Compl. ¶ 45. In establishing a §2 violation, the totality of the circumstances must point to an effort to deny a group of people classified

under §2(a) the right to participate in an election. By creating and partaking in a system that allows for such racial disparity in apprehension, conviction, and sentencing, African Americans such as Mr. Coolidge make up a disproportionate number of disenfranchised felons who are denied the right to vote.

Mr. Coolidge experienced police bias when he was considered a suspect in a robbery that he did not commit. He was never charged for the robbery, but was singled out in a biased manner for potentially committing a crime just because of his race. Mr. Coolidge's crimes took place in Baltimore, located in Baltimore County, Maryland. Population statistics show that African Americans make up 64.3% of the total population in Baltimore, 20.1% of the population in Baltimore County, and 27.9% of the population of Maryland. Compl. ¶ 19. African Americans in Maryland are in contact with the police 75% more often than white residents. Compl. ¶ 25.

This is a drastic discrepancy; the small segment of the population that happens to be black comes into contact with police at a rate much higher than the remainder of the population. The Respondent believes that this discrepancy can be accounted for by the biased behavior of the Maryland police force who actively seek out African Americans to accuse of committing crimes. The Maryland police, who actively pursue more African Americans than other races are thus able to apprehend African Americans more often than white residents as a result. Compl. ¶ 26. Once in police custody, Maryland prosecutors charge African Americans with crimes at a disproportionately high rate. Compl. ¶

26. Both of these elements of the political process contribute to the unlawful disenfranchisement of African Americans.

Mr. Coolidge was convicted by a jury comprising one African-American and eleven white members. The Maryland juries that convict African Americans are not representative of the population. For example, juries in Baltimore County have on average 1 African-American juror for every 14 white jurors, even though the population of the county has 1 African-American resident for every 5 residents. Compl. ¶ 28. Mr. Coolidge believes that a jury comprising of one African American juror and eleven white members is a prime example of Maryland's jury bias in sentencing African Americans to more infamous and violent crimes than persons belonging to other races. If the jury is biased in the same manner as the police and the prosecution, the chances that an African American will be disenfranchised increase dramatically. Coupled with the fact that African Americans receive competent legal representation at trial less often than white Maryland residents and plead guilty 35% more often than whites, the numerical difference between African American felons and white felons can be explained by these facts. Likewise, the dramatic increase in African American felons accounts for the grim statistic regarding the high number of disenfranchised African Americans as compared to their white counterparts. Compl. ¶ 27.

B. Infamous Crimes

Infamous crimes, as defined by Maryland legislature, are numerous. The expansive list includes violations of criminal law,

health law, and election law. Infamous crimes cover a large number of crimes in Maryland. They range from criminal law to election fraud to health law. The one undeniable truth is that Maryland convicts African Americans of infamous crimes, as defined by Maryland state law, at a rate disproportionate to their share of the population. Compl. ¶ 42. The willingness to convict more African Americans than other races allows for more African Americans to be subject to disenfranchisement laws.

An important statistic to note is that among African Americans in prison in Maryland, 25% are serving sentences for drug-related crimes, while only 9% of white prisoners are serving sentences for such crimes. Compl. ¶ 24. Thus, the racially biased political process allows for more African Americans to serve time for infamous crimes than other races, most notably drug-related crimes such as Mr. Coolidge's conviction. Under Md. Code Ann., Election Law § 3-102(c) (Bender 2005), a citizen permanently loses the right to vote if he is convicted of an infamous crime and a subsequent violent crime. Compl. ¶ 43. If a person is already convicted of an infamous crime, then they will be denied the right to vote if a subsequent violent crime is committed.

In 1982, Mr. Coolidge was sentenced to one year in prison and one year of probation for possession of cocaine with the intent to distribute. Under Maryland law, this crime was an infamous crime within the contemplation of what is now Md. Code Ann., Election Law § 3-102(b) (Bender 2005). Compl. ¶ 13. The totality of the circumstances here yields to the belief that due to racial bias in the legislative process, including the

establishment of the list of infamous crimes, more African Americans are found guilty of infamous crimes. African Americans such as Mr. Coolidge are thus subject to the fear of being charged with a subsequent violent crime. If charged with a second or subsequent violent crime and found guilty, this person is ineligible to vote. Thus, because there is a disproportionate number of African American citizens convicted and sentenced for infamous crimes in the State of Maryland, more African American citizens are subject to §3-102(c) stipulations than persons belonging to other races. This renders more African American citizens unable to vote, and this Court should find that this is a violation of §2 of the VRA.

