

QUESTION PRESENTED

1. Whether Maryland's statutory provision permanently denying the right to vote only to persons who have committed a qualifying felony is a voting qualification or prerequisite subject to § 2 of the Voting Rights Act, 42 U.S.C. § 1973, because it results in the denial of the right to vote on account of his 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 Eight Amendment?

PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 24.1(b), the undersigned counsel of record certify that the following parties have an interest in the outcome of this case. These representations are made so the Justices of this Court may evaluate any possible disqualification or necessary recusal.

APPELLANT	APPELLEE
Maryland State Board of Elections, et al.	Jeffrey Coolidge

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TABLE OF AUTHORITIES

Supreme Court Cases

Bowling v. Sharpe
347 U.S. 497 (1954) 3

Chisom v. Romer
501 U.S. 380 (1991) 15

Dunn v. Blumstein
405 U.S. 330 (1971) 11

Gomillion v. Lightwood
364 U.S. 339 (1960) 6

Gregg v. Georgia
428 U.S. 153 (1976) 26

Guinn v. United States
238 U.S. 347 (1915) 1

Hill v. Stone
421 U.S. 289 (1975) 7

Hunter v. Underwood
471 U.S. 222, 233 (1985) 4, 10, 11, 16

Nev. Dep't of Human Res. v. Hibbs
538 U.S. 721 (2003) 19

Oregon v. Mitchell
400 U.S. 112 (1970) 11

Reynolds v. Sims
377 U.S. 533 (1964) 1

Richardson v. Ramirez
418 U.S. 24 (1974) 8, 9, 11, 17

State of S.C. v. Katzenbach
383 U.S. 301 (1966) 4, 6

Thornburg v. Gingles
478 U.S. 30, 47 (1986) 14

Trop v. Dulles
356 U.S. 86 (1958)passim

Washington v. Davis
426 U.S. 229, 239 (1976).3,4,16

Weems v. U.S.
217 U.S. 349 (1910).19,26

Wilson v. Seiter
501 U.S. 294 (1991). 16

Federal Circuit Cases

Farrakhan v. Washington
338 F.3d 1009 (9th Cir. 2003).13,14

Green v. Bd. of Elections of the City of N.Y.
380 F.2d 445 (2d Cir. 1967).9

Johnson v. Bush
405 F.3d 1214 (11th Cir. 2005). 16

Johnson v. Governor of Florida
353 F.3d 1287 (11th Cir. 2003). 15

Muntaquim v. Coombe
385 F.3d 793 (2nd Cir. 2004).14

Federal District Court Cases

Kronlund v. Honstein
327 F. Supp. 71 (Dist. Ct. N. Dist. Ga. 1971).9

McLaughlin v. City of Canton
947 F. Supp. 954 (S.D. Miss. 1995). 27

Thiess v. State Admin. Bd. of Election Laws
387 F. Supp. 1038(Dist Ct. Md. 1974).28

Wesley v. Collins
605 F.Supp. 802 (Dist Ct. M. Dist Tenn. 1985).13

Constitutional Provisions

U.S. Const. amend. VIII. passim
U.S. Const. amend. XIV, passim
U.S. Const. amend. XV

Federal Statutory Provisions

Voting Rights Act

42 U.S.C. § 1973 (Bender 2005).passim
42 U.S.C § 1983. passim

State Statutory Provisions

Md. Code Ann. §3-102 (Bender 2005).18,20,21,25,30

Law Review Articles

Andrew L. Shapiro, Challenging Criminal Disenfranchisement Under The Voting Rights Act: A New Strategy, 103 Yale L.J. 537, 537, 538 (1993)2

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ARGUMENT

I. The Right to Vote is a Constitutionally Protected Right. Maryland's statutory provision permanently denies the right to vote to persons convicted certain crimes as a voting qualification resulting in the denial of the right to vote on account of race.

A.) Voting Is A Fundamental Right Protected By The Constitution.

"Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as federal elections." Reynolds v. Sims, 377 U.S. 533, (1964). As the court stated in Guinn v. United States, 238 U.S. 347, 1915) ("the right to vote can neither be denied outright", however the state of Maryland maintains a disenfranchisement practice that denies a significant portion that very right the Constitution, the Spirit of Our Country and the Electoral Process purports to protect, Freedom. See Guinn, 238 U.S. 347.

This case demonstrates the very essence of the protections the Voting Rights Act was enacted to ensure and clarify protections of the Fourteenth and Fifteenth Amendments Equal Protection Clauses. Maryland selectively denied Coolidge his right to vote on the account of race, under the guise of a criminal disenfranchisement statute resulting in a disparate impact to the states African American Population, in direct violation of the Voting Rights Act Amendment. Originating from the post-civil war Reconstruction Amendments when states began

to solve the problem of the minority vote and circumvent the Equal protection voting right prohibition by enacting various forms of legislation aimed at disenfranchising the minority vote. "The conventions adopted a panoply of voting barriers, including literacy and property test, poll taxes, understanding clauses, and grandfather clauses. The purpose of these voting restrictions was to disenfranchise as many blacks as possible without violating the recently ratified Fifteenth Amendment, which prohibited denying the right to vote on account of race." See generally, Andrew L. Shapiro, Challenging Criminal Disenfranchisement Under The Voting Rights Act: A New Strategy, 103 Yale L.J. 537, 537, 538 (1993).

The historical modes of disenfranchisement have since been extinguished from the electoral landscape, largely due to the enactment of the Voting Rights Act of 1965. However, Maryland and several other states maintain equally destructible and unjustifiable prohibitive methods of racial discrimination under the guise of criminal disenfranchisement, the only substantial voting restriction that remains in effect. Id. Shapiro at 539. Maryland claims §2 of the Fourteenth Amendment, contains an exception to the prohibition of the right to vote, which is false. More importantly, the amended Voting Rights Act, 42 U.S.C. §1973 (Bender 2005), prohibits any and all types of voting discrimination. Several cases have addressed the

question of the constitutionality of criminal disenfranchisement statutes, but as this case demonstrates the Amended Voting Rights Act of 1982.

B.) The Court has already found criminal disenfranchisement statutes unconstitutional on the basis of Equal Protection Clause, despite Richardson v. Ramirez, 418 U.S. 24 (1974).

Maryland maintains an unconstitutional felon-disenfranchisement law that functions to deny a significant portion of the African-American population, their constitutionally protected right to vote. Consequently, the Equal Protection Clause contained in Section 1 of the Fourteenth Amendment provides: "No state shall...deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Similarly the same Equal Protection principles also apply to the federal government as the Court in Washington v. Davis, 426 U.S. 229, 239 (1976), stated, "[t]he central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. It is also true that the Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups." (citing from Bolling v. Sharpe, 347 U.S. 497 (1954))." Id. at 239. The Court in Washington also stated, "the Equal Protection Clause prohibits a state from using a facially neutral law to

intentionally discriminate on the basis of race.” Id. at 239. This ruling includes a criminal disenfranchisement law enacted with the intent to deprive one racial group of its right to participate in the local political process. Hunter v. Underwood, 471 U.S. 222, 233(1985).

2.) Congress has the authority to affect states authority over voting control expressly given to state in the Constitution, the Voting Rights Act does apply.

The question of federal legislations applicability to state legislation has been considered throughout our country’s jurisprudence. “Provisions of [the voting rights act] were appropriate means for carrying out Congress’ constitutional responsibilities under U.S.C.A. Const. amend. 15 and were consonant with all other provisions of the Constitution. State of S.C. v. Katzenbach, 383 U.S. 301 (1966). Similarly, as South Carolina argued and now Maryland echoes,

“...precedents only for the authority of the judiciary to strike down state statutes and procedures-that allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, §2 of the Fifteenth Amendment expressly declares that ‘Congress shall have power to enforce this article by appropriate legislation.’ By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in §1.” Id. at 326.

Maryland contends that the United States Constitution protects and extends authority to the state to regulate the voting franchise. R. at 33. While that contention is partially

correct, it fails to consider several important principles of Constitutional law implicit and binding upon all states concerning governmental activities, legislation, and prohibitions, especially when a fundamental Constitutional guarantee such as the right to vote is implicated.

Md. Code Ann, Election Law § 3-102, established the State's qualifications for voter registration. With respect to the disenfranchisement of those persons with criminal convictions, §3-102(b) and (c) describe a three tiered voter-qualification scheme. First, a person who commits a "theft or other infamous crime" for the first time may not register to vote unless the individual has been pardoned or has completed the court-ordered sentence imposed for the conviction. §3-102(b)(1). Second, a person who has been convicted of an infamous crime for the second time (or more) must complete the court-ordered sentence and also wait three years for restoration of the right to vote. §3-102(b)(2). R. at 44.

The third tier of the scheme distinguishes second-time (and subsequent) offenders who commit violent felonies. All felonies, violent or otherwise, are infamous crimes according to Maryland law. Record at 45-51. Conviction of a second or subsequent infamous crime that is not also a violent felony subjects an individual to the three-year waiting period described by §3-102(b)(1)(ii)(2). However, if the second or subsequent crime is a violent felony, the convicted criminal permanently forfeits the right to vote. R. at 44.

The Appellant was a registered voter in the City of Baltimore prior to his conviction. Now he will never again be allowed to register to vote.

Voting is a fundamental right of every citizen protected by the constitution of the United States. The Voting Right Act was appropriate legislation enacted for the purpose of ridding discriminatory voting practice of any form to ensure the

appropriate and just application of voting practices. Maryland participates in a practice that results in the denial of the right to vote, accordingly "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. Gomillion v. Lightwood, 364 U.S. 339, 347 (1960) (citing from Katzenbach, 383 U.S. at 325). Consequently §2 does apply, and Maryland is in violation of the Voting Rights Act, 42 U.S.C. § 1973.

C.) The Maryland Criminal Disenfranchisement Statute permanently denies the right to vote, based on a voting qualification that results in the denial of the right to vote on account of race subject to and in violation of § 2 of the Voting Rights Act, 42 U.S.C. § 1973.

The Constitution expressly prohibits both state and federal governments from selectively denying the right to vote on certain bases: the Twentieth Amendment (age), the Twenty-fourth (failure to pay taxes), the Nineteenth Amendment (sex), and the Fifteenth Amendment (race). While these four provisions expressly prohibit discrimination on the basis of age, race, sex, or failure to pay taxes they do not prohibit all forms of voting discrimination.

The basic principle expressed in these cases is that as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot

stand unless the district or State can demonstrate that the classification serves a compelling state interest. Hill v. Stone, 421 U.S. 289, 297 (1975) (holding that a Texas restriction on suffrage did not serve any compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment).

The Maryland disenfranchisement scheme although not facially discriminatory, has a discriminatory effect on the African American population. The statute violates the one of the most central and sacred ideas of democracy and equality the Constitution intends to uphold. Maryland permanently disenfranchises 3.90% (214,812) of the voting age African American Population, which comprises 27.90% of the overall population of Maryland. Comparatively only 1.00% (55,080) of the state white inhabitants are affected. The disparate impact disenfranchisement statutes have on African American in Maryland, and other states with similar disenfranchisement practices violates both the Equal Protection Clause of the Fourteenth, the Fifteenth Amendments and the Voting Rights Act, 42 U.S.C. §1973. The three level disenfranchisement schemes complexity furthers the provisions effect on the African American population, evident from the disproportionate impact. (See, Table 1). The egregiousness is evident from the provisions disproportionate effect and permanency provisions. When Appellant was convicted of robbery in 2004 and sentenced to 5 years in prison and 5 years of probation he was permanently

stricken from the Maryland voter registration rolls, and is forever ineligible to vote. R. at 32.

	Maryland	County of Baltimore	City of Baltimore
Total Population	5,508,000	781,000	628,000
<u>African American</u>			
Percentage Population	27.90%	20.10%	64.30%
Voting Age Imprisoned	0.08%	*	0.90%
Serving for			
Disqualifying Offense	48.00%	*	54.00%
Ineligible to Vote	3.90%	*	4.30%
<u>Whites</u>			
Percentage of			
Population		*	*
Voting Age Imprisoned	0.25%	*	*
Serving for			
Disqualifying Offense	50%	*	*
Ineligible to Vote	1.00%	*	*
<u>Ineligible to Vote</u>			
African Americans	214,812		
White	55,080		

(Cite as Table 1) *indicates unavailable information

D.) Maryland's Criminal Disenfranchisement statute violates the Voting Rights act, 42 U.S.C. § 1973.

Appellant was denied his right to vote and is permanently ineligible to vote. The Maryland election law has the effect of denying the right to vote on account of race. R. at 33.

Although the lower court ruled "[t]hat § 3-102 does discriminate between criminals on the basis of their past convictions, [s]uch discrimination is permissible under Richardson v. Ramirez, 418 U.S. 24 (1974)." R. at 33. The lower courts failed to recognize intentional discrimination is not necessary involving claims of voting discrimination under the Voting Rights Act, 42 U.S.C. §1973. The District Court reversed part of the lower courts ruling, holding that "[M]aryland may not use past criminal convictions as a basis for the disenfranchisement of individuals

where, such convictions interact with political, economic, and social factors to deny the right to vote on account of race.” (holding that the appellant has made out a cognizable claim under 42 U.S.C. §1973). R. at 30.

Criminal Disenfranchisement Statutes were first upheld in Richardson. In 1974, “after the three individual respondents, who had been convicted of felonies and had completed their sentences and paroles, were refused registration to vote in three different California counties respectively because of their felony convictions” Richardson, 418 U.S. at 24. The Richardson Court declared that states may *generally* deprive offenders of the right to vote without violating the Fourteenth Amendment’s Equal Protection clause, finding § 2 of the Fourteenth Amendment as an exclusionary provision allowing states authority to disenfranchise felons. Since Richardson there have been a myriad of decisions regarding the constitutionality of criminal disenfranchisement statutes, most finding § 2 as an affirmative expression of a states authority. See Green v. Bd. of Elections of the City of N.Y., 380 F.2d 445 (1967) (dismissing challenge to disenfranchising statute, by plaintiff convicted of conspiring to organize a group to overthrow the government); Kronlund v. Honstein, 327 F. Supp. 71 (1971) (upholding Georgia constitutional provision, disenfranchising persons convicted or treason against the state,

embezzlement of public funds, malfeasance in office, bribery or larceny, or any crime involving moral turpitude punishable with imprisonment in the penitentiary.

The underlying commonality between criminal disenfranchisement challenges, is distinguishable from the present case. This case is distinguishable because unlike other cases, this situation involves a statute that has substantial racial discriminatory consequences, disproportionately effecting a significant number of minorities. As the court in Hunter v. Underwood, 471 U.S. 222 (1985), first addressed, holding an Alabama state constitutional provision disenfranchising persons convicted of crimes involving moral turpitude violated equal protection when even though on its face it was racially neutral, the statutes original enactment was motivated by desire to discriminate against blacks on account of race and provision had racially discriminatory impact since its adoption. See Id. at 222. The Court did not overrule the previous Richardson ruling, finding the constitutionality of criminal disenfranchisement statutes, however Hunter distinguishes racial discrimination.

The Hunter Court invalidated the Alabama statute based on the statutes intentional discriminatory enactment. The lower courts have then based subsequent ruling based on the 'intentional' discrimination described in Hunter, however the lower court have failed to recognize a careful yet subtle

inclusion to discussed in that opinion, as Justice Rehnquist states, "we are confident that § 2 was not designed to permit the purposeful racial discrimination attending the enactment and operation of § 182 [the criminal disenfranchisement statute] which otherwise violates §1 of the Fourteenth Amendment." Id.

Similarly, several cases have found § 2 not to affirmatively allow states the authority to disenfranchise voters. In Dunn v. Blumstein, 405 U.S. 330 (1971), Justice Marshall, J., held that state laws requiring would-be voter to have been resident for year in state and three months in country do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment. Id. at 330. Although, the U.S. Const. amend. XIV § 2 has express age and residency requirements Dunn, determined the Tennessee durational residency requirements were unconstitutional, and subject to the Equal Protection Clause of the Fourteenth Amendment. The Court also applied Congressional remedies in despite Constitutional language in Oregon v. Mitchell, 400 U.S. 112 (1970). "Although §2 excepts from its terms denial of the franchise not only to ex-felons but also to persons under 21 years of age . . . [C]ongress, under § 5 had the power to implement the Equal Protection Clause by lowering the voting age to 18 in federal elections." (citing from Richardson, 418 U.S. at 76).

The Supreme Court in Dunn, and Oregon has already decided § 5 authorizes Congress authority to curtail a states power to disenfranchise voters base on residency and age as express in the Constitution. The importance of the right to vote certainly dictates the importance and applicability of the Voting Right Act, 42 U.S.C. §1973, and the authority of Congress "[p]ower to enforce, by appropriate legislation, the provisions of this article." See U.S. Const. Amend XIV § 5.

E.) The Circuits Split

The Maryland disenfranchisement statute grossly disproportionately disqualifies African-Americans. The complexity and facially neutral structure of the statute does not alleviate the necessity of finding the provision violates the Appellants constitutionally protected right to vote. As the District Court stated "[t]he right to vote is our nation's most sacred guardian of democracy. That guardian is currently stained by the mark of racial disparity and crippled by an overly broad reading of just one provision—§ 2—of the Fourteenth Amendment." R. at 36, 37. While the state argues the provisions constitutionality based on §2, the Maryland provision inappropriately denies a significant portion of the African American equal protection of the right to vote and the denial of their constitutionally protected right to vote on the basis of

race, falling squarely under prohibitions of the Voting Rights Act 42 U.S.C. §1973.

The Circuits are split regarding that applicability of the Voting Right Act to felon disenfranchisement statutes. In 1985, the Tennessee Federal District Court, in Wesley v. Collins, 605 F.Supp. 802, 803 (1985), first addressed the disparate impact criminal disenfranchisement statutes have on the Black vote. The Wesley Court held, "that Tennessee may disqualify convicted felons from the voting public without unlawfully interfering with the equal opportunity of blacks to participate in the political process and to elect representatives of their choice." Id. at 803. (dismissing the plaintiffs claim alleging Tennessee felon disenfranchisement statute resulted in the unlawful dilution of the black vote in violation of the U.S. Constitution and the federal Voting Rights Act Amendments of 1982.). Wesley failed to appropriate standard set by the 1982 Voting Rights Act amendments. More importantly, although the District Court in Tennessee found the statute did have a disproportionate impact on blacks, the court erroneously attempts to intermingle the higher equal protection standards of Richardson.

In 2003, the Ninth Circuit in Farrakhan v. Washington, 338 F.3d 1009 (9th Cir. 2003) found the Washington State criminal disenfranchisement statute denied access to voting privileges on the basis of race. The Court in Farrakhan recognized the

'totality of the circumstances test' proscribed by the 1982 Voting Rights Amendments, and erroneously applied by the Wesley Court. The Farrakhan Court held, "[a] Section 'totality of the circumstances' inquiry requires courts to consider how a challenged voting practice interacts with external factors such as 'social and historical conditions' to result in denial of the right to vote on account of race or color." (*citing* Thornburg v. Gingles, 478 U.S. 30, 47 (1986) ("Section 2 [of the VRA] prohibits all forms of voting discrimination..."). Id. at 1011. The very 'social and historical conditions' which the Voting Rights Act was enacted to cure, were inappropriately ignored by other courts such as Wesley.

The Second Circuit also address a Voting Rights challenge to disenfranchisement provision in Muntaquim v. Coombe, 385 F.3d 793 (2nd Cir. 2004), cert. denied, vacated pending reh'g, 396 F.3d 95 (2nd Cir. 2004). However the issued presented in Muntaquim was whether "[p]ersons *currently in prison or on parole*-can be challenged under the Voting Rights Act." Id. 385 F.3d. 793, 794. (*emphasis supplied*). The Muntaquim Court included in their opinion, 'the question presented in this case should not be confused with the more frequently debated question whether former felons should lose their right to vote for a time or even permanently.'" Id. at 794. The present case is distinguishable, Muntaquim decided based on the applicability to

criminals "currently in prison or on parole" not the issue of whether felons should permanently be disqualified.

The distinction becomes more evident in Johnson v. Governor of Florida, 353 F.3d 1287 (11th Cir. 2003) (affirming summary judgment summary judgment of defendant). However, as Judge Barkett dissenting argument emphatically explains, "The language of Section 2 of the VRA is unambiguous, and compels a conclusion that it applies to felon disenfranchisement provisions. Such a provision is unquestionably a 'voting qualification or prerequisite to voting' that is 'applied by [the] state.' Whether or not felon disenfranchisement results in vote denial 'on account of race or color' under the totality of the circumstances remains the ultimate question for the trier of fact." (internal citations omitted), Id. at 1248.

Moreover, the Voting Rights Act was enacted to enforce the Fifteenth Amendment and to strengthen its protection of the right to vote from discrimination on account of race. Chisom v. Romer, 501 U.S. 380, 383 (1991). The District Court found that §3-102, discriminates between criminals on the basis of their past convictions. R. at 32-32. Although, Richardson allowed for criminal disenfranchisement that was a race-neutral decision, consequently when the statute results in a disproportionate impact or disparate effect on the basis of race, resulting in the denial to vote, it is subject to the provisions of the

Voting Rights Act. The Equal Protection Clause and the Voting Rights Act the courts have already settled, 'the Equal Protection Clause prohibits a state from using a facially neutral law to intentionally discriminate on the basis of race. Washington v. Davis, 426 U.S. 229, 239-40 (1976). This ruling includes a criminal disenfranchisement law enacted with the intent to deprive one racial group of its right to participate in the political process. Hunter v. Underwood, 471 U.S. 222, 223 (1985)." (citing from Johnson v. Bush, 405 F.3d 1214, 1218 (11th Cir. 2005)).

II. MARYLAND'S STATUTE 3-102(B) THAT PERMANENTLY DISFRANCHISES VIOLENT FELONS WITH PRIOR CONVICTIONS OF INFAMOUS CRIMES VIOLATES THE EIGHTH AMENDMENT PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT.

A. Maryland's statute permanently disallowing certain criminals the right to vote is punishment.

The first issue to consider is whether disallowing criminals from voting is a form of punishment. In order to inflict punishment upon a person the punisher must intend for the action to be punishing with the intent to chastise or deter. Wilson v. Seiter, 501 U.S. 294 (1991). Punishment does not accidentally occur or arise out of negligence of the party perceived to be the punisher. Instead, punishment is a carefully crafted device with the purpose of inflicting some sort of suffering on the one being punished. Punishment need not inflict "physical mistreatment" or be "primitive torture."

Trop v. Dulles, 356 U.S. 86, 101 (1958). In Richardson v. Ramirez, 418 U.S. 24 (1974), the Court examines whether the Fourteenth Amendment sanctions the use of disfranchisement as punishment. Little discussion in the case explains what makes disfranchisement punishment because there is little argument that disfranchisement is anything but punishment. In Richardson, the court also discusses the post civil war states, and mentions the law in Arkansas that only allows voting restriction for punishment, in any other instance universal suffrage is the rule. Taking away rights and privileges from a convicted felon is punishment.

If a statute imposes disability with the purpose to punish, then the statute is considered penal. On the other hand, "a statute has been declared non-penal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose." Trop, 356 at 96.

When the Fourth Circuit faced the question of whether disfranchisement was actually a form of punishment, they determined that it was punishment. No other legitimate governmental interest apart from punishment has even been brought into the equation. "The express purpose of felon disfranchisement is to punish convicted criminals." R. at 37. In Maryland, the statutory system disallowing felons a right to vote is designed to punish criminals, and the permanent

disfranchisement for infamous crimes is simply a more severe form of punishment for a more severe crime. R. at 38.

In the case at bar, Coolidge has been permanently disfranchised because he was convicted of an infamous crime and a subsequent violent crime within the meanings of the Maryland statutes. The Supreme Court has addressed issues of felon disfranchisement, and has always determined that the disfranchisement is a form of punishment, and the Fourth Circuit has also determined that the Maryland statutes outlining felon disfranchisement is expressly a form of punishment. The Maryland statute reads "Same-Second or subsequent crimes of violence—Notwithstanding the 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. § 3-102 (Bender 2005). This disability of being unable to qualify as a registered voter, is a punishment for having committed a same-second or subsequent crime of violence.

Statute 3-102(b) is construed as penal in nature making the disfranchisement a punishment, which then raises questions concerning whether this punishment is consistent with the United States Constitution.

The constitutionality of punishment will be analyzed under the Eighth Amendment and will be concerned with whether the

punishment is proportional to the crime that was committed, and whether there is something innately cruel and unusual in this punishment that would exclude it from our understanding of humane justice.

B. The Maryland statute 3-102(b) is unconstitutional because it delivers a punishment disproportionate to the severity of the crime Mr. Coolidge committed.

Proportionality is a key factors in determining whether a punishment is appropriate for a crime. If a punishment is deemed too severe for a crime, then no matter what the punishment, it is cruel and unusual under the Eight Amendment. The Amendment protects "against all punishment which by their excessive length or severity are greatly disproportioned to the offense charged." Weems v. U.S., 217 U.S. 349 (1910). "Legislation must exhibit congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721(2003).

To permanently disallow convicted felons the ability to vote is a punishment that, while on its face may appear to a proportional punishment for violent felons who have previously committed infamous crimes, it is not. A felon faced with this sanction has already paid his or her debt to society for the first infamous crime. Whether jail time, parole, probation or any combination of these punishments, this debt is marked paid in full. The Maryland statute reads that the violent crime

alone is not enough to bring about the permanent disfranchisement. Only when a felon has committed both crimes does this statute bar the felon from ever voting again. The reason this punishment is not proportional to the crime is for the very reason that the crime has already been punished. Writing a statute to read "if one commits X crime, the punishment is Y" is fair. Writing a statute to read "if one commits X crime the punishment is Y and after completing Y, crime X will still be held over ones head in such a way that if he or she ever moves wrong again X crime will come back to haunt him or her till he or she dies" is not a proper manner in which a statute should be written. In many ways, that is exactly how the Maryland statute reads. "Same-Second or subsequent crimes of violence—Notwithstanding the 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. § 3-102 (Bender 2005).

Coolidge is permanently banned from voting because he was found to be in possession of 10 grams of cocaine, which is an infamous crime in Maryland, and then convicted of robbing a convenience store and taking \$150. R. at 11. Robbery is a crime of violence under the Maryland code. R. at 11. For committing two crimes, each of which is at the minimum edge of the

classifications of these broad categories of infamous and violent crimes, Coolidge is being faced with some an extremely severe punishment. Not only has he served the time in prison for each of his crimes, a total of 6 years in prison and 6 years probation, his classification as a violent criminal who has previously committed an infamous crime is placing him under the additional punishment of loosing his right to vote permanently. This added punishment, which permanently takes away a part of Mr. Coolidge's rights as a citizen of the United States is excessive and should be limited under the Eighth Amendment as cruel and unusual based on the disproportionate nature of the crimes to the punishment.

Maryland's § 3-102(c) is not consistent the United States Constitution because the Eighth Amendment protects United States citizens against cruel and unusual punishment, of which the understanding includes disproportion punishment. Permanently banning a convicted felon of voting after he or she has completed his or her sentence is disproportionate to the level of crimes included in the infamous and violent crime categories in Maryland.

C. Alternatively, devaluing citizenship of individuals by permanent disfranchisement is a punishment that requires a high level of scrutiny because it falls outside of the traditional forms of punishment.

Part of a criminal conviction is a certain stigmatization that is attached to the convicted felons for the rest of their lives. This stigma often makes it difficult for convicted felons to find jobs and to reconnect with the rest of society once they have completed their sentences. After serving time for a criminal offence, the ex convict must work extremely hard to rejoin society and become a positive contributing part of their communities. The extreme example of criminal convictions affecting the convicted's place in society is when part of the punishment is actual expatriation of the convicted. Expatriation of a felon is totally outside of the bounds of the Eighth Amendment as determined by Trop v. Dulles, 356 U.S. 86 (1958). "[T]he deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be. As long as a person does not voluntarily renounce or abandon his citizenship . . . I believe his fundamental right of citizenship is secure." Id. at 93. To take away all the rights of citizenship as punishment for committing crimes, even crimes as serious as desertion in wartime, is proportionally questionable under the Eighth Amendment. In Trop, the Court discusses that just because death is a valid method of punishment, all punishments short of death are acceptable for crimes. Further, the Court stated, "[w]hen the Government acts to take away the

fundamental right of citizenship, the safeguards of the Constitution should be examined with special diligence. Id. at 103. "Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect." Id. at 100. Permanently disfranchising voters is a punishment outside of those traditional punishments of fines imprisonment and execution and is definitely associated with the punishment of expatriation. Because taking the right to vote is taking away a right of citizenship, and because this sanction is outside the traditional forms of punishment, it should be given an especially close look for consistency with the Constitution.

The ability to restrict voting has always been a difficult issue for our country. Unfortunately, the United States has a spotted history of choosing, in a discriminatory manner, who can and who cannot participate voting. However, over time, through multiple amendments, voting rights have been carefully and clearly added to the Constitution. The Fifteenth Amendment, ratified in 1870, gives rights to persons of race to vote and the Nineteenth Amendment, ratified in 1920, gives women the right to vote. As society has progressed, though these amendments to the Constitution, civil rights movements, and the Voting Rights Act, ratified in 1965 and amended in 1982, the

right to vote has become very closely associated with the rights of citizenship. Without this important right, citizenship is severely marred and not considered to be complete.

After having paid fully for his crime of possessing controlled substances, Coolidge sought to return to society as an active and participating member. He registered to vote, and voted in three different presidential elections. R. at 11. When he finished his year in prison and his year of parol, he had every right to believe he was finished with the unfortunate chapter of his life. After being apprehended with another gram of cocaine in his possession, he realized his need to be totally free from this lifestyle, and went through rehabilitation for his addiction to these illegal substances. It was after his successful two-year period in rehab that Coolidge began to exercise his right to vote as a United States citizen. He had every right to assume that his past in drugs was completely over. Not only had completed his criminal sentence and probations, he had taken steps to become completely and totally free of drugs and had been successful.

Twenty years after his release from prison for his infamous cocaine conviction, Coolidge robbed a convenience store and took \$150 from the clerk. While he threatened to assault the clerk, he never displayed a weapon. Robbing a convenience store is not a crime severe enough to merit permanently taking voting rights.

However, because of Coolidge's conviction and sentence that had been completed twenty years earlier, he falls under section 3-102(b) of the Maryland code, which permanently disfranchises him. This disfranchisement is on top of the five-year sentence and five-year probationary period, which he is currently serving. This additional punishment which was not suggested by a jury or reviewed and given by a judge, is simply added because he fits into this special category of criminals whom Maryland's legislature determined should no longer have this right of citizenship because these types of criminals are just too bad to be allowed to be full citizens even after their debts are paid.

Maryland's statute 3-102(b) is suspect and raises a higher level of scrutiny because it inflicts a punishment that falls outside of traditional fines and imprisonment, and because it permanently takes a fundamental right of citizenship from individuals without any review of a judge. 3-102(b) has permanently destroyed a fundamental piece of Mr. Coolidge's citizenship and this extreme measure should be carefully examined in a society which seeks to protect the rights of all citizens.

D. When Permanent disfranchisement is examined with the higher level of scrutiny this type of punishment requires, it is unconstitutional on the grounds of cruel and unusual punishment.

The section of the Constitution we look to in order to determine whether a punishment is acceptable, is the Eighth Amendment. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. This amendment is a call to fair and just punishment, which fits into a system where human dignity and life are deeply valued. In the Supreme Court's interpretation of this amendment, this call to an evolving and improving sense of just punishment is apparent. "The clause of the Constitution is the opinion of the learned commentators may be therefore progressive, and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." Weems v. U.S., 217 U.S. 349, 378 (1910). "The Eighth Amendment has not been regarded as a static concept." Gregg v. Georgia, 428 U.S. 153, 173 (1976). "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958). This evolving nature of the Amendment exists because of the understanding that over time, a society becomes aware that certain ideals that were once generally accepted as being rational humane ideals are at times actually horrible examples of cruelty and degradation of humanity. Following the upward trend toward more humane punishment, and the upward trend toward universal suffrage, it

fits within the interpretation and understanding of the Eighth Amendment that while disfranchisement may at one point have been an acceptable form of punishment, that no longer is the case.

As mentioned in the previous section, voting rights have become equivalent with citizenship. "The disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box... 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." McLaughlin v. City of Canton, 947 F. Supp. 954, 971 (S.D. Miss. 1995). The idea of "civil death," or loss of rights of citizenship has been around since ancient Greek and Roman times. In Trop, the Supreme Court very clearly ruled that taking the rights of citizenship from individuals because they have done wrong is undeniably cruel and unusual punishment. "We believe that the use of denationalization as punishment is barred by the Eighth Amendment." Trop, 356 U.S. at 101. "[T]he American concept of man's dignity does not comport with making those we would punish completely 'stateless'- fair game for the despoiler at home and the oppressor abroad." Id. at 102. (ruling that despite the severity of the crime of desertion in wartime, total deprivation of citizenship is unconstitutional under the Eighth Amendment.)

Because of the higher level of scrutiny necessitated by a punishment that is outside the scope of traditional punishment, and because the franchise is so deeply connected with this country's ideas of citizenship, and because the crimes often punished by disfranchisement are so very far from serious, permanent disfranchisement should be ruled unconstitutional under the Eighth Amendment. The standard of universal suffrage in the United States demands that there can be no legitimate governmental purpose for disfranchisement outside of punishment. "The crime need not have any connection to electoral process, nor need it be classified as notably serious. Shoplifting or possession of a modest amount of marijuana could suffice."

Andrew Shapiro. Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States (October, 1998). Infamous crimes in Maryland include offenses ranging from sodomy, shoplifting, and narcotics violations. Thiess v. State Admin. Bd. of Election Laws, 387 F. Supp. 1038, N.3 (Dist Ct. Md. 1974) (quoting a letter issued by the Office of the Attorney General of the State of Maryland classifying infamous crimes.)

Committing a crime in the State of Maryland as minor as possessing narcotics or shoplifting is enough to permanently destroy the right to vote. Considering the implications of the loss of this fundamental right for and the relatively small impact of these criminal infractions in conjunction with the

high level of scrutiny of review for this type of punishment, leads to the conclusion that Coolidge is being faced with punishment that is cruel and unusual under the understanding of the constitution. The Eighth Amendment is understood to evolve with the growing understanding of humane justice. Mr. Coolidge will never again have the ability to contribute positively to the body politic because of this statute, and Coolidge will never again have the chance to affect the manner in which the legislative or executive branches of government operate. The United States government is created so that the equal citizens are given the unique privilege and right to determine how their tax dollars are spent, how security and privacy matters are resolved, and ultimately how their rights are protected by voting in public, universal elections. Statutory schemes like Maryland's create a class of persons who are less than full citizens, who have suffered a high level of civil death. While they have not had the "total loss of citizenship" the Court deemed unconstitutional in Trop in 1958, they have still suffered a significant loss, which is simply not a legitimate governmental function. Society has progressed since 1958 when Trop was decided; this country has come to realize the incredible impact of universal suffrage, and the necessity of voting to every citizen. To take voting from a person of Mr. Coolidge's class is to take his only voice in the democracy.

Coolidge will never have the financial means to raise large sums of money to lobby for his political ideals, voting is the only real way many citizens have to be a part of the democracy that is their right as United States citizens.

Citizens like Coolidge should not be permanently denied the right to vote based on minor indiscretions in their pasts, as far in their pasts as twenty years. The "evolving standards of decency" and humane justice dictate that citizens of the United States have the full protection of the Bill of Rights including rights to proportional and humane punishment. Punishments should allow for rehabilitation and reentrance into society, not total and complete stigmatization which relegates the convicts to a subclass of society, the only group in this country who have been permanently denied the right to representation.

Conclusion

For the forgoing reasons, Respondent requests that Maryland Code Annotated § 3-102(b) be invalidated because it is inconsistent with the Voting Rights Act and the Fourteenth and Fifteenth Amendments, and because the punishment required by the statute is unconstitutional under the Eighth Amendment.