STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

Docket No. 19-cv-15941

COMMUNITY SUCCESS INITIATIVE; JUSTICE SERVED NC, INC.; WASH AWAY UNEMPLOYMENT; NORTH CAROLINA STATE CONFERENCE OF THE NAACP; TIMOTHY LOCKLEAR; DRAKARUS JONES; SUSAN MARION; HENRY HARRISON; ASHLEY CAHOON; SHAKITA NORMAN,

Plaintiffs,

v.

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAVID C. BLACK, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

AMENDED COMPLAINT

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. The North Carolina Constitution guarantees free and fair elections, in which all citizens have an equal voice in choosing their elected representatives. The right to vote is a fundamental right in this state, and, like all fundamental rights, it may not be abridged absent a compelling government interest. Yet, with no legitimate government interest, state law denies the right to vote to tens of thousands of people living in North Carolina communities because they have a prior felony conviction. These individuals are prohibited from voting until they are "unconditionally discharged" from probation, parole, post-release supervision or a suspended sentence—often years after their release from incarceration and reentry into society. In many cases, the disenfranchisement persists solely because of a person's inability to pay court costs, fees, or restitution. In some instances, North Carolinians convicted of felonies are placed under community supervision sentences by the court without incarceration; while they are economically contributing to society, North Carolina law bars them from voting for the entirety of their probationary period. These North Carolinians are neighbors, co-workers, family members, taxpayers, and participants in civic groups. The same as all other citizens, their lives are governed by the laws enacted and enforced by elected officials. But unlike their neighbors, they are denied the fundamental right to participate in choosing their representatives. North Carolina's disenfranchisement of citizens living in our community based solely on a prior felony conviction ("probation and post-release felony disenfranchisement") serves no legitimate government purpose. It is unfair, discriminatory, and wrong. And it violates the North Carolina Constitution.

2. The impact of this disenfranchisement scheme is staggering. According to a recent estimate, roughly 70,000 North Carolinians are unable to vote today because of a felony conviction, even though they have been released from incarceration (or were never incarcerated) and are living in communities across the state. And by wide margins, this scheme disproportionately harms African Americans, who represent about ***20%*** of North Carolina's voting population but ***40%*** of those disenfranchised while on probation, parole, or a suspended sentence. The impact on African-American men is even more disparate.

3. While the North Carolina Constitution provides that the "manner" of rights restoration shall be "prescribed by law," N.C. Const., Art. VI, § 2, cl. 3, the General Assembly of course must exercise this authority consistent with other constitutional limitations.

4. One such limitation is the North Carolina Constitution's command that "all elections shall be free"—a provision specifically intended to prohibit government manipulation of the electorate. Probation and post-release felony disenfranchisement perniciously restricts the eligible electorate in North Carolina. The felony-based disenfranchisement law strikes at the heart of the Free Elections Clause's guarantee that elections in North Carolina must "freely and honestly . . . ascertain . . . the will of the people." *Common Cause v Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *109-12 (N.C. Super. Sep. 03, 2019).

5. North Carolina's Equal Protection Clause, which affords broader protections than its federal counterpart, protects "the fundamental right of each North Carolinian to substantially equal voting power." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (N.C. 2002). North Carolina's probation and post-release felony disenfranchisement scheme deprives all people subject to probation, parole and post-release supervision of "substantially equal voting power," and particularly discriminates against African Americans in intent and effect.

6. This State's free speech and assembly guarantees likewise provide broader protections than their federal counterparts, and "[v]oting for the candidate of one's choice" is a "core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses." *Common Cause*, 2019 WL 4569584, at *119. Probation and post-release disenfranchisement constitutes an outright ban on such political expression.

7. Lastly, the requirement that people pay money to regain access to the franchise violates the North Carolina Constitution's Ban on Property Qualifications.

8. This Court should declare that North Carolina's probation and post-release felony disenfranchisement law violates the North Carolina Constitution, and enjoin Defendants from denying the fundamental right to vote to people previously convicted of a felony who are living in society.

PARTIES

9. Plaintiff Community Success Initiative ("CSI") is a nonpartisan, nonprofit organization based in Raleigh, North Carolina that works with people who find themselves entangled in the criminal justice system and their families as they transition back into family and community life. The fundamental mission of CSI is to create a support network for people entangled in the criminal justice system. To that end, CSI works to ensure that people with felony convictions, including those who remain disenfranchised under North Carolina's probation and post-release felony disenfranchisement law, N.C.G.S. § 13-1, can successfully reintegrate into civic life. CSI provides small group trainings and individual mentoring in general life skills, civic engagement, leadership, entrepreneurship, and financial literacy. Through these training and mentorship sessions, CSI diverts time and resources away from its other work to educate people, including people disenfranchised under N.C.G.S. § 13-1, about

their voting rights (or lack thereof), and assists them in registering to vote (in accordance with current North Carolina law). CSI also convenes gatherings where citizens with felony convictions can network, share experiences, and exchange knowledge and resources.

10. Plaintiff Justice Served N.C., Inc. is a nonpartisan, nonprofit organization based in Raleigh, North Carolina that works with people who find themselves entangled in the criminal justice system. The fundamental mission of Justice Served is to ensure that these individuals are able to reintegrate into society. Justice Served diverts resources away from its other work in this area to educate people, including people disenfranchised under N.C.G.S. § 13-1, about their voting rights (or lack thereof), and to register them to vote (in accordance with current North Carolina law). Justice Served also provides community-based alternatives to incarceration and facilitates mentorship programs for people with involvement in the criminal justice system geared at helping them transition into civic life.

11. Plaintiff Wash Away Unemployment is a nonpartisan, nonprofit organization located in New Bern, North Carolina. Its mission is to provide economic opportunities to community members who have life experiences with the criminal justice system, and to advocate for changes in policies that discriminate against persons with past involvement in the criminal justice system. Wash Away Unemployment provides mentoring services, transitional housing, and vocational training to justice-involved people, including persons who are currently disenfranchised under N.C.G.S.A. § 13-1. Wash Away Unemployment provides peer support to community members navigating the criminal justice system, and offers youth programming aimed at preventing criminal justice system involvement and increasing their chances of success. Wash Away Unemployment diverts resources away from its other work in this area to educate

people, including people disenfranchised under N.C.G.S.A. § 13-1, about their voting rights (or lack thereof), as well as financial literacy, license restoration, and expungement opportunities.

12. Plaintiff North Carolina State Conference of the NAACP ("North Carolina NAACP") is a nonpartisan, nonprofit organization composed of over 100 branches and 20,000 individual members throughout the state of North Carolina. The North Carolina NAACP has members who are citizens but, under N.C.G.S.A. § 13-1, are unable to vote due to a prior felony conviction despite having been released from incarceration. The fundamental mission of the North Carolina NAACP is the advancement and improvement of the political, civil, educational, social, and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. In furtherance of this mission, the North Carolina NAACP advocates to ensure that the interests of the African American community and people of color are represented on the local, state, and national legislative bodies by representatives who share the community's interests, values, and beliefs, and who will be accountable to the community. The North Carolina NAACP thus encourages and facilitates nonpartisan voter registration drives by its chapters to promote civic participation. The North Carolina NAACP is currently forced to divert organizational resources away from activities core to its mission in furtherance of education and voter engagement efforts required to assist potential voters in North Carolina in understanding North Carolina's felony-based disenfranchisement laws.

13. Plaintiff Timothy Locklear is a 57-year-old member of the Lumbee Tribe from Lumberton, North Carolina. He was convicted of a felony offense in 2018, and after serving 10 months of incarceration, he was released on October 11, 2019. Mr. Locklear is currently on post-release supervision for a term of at least nine months. He currently resides at Leading Into

New Communities ("LINC") in Wilmington, NC, where he is enrolled in a 90-day post-release program. As part of this program, Mr. Locklear regularly attends Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings. Mr. Locklear works full-time at the New Hanover County Landfill. Mr. Locklear believes that every voice is supposed to count in the political process. Mr. Locklear would vote in upcoming North Carolina elections but for his disenfranchisement.

14. Plaintiff Drakarus Jones is a 26-year-old African American man from Greenwood, Mississippi. In 2017, Mr. Jones moved to North Carolina for a fresh start, but found himself entangled in the criminal justice system. He was convicted of a felony in Onslow County, North Carolina for which he was incarcerated for two years. He was released on August 15, 2019 and is now on post-release supervision until April 2020. He is currently pursuing an electrical line working certification from Cape Fear Community College. Mr. Jones was recently employed as a construction worker in Wilmington, North Carolina, but was let go after his employer conducted a criminal background check. He is actively seeking new employment. Mr. Jones went to the polls to vote in the 2019 election, but was told by a poll worker that he was unable to vote due to his criminal history. Mr. Jones believes that by being released from prison to contribute as a productive member of society, pay taxes, and all of the many privileges of free citizens, he should be allowed to voice his opinion through voting. Mr. Jones would vote in upcoming North Carolina elections but for his disenfranchisement.

15. Plaintiff Susan Marion is a 54-year-old white woman from Jamestown, North Carolina. Ms. Marion was convicted of a felony in 2019 after losing her home and car to Hurricane Florence. She was released on November 19, 2019 and was placed on post-release supervision for a term of at least nine months. Ms. Marion currently resides at LINC in

Wilmington, North Carolina. Ms. Marion received an accounting degree from North Carolina Agricultural & Technical State University in 1997, and is planning to seek employment in accounting after completing her time at LINC. Ms. Marion has been a registered, active voter in the past until she was disenfranchised due to her felony conviction. Ms. Marion believes her current disenfranchisement prevents her voice from being heard. Ms. Marion would vote in upcoming North Carolina elections but for her disenfranchisement.

16. Plaintiff Henry Harrison is a 51-year-old African American man originally from Newark, New Jersey. Mr. Harrison was convicted of a felony in January 2019 in New Hanover County. After serving nine months in prison, Mr. Harrison was released on July 15, 2019. Mr. Harrison is on post-release supervision for a period of at least nine months. Prior to his conviction, Mr. Harrison was employed as a construction worker by the City of Wilmington's Parks and Recreation Department. He has been working as a full-time truck driver for the New Hanover County Landfill since his release from prison. Mr. Harrison previously had his disenfranchisement extended due to an inability to pay restitution following a 2016 conviction in Greene County. Mr. Harrison would vote in upcoming North Carolina elections but for his disenfranchisement.

17. Plaintiff Ashley Cahoon is a 26-year-old white woman from Greenville, North Carolina. Ms. Cahoon was convicted of a felony in 2017 in Beaufort County, and was released on September 19, 2019. Ms. Cahoon is on post-release supervision for a period of at least nine months. She is currently employed at Kentucky Fried Chicken and works approximately 30 hours per week. Ms. Cahoon attends three Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) meetings each week. She believes that as a result of her disenfranchisement,

her voice does not matter. Ms. Cahoon would vote in upcoming North Carolina elections but for her disenfranchisement.

18. Plaintiff Shakita Norman is a 28-year-old African-American woman from Raleigh, North Carolina. Ms. Norman currently resides in Raleigh with her fiancée and five children. Following her conviction on a felony offense in December 2018, Ms. Norman was sentenced to "special probation" for a term of at least three years, with her probation currently set to end in December 2021. Ms. Norman has worked at Jiffy Lube for two years and is training to be a Jiffy Lube manager. She is also working to obtain her GED. Ms. Norman believes that it is important to vote in both local and national elections. She would like to be able to vote to effect change in the community where she works and where her children attend public school. Ms. Norman would vote in upcoming North Carolina elections but for her disenfranchisement.

19. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

20. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

21. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

22. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

23. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

24. Defendant Ken Raymond is a member of the North Carolina State Board of Elections. Mr. Raymond is sued in his official capacity only.

25. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

26. Defendant David C. Black is a member of the North Carolina State Board of Elections. Mr. Black is sued in his official capacity only.

JURISDICTION AND VENUE

27. This Court has jurisdiction over this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

28. Under N.C. Gen. Stat. § 1-267.1, the exclusive venue for this action is the Wake County Superior Court.

29. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because this action involves a facial challenge to the validity of an act of the General Assembly.

FACTUAL ALLEGATIONS

A. Felony Disenfranchisement Has Long Been Used in North Carolina to Suppress the Political Power of African Americans

30. North Carolina has stripped the right to vote from persons convicted of certain crimes since the enactment of its first state constitution in 1776. But the state began to broadly disenfranchise all persons with felony convictions after the Civil War as a means of suppressing the political power of African Americans.

31. Before the Civil War, election officials in North Carolina excluded only "infamous" persons from suffrage. The disenfranchisement of infamous persons is rooted in English common law. Infamy "could result either from the commission of an infamous crime," such as treason, bribery, or perjury, "or from the receipt of an infamous punishment such as whipping," which could be inflicted for certain other crimes, like petty larceny. *See* Pippa

Holloway, Living in Infamy: Felon Disenfranchisement and the History of American Citizenship 6, 34, 91 (2014).

32. Neither the pre-war state Constitution nor pre-war state statutory law expressly authorized the disenfranchisement of infamous persons. According to one historian, disenfranchisement for infamy "appears to have simply been a tradition." *Id.* at 170 n.13. North Carolina did, however, enact statutory and constitutional provisions explaining how rights might be restored following disenfranchisement for infamy. *See* N.C. Const. Art. I, Sec. 4, pt. 4 (1776, amended in 1835); Ch. 36, 1840 N.C. Sess. Laws 68.

33. North Carolina's policy of disenfranchising persons convicted of certain crimes became a tool of race-based political suppression immediately after the Civil War. In 1866, an inspector with the Freedman's Bureau notified a federal military commander that white former rebels in North Carolina "had found new use for longstanding state laws" that imposed infamy (and thus effectively disenfranchisement) for crimes like petty larceny that were punishable by whipping. Steven F. Miller et al., *Between Emancipation and Enfranchisement: Law and the Political Mobilization of Black Southerners, 1865-1867*, 70 Chi.-Kent L. Rev. 1059, 1074 (1995) (citing Petition of Wm. C. Watson et al. to Lt. H.C. Strong (July 17, 1866)). Across the state, these rebels "conspired to seize negroes, procure convictions for petty offenses punishable at the whipping post, and thus disqualify them forever from voting in North Carolina." Holloway at 33.

34. Contemporary sources describe the whippings as meticulous and widespread. *Harper's Weekly* described a scene outside a courthouse in Raleigh where a crowd of five hundred watched "the public whipping of colored men as fast as they were convicted and sentenced." *Whipping and Selling American Citizens*, Harper's Weekly (Jan. 12, 1867). *Atlantic*

Monthly chronicled the incident, explaining that "[t]he public whipping of negroes for paltry offenses is carried on in North Carolina on a large scale," because "every man who has been publicly whipped is excluded from the right of voting." *The True Problem*, Atlantic Monthly 374 (March 1867). This incident "explains why disenfranchisement for prior criminal convictions was among the first strategies employed to block African American suffrage in North Carolina." Holloway at 34.

35. North Carolina adopted a new constitution after the Civil War as a condition of rejoining the Union. *See* N.C. Const. of 1868; John V. Orth, *North Carolina Constitution History*, 70 N.C. L. Rev. 1759, 1783 (1992). Congress, then in the hands of the "Radical Republicans," called a North Carolina Constitutional Convention in 1868. Reconstruction legislation required that delegates to the convention include both white and black citizens. *Id.* Indeed, fifteen of the 120 delegates to the 1868 Convention were black. *Id.*

36. The Constitution enacted at the 1868 Convention provided for universal male suffrage, eliminated property requirements to vote, and abolished slavery. *See* N.C. Const. of 1868, Art. I, § 33; *id.* art. VI, § 1. Like its predecessor, the 1868 Constitution did not contain any provision that expressly stripped the vote from persons convicted of certain crimes. *See id.* Art. VI. And in the years that followed, African Americans achieved some success in municipal, state legislative, and even congressional elections. *See, e.g.*, William Mabry, *White Supremacy and the North Carolina Suffrage Amendment*, 13 N.C. Hist. Rev. 1 (1936); *see also, e.g.*, Biographical Directory of the United States Congress, *John Adams Hyman*; Biographical Directory of the United States Congress, *James E. O'Hara*.

37. Ratification of the 1868 Constitution "earned North Carolina readmission to representation in Congress and the end of Reconstruction" in the state. Orth, *supra* at 1781. But

the end of Reconstruction in North Carolina precipitated the emergence of "pre-war political forces . . . in the form of the Conservative Party" in 1870. *Id.* The Conservatives, who would soon rebrand themselves as Democrats, won control of the General Assembly in 1870 and immediately proposed a convention to replace the "hated" 1868 Constitution. *Id.* The General Assembly initially submitted to voters the question as to whether to call a constitutional convention. North Carolina voters rejected the idea. *Id.*

38. The General Assembly eventually called a constitutional convention in 1875 without submitting the question to voters. *Id.* The 1875 Convention enacted a flurry of amendments to the 1868 Constitution aimed at eroding the rights of African Americans. These Amendments required segregation in public schools and banned interracial marriage. *See* 1875 Amendments to the N.C. Const. of 1868, Amends. XXVI & XXX. They also directly assaulted the political rights of African Americans by stripping counties of the ability to elect their own local officials, including judges, giving that power instead to the Conservative-controlled General Assembly. *See id.* Amend. XXV. "The purpose of this amendment, as was well understood, was to block control of local government in the eastern counties by blacks who were in the majority there." Orth, *supra* at 1783.

39. Particularly relevant here, the 1875 Amendments codified felony disenfranchisement in the state Constitution for the first time. *See* 1875 Amendments to the N.C. Const. of 1868, Amend. XXIV. The text of the original 1875 felony disenfranchisement amendment largely mirrors the analogous provision in North Carolina's current constitution. The 1875 amendment provided:

> [N]o person who, upon conviction or confession in open Court, shall be adjudged guilty of felony, or of any other crime infamous by the laws of this state, and hereafter committed, shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a mode prescribed by law.

1875 Amendments to the N.C. Const. of 1868, Amend. XXIV.

40. The General Assembly enforced felony disenfranchisement via statute for the first time the following year in 1876. Ch. 275, N.C. Laws 1876, Sec. 10; *see* Jeff Manza & Christopher Uggen, Locked Out: Felon Disenfranchisement and American Democracy at 237-239 (2006) . The 1876 statute provided:

> The following classes of persons shall not be allowed to register to vote in this state, to-wit: First. Persons under twenty-one years of age. Second. Idiots and lunatics. Third. Persons who, upon conviction or confession in open court, shall have been adjudged guilty of felony or other crime infamous by the laws of this state . . . unless they shall have been legally restored to the rights of citizenship in the manner prescribed by law.

Ch. 275, 1876 N.C. Sess. Laws 519-20.

41. North Carolina's new laws providing for felony disenfranchisement and depriving localities of the ability to elect their own judges worked hand-in-hand to enforce white supremacy. *See* Holloway at 62. "The change in the composition of the judiciary . . . and the expanded disenfranchisement provision, added up to an increase in the number of Democratic judges" able to deprive African Americans of the right to vote. *Id.*; *see also Notes from the Capital*, N.Y. Times, Oct. 11, 1875, at 5 (explaining that the "evident purpose" of these changes was "to prevent colored men and poor white men from exercising the right of suffrage").

42. Until the enactment of North Carolina's current disenfranchisement statute, persons with felony convictions were required to petition a court for the restoration of their right to vote. The decision on whether to restore the person's rights was left to the discretion of the court. *See* Ch. 36, 1840 N.C. Sess. Laws 68.

43. North Carolina's expansion of its felony disenfranchisement laws following the Civil War was not unique. Many former Confederate states expanded the scope of criminal

history-based disenfranchisement after 1865 to cover most or all felony convictions in an effort to suppress the political power of newly freed slaves. *See* Manza & Uggen at 49-53; *see also id.* at 237-239 (listing the year of each state's first felony disenfranchisement law). Indeed, "[f]elon voting restrictions were the first widespread set of legal disenfranchisement measures imposed on African Americans; the literacy tests and other mechanisms for political exclusion followed at a later date." Daniel S. Goldman, *The Modern-Day Literacy Test: Felon Disenfranchisement and Race Discrimination*, 57 Stan. L. Rev. 611, 625 (2004). These disenfranchisement laws proliferated as the imprisonment of African Americans increased. By the 1870s, nearly 95% of persons with felony convictions in southern states were African American. *See* Christopher Adamson, *Punishment After Slavery: Southern Penal Systems, 1865-1890*, Oxford University Press (1983).

44. Following the Civil War, the political power of the then-Democratic Party in North Carolina waxed and waned over the next several decades. In an effort to regain and solidify their power, the party championed "rigid safeguards" against voting by "ex-convicts," State Democratic Executive Committee of North Carolina, *The Democratic Handbook* (1898) at 84, and sought to implement those "safeguards" after regaining power in 1898.

45. In the leadup to the 1898 election, the then-Democratic Party ran "a vicious racist campaign the likes of which the state had never seen." William S. Powell, *North Carolina through Four Centuries*, 433 (1989). The campaign expressly emphasized the need for "white men [to] control and govern" the State. State Democratic Executive Committee of North Carolina, *The Democratic Handbook* (1898) at 38; *see also id.* ("It is better for the negro, as well as for the white man, that the white man should make and administer the laws . . . . It has been in the past, and is to-day, the special mission of the Democratic Party to rescue the white people of

the east[ern part of the State] from the curse of negro domination."). The party sent "persuasive speakers into virtually every community in North Carolina to report on the evils of Negro domination" and widely circulated a letter "calling upon whites to stand together in support of 'White Supremacy.'" *North Carolina through Four Centuries* at 433-35. The campaign also featured racist newspaper editorials and cartoons showing the threat purportedly posed by African American political influence, including the following cartoon featured in the Raleigh *News & Observer* on October 27, 1898:

See "A Vampire that Hovers Over North Carolina," *UNC Libraries*.[1]

46. In plotting their return to power, the turn-of the-century Democrats observed with alarm that "fully one-third [of votes in North Carolina] is cast by the negroes" and partially attributed that number to voting by people with felony convictions. *See id.* at 37, 88. They further observed that additional restrictions on voting by people with felony convictions were needed "in order to protect the white voters of the State against having their honest votes off-set

[1] https://exhibits.lib.unc.edu/items/show/2215.

by illegally and fraudulently registered negro votes." *Id.* at 84; *see also id.* at 88 (explaining that "negro ex-convicts . . . were registered and voted galore . . . leav[ing] to the white voters of North Carolina no protection against this fraudulent registration save what their courage and Anglo-Saxon manhood may give them").

47. Democrats prevailed in the 1898 election, regaining control of the General Assembly. The victory was interpreted as "an ultimatum to curb the political power of the Negro." William Mabry, *White Supremacy and the North Carolina Suffrage Amendment*, 13 N.C. Hist. Rev. 1 (1936). Over the next several years, the General Assembly enacted numerous laws designed to suppress African-American political power, including a literacy test (that exempted white citizens), a poll tax, and harsh new penalties for voting with a felony conviction. *See id.*; *see* Ch. 507, 1899 N.C. Sess. Laws 658, 681 (penalizing voting by persons with felony convictions with "imprison[ment] at hard labor not exceeding two years").

48. To this day, the harsh criminal penalties imposed on voting by persons with felony convictions continue to have a deterrent effect on *lawful* voting by re-enfranchised persons.

B. Today's Law Prolongs Disenfranchisement Through Probation and Parole

49. Adopted in 1971, the current felony disenfranchisement provision of the North Carolina Constitution provides as follows:

> Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

N.C. Const., Art. VI, § 2, cl. 3.

50. Also in 1971, the General Assembly enacted a new felony disenfranchisement statute maintaining the prior policy of disenfranchising people even after release from

incarceration. Specifically, the 1971 statute provided that people with felony convictions regained the right to vote if either "the Department of Correction at the time of release recommend[ed] restoration" or "two years have elapsed since release by the Department of Correction, *including probation or parole*." *See* https://www.ncleg.net/enactedlegislation/sessionlaws/pdf/1971-1972/sl1971-902.pdf (emphasis added).

51. The General Assembly amended this statute in 1973, adopting the essential language that is currently in effect—namely, that people with felony convictions regain the right to vote only upon an "unconditional discharge" not only from incarceration, but also from probation, parole, or a suspended sentence. *See* https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/1973-1974/SL1973-251.pdf.

52. The current statute, last amended in 2013, provides as follows:

> Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:
>
> (1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.
>
> (2) The unconditional pardon of the offender.
>
> (3) The satisfaction by the offender of all conditions of a conditional pardon.
>
> (4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.
>
> (5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

N.C.G.S.A. § 13-1.

53. Under this law, North Carolinians who have been released from incarceration but have not been "unconditionally discharged" from probation or post-release supervision cannot vote. Additionally, North Carolinians who have been convicted of a felony and are sentenced to community supervision without incarceration cannot vote.

54. The terms of this law extend the disenfranchisement of people already deemed fit to return to or remain in society. The requirement that a person complete any term of *parole or post-release supervision* can delay restoration of the right to vote by at least one year after the person's release from incarceration. *See* N.C.G.S. § 15A-1372(a). And the requirement that a person complete any term of *probation* imposes delays that are typically even longer—and of uncertain duration due to the potential for modifications, extensions, or early termination. *See* N.C.G.S. § 15A-1344(a), (d); N.C.G.S. § 15A-1342(a).

55. Once an individual is on probation, a court has the power "at any time" prior to the termination of probation to extend the period of probation "for good cause," regardless of whether that person has violated probation. N.C.G.S. § 15A-1344(d). Probation hearings, whether to revoke or extend, are "regarded as informal or summary" and provide minimal due process protections. *State v. Sellars*, 185 N.C. App. 726, 728, 649 S.E.2d 656, 657 (2007). With every extension of probation, that person's disenfranchisement is likewise extended.

56. In 2018, "Property and non-trafficking drug offenses comprised 76% of probation sentences." North Carolina Sentencing & Policy Advisory Commission, Structured Sentencing Statistical Report at 22, 24 (2018).

57. According to recent data from the North Carolina Sentencing and Policy Advisory Commission, the average length of probation for "intermediate" felony convictions (i.e., for Class D, E, F, G, H, or I felony offenses) is 26 months. *See* North Carolina Sentencing & Policy

Advisory Commission, Structured Sentencing Statistical Report at 23 (2018). The average length of probation is longer for more serious felony offenses. Class D felony offenses, for instance, carry an average probation period of 42 months. *Id.*[2]

C. Today's Law Conditions the Right to Vote on the Ability to Pay Court Costs

58. Because North Carolina law requires the payment of court costs, fees, and restitution as a condition of probation, North Carolina's disenfranchisement statute, N.C.G.S. § 13-1, effectively conditions the right to vote on a person's ability to pay. As a result, people who have otherwise completed the terms of