C. Second or Subsequent Violent Crimes

Second or subsequent violent crimes, as defined by Maryland statute, are crimes committed more frequently by African Americans than non-African Americans. The willingness of the legislature to create criminal offenses that target more African Americans is a violation of the VRA because more African Americans are thus subject to disenfranchisement laws. In April 2004, "Coolidge entered a convenience store in Baltimore threatened to assault the clerk if she did not deliver the cash, but he did not display a weapon. He took \$150 from the clerk. Compl. ¶ 16. Afterwards, Coolidge was indicted and convicted of robbery, which is a crime of violence under Md. Code Ann., Criminal Law § 14-101(a) (Bender 2005). In October 2004, he received a sentence of 5 years in prison and 5 years of

probation. Compl. ¶ 17. Though there was no weapon found on Mr. Coolidge, he was still convicted of a violent crime.

The statistics for violent crimes are as grim as the statistics for infamous crimes in the sense that more African Americans are convicted and sentenced than persons belonging to other races. "Maryland convicts African Americans of violent crimes at a rate disproportionate to their share of the population." Of African Americans of voting age who are permanent residents of Baltimore, 0.9% are currently in prison. Of these, 54% are serving sentences for violent crimes. Of African Americans of voting age in Maryland, 0.8% are currently in prison, of which 48% are serving sentences for violent crimes. By contrast, only 0.25% of white residents of the state of Maryland are in prison, 50% of them serving for violent crimes. Compl. ¶ 21.

Because roughly the same percentage of both white and African American inmates are serving sentences for violent crimes, the over three to one ratio of black prisoners to white prisoners in Maryland also means that African Americans are sentenced to prison for violent crimes over three times as frequently. The practical relevance of this statistical finding to state election law is that any state statute that restricts voting rights based on a formula of violent crimes would be implementing a voting law that affects African Americans more than three times as frequently as whites, and therefore restricting their voting rights over three times as often. Md. Code Ann. Election Law § 3-102(c) is such a law.

"Under Md. Code Ann., Election Law § 3-102(c) (Bender 2005), a citizen permanently loses the right to vote if he is convicted of an infamous crime and a subsequent violent crime." Compl. ¶ 43. More African Americans are convicted for infamous crimes, and more African Americans are convicted for violent crimes. The combination of the two allows for a disproportionate number of those African Americans convicted for infamous crimes to be also convicted for violent crimes, which would mean more African Americans would be denied the right to vote. Mr. Coolidge believes that he was unfairly denied the right to vote due to a violation of §2 of the VRA because he, as an African American, has been subject to laws that disproportionately convict African Americans as opposed to persons belonging to other races.

Because § 3-102, as enforced by MBE, disfranchises African Americans at a disproportionately high rate, it denies them the right to vote on account of race, in violation of §2 of the VRA. Under § 3-102, conviction of a violent crime and prior conviction of an infamous crime are voting qualifications within the contemplation of § 2 of the VRA. Compl. ¶ 45. Mr. Coolidge believes that as a result of discrimination at all stages of the criminal justice system, from the definition of infamous crimes through sentencing, African Americans are disfranchised under § 3-102 at a disproportionately high rate. Compl. ¶ 46. This is evident because of African Americans of voting age in Maryland, 3.9% are permanently ineligible to vote. Compl. ¶ 22. In contrast, "only 1.0% of white Maryland residents of voting age are permanently ineligible to vote." Compl. ¶ 46.

These grim statistics show a discrepancy in which four times as many African Americans are ineligible to vote than their counterparts belonging to a different race. From this evidence, it is clear that the bias in the trial system that has allowed for more African Americans to be convicted of infamous and violent crimes has also allowed for African Americans to be disenfranchised at a rate that violates §2 of the VRA. It is for this reason that this Court should find that MBE violated §2 of the VRA.

II. Maryland's disenfranchisement of a violent felon, predicated on his prior conviction of an infamous crime, is a cruel and unusual punishment in violation of the Eighth Amendment.

The Fourth Circuit Court of Appeals opinion that felon disenfranchisement violates the Eighth Amendment is correct; if felon disenfranchisement is indeed cruel and unusual punishment, §3-102 is unconstitutional as applied to felons such as Mr. Coolidge and those in his circumstance. The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. XIII. Respondent's disenfranchisement must actually be a punishment, and it must be impermissibly extreme compared to his crime for an Eighth Amendment violation. *Wilson v. Seiter*, 501 U.S. 294 at 300 (1991).

To qualify under the Eighth Amendment, the condition - in this case, disenfranchisement - must be deemed a "disability." *Slade v. Hampton Rds. Reg'l Jail*, 407 F.3d 243, 250 (4th Cir. 2005). If the condition in question is deemed a disability, then the

question becomes whether the "condition's express purpose is to punish, or whether an alternative purpose to which [the condition] may rationally be connected is assignable for it and the action does not appear excessive in relation to the alternative purpose assigned." *Id.* After it is established that the purpose of the condition is to punish, the analysis turns on whether the punishment is cruel and unusual.

To be cruel and unusual, the punishment can does not need to have a definition of cruel and unusual on its face; however, "severity is not measured simply by years in confinement or magnitude of physical pain; a punishment may involve "no physical mistreatment, no primitive torture." *Trop v. Dulles*, 356 U.S. 86 at 101 (1958). Cruel and unusual can also be described as being severely disproportional to the crime committed. To find a punishment severely disproportional to the crime committed, The Eighth Amendment must be interpreted "with due regard for its purpose and function in the constitutional design... referring to 'the evolving standards of decency that mark the progress of a maturing society.'" *Id.* Based on this analysis, and citing a recent human rights ruling from a European court, the Fourth Circuit Court found that permanent felon disenfranchisement, as authorized by the MBE, violated the Eighth Amendment. Compl. ¶ 37. This opinion is correct and should be affirmed.

A. Disenfranchisement as Punishment

The Fourth Circuit Court found permanent felon disenfranchisement to be a disability, and turned next to determining whether the purpose of the disenfranchisement is

punishment. In every sentencing scheme outlined in §3-102 from infamous crimes to subsequent violent crimes, disenfranchisement is mentioned and used specifically as a punishment. The mechanism for using disenfranchisement as punishment differs from concurrent, temporary disenfranchisement to permanent disenfranchisement that is concurrent to the sentence as well as in effect after the felon has completed his sentence.

In regards to infamous crimes, "disfranchisement that is wholly concomitant with court-ordered sentence is surely meant as part of the overall sentence [so that] some violent felons are permanently ineligible to vote [if they are serving their sentence]." Md. Code Ann., Election Law § 3-102 (Bender 2005). In this sense, disenfranchisement is part of an overall punishment for infamous crimes; voting rights are reinstated after three years. It is part of the punishment, and some crimes warrant permanent disenfranchisement because their sentence is equally severe.

In Maryland, §3-102 calls for permanent disenfranchisement for a felon even if the sentence for a subsequent violent crime has been served. In this sense, disenfranchisement is indeed a punishment and also above and beyond the sentencing itself. The prison term is over; the felon remains unable to vote for the express purpose of punishment. The Fourth Circuit Court found this treatment to be punishment, explaining that "the state may wound a person as deeply in his political existence as in his physical person. Permanent disfranchisement bars an individual from many forms of participation in civic society. He may not

vote, nor may he stand for public office, sign a petition, or participate in forming a political party." Md. Code Ann., Election Law § 6-203, Md. Code Ann., Election Law § 4-102. The Fourth Circuit further states that a "permanently disfranchised citizen is largely excluded from public life [and] although disfranchisement is not the 'total destruction of the individual's status in organized society,' it is substantial." *Trop*, 356 U.S. at 101.

While Maryland might argue that § 3-102(c) is intended to protect the electoral process from the inappropriate influence of criminals, this justification no longer suffices. The Fourth Circuit recognized that "'fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." *Carrington v. Rash*, 380 U.S. 89, 94 (1965). The opinions espoused by the Fourth Circuit Court are correct and should be affirmed by this Court; it is clear that disenfranchisement is used as punishment and likewise harms a person with a past felony conviction.

B. Cruel and Unusual

The Fourth Circuit Court asserts that permanent disfranchisement is not cruel and unusual in itself, but it may be disproportionate in some circumstances. The Eighth Amendment, interpreted with "due regard for its purpose and function in the constitutional design, referring to the 'evolving standards of decency that mark the progress of a maturing society'" yields to an idea, however, that permanent disenfranchisement for sentences that are already completed are extreme in nature. For example,

the Fourth Circuit notes that only 13 States still practice the most extreme form, permanent disfranchisement. Even so, the Fourth Circuit does not find that felon disfranchisement violates the U.S. Constitution, which explicitly permits it in § 2 of the Fourteenth Amendment.

Due to the Constitutional provision allowing for felon disenfranchisement, it is difficult to assert that the punishment is cruel and unusual on its face. The Fourth Circuit is correct in stating that the real harm lies in the proportionality between the sentence and the punishment established by permanent disenfranchisement and not in an inherently cruel and unusual nature of this action. The Fourth Circuit was likewise correct in asserting that because of this proportionality concern and in light of the evolution of our concepts of human dignity, permanent disfranchisement as a punishment deserves scrutiny.

C. Proportionality

There is a proportionality concern when an action appears excessive in relation to the crime committed. Because there is no Constitutional violation when a felon is disenfranchised in relation to his sentence, the inequity occurs when a felon is disenfranchised in a manner that goes above and beyond what has already been completed. In the case of Maryland's law, a felon who has committed an infamous crime and a subsequent crime of violence is permanently disenfranchised even when the sentence for the subsequent crime of violence has been completed. As discussed above, this constitutes a removal from public life, a continued punishment well beyond the crime committed. This is

excessive; the felon has already paid the price for committing the crime by serving an appropriate sentence. Unlike felons who are permanently disenfranchised for crimes that require a lifetime sentence, persons such as Mr. Coolidge are subject to a punishment drastically disproportionate to their crime.

The Fourth Circuit does not believe that this type of disproportionate punishment has any justification other than retribution, and deems this "arbitrarily harsh." *Ewing v. California*, 538 U.S. 22 at 25 (2003). This is inadequate justification for retribution considering that Mr. Coolidge's crimes, taken separately, would not necessitate permanent disenfranchisement. This is an unduly extreme punishment, especially because Mr. Coolidge will be ineligible to vote long after Maryland has seen fit to release him into society. The Fourth Circuit Court concluded that Respondent has been permanently disfranchised in retribution for his complete criminal history, and this is inappropriate because Respondent would only be temporarily disfranchised, if he had no prior conviction; instead he received the harsher, permanent sanction simply because of his single prior conviction for possession of 10 grams of cocaine. This assertion by the Fourth Circuit Court is correct; this Court should affirm this reasoning set forth and find that §3-102 violates the Eighth Amendment.

Conclusion

As the above arguments indicate, Respondent has sufficient evidence to prove that the defendants violated § 2 of the VRA of 1965, and requests that the Supreme Court affirm the judgment of

the U.S. Court of Appeals for the Fourth Circuit. He deserves the right to have his chance to present evidence to the district court 1) that the political system of the state of Maryland discriminates in its treatment of African Americans; 2) that the Respondent, an African American, and others like him have been the recipient of that discrimination; 3) that Maryland election law §3-102 unfairly targets African Americans because the list of crimes labeled "infamous" includes crimes more likely to be committed by African Americans than other races; and 4) that under the totality of circumstances as stated above, the net effect of Maryland state election law is to incarcerate African Americans at a rate disproportionately high relative to other races and disfranchise more African Americans than any other race, in plain violation of § 2 of the VRA of 1965.

Additionally, there is sufficient evidence to show that Maryland Election Law § 3-102 violates the Eighth Amendment. Accordingly, the plaintiff prayerfully requests that the Supreme Court affirm the judgment of the U.S. Court of Appeals for the Fourth Circuit holding permanent felon disenfranchisement is a cruel and unusual punishment protected by the Eighth Amendment. The ruling of the Fourth Circuit should be affirmed because 1) permanent felon disenfranchisement has the effect of punishing individuals permanently by restricting their ability to fully participate in civic life rather than giving them incentive deterring them from bad behavior in the future, a position incongruous with past court decisions interpreting the intent of the Amendment; 2) evolving standards of decency suggest that

permanent felon disfranchisement, while not cruel and unusual on its face, can be deemed cruel and unusual when viewed in relationship to the actual crime committed; and 3) the sentence of permanent disfranchisement for committing an infamous crime followed by a crime of violence is arbitrarily harsh retribution that is not proportionate in punishment to the crimes actually committed. For these reasons, Respondent requests to the Supreme Court that the judgment of the U.S. Court of the Appeals for the Fourth Circuit be hereby affirmed and properly remanded to the District for proceedings consistent with that ruling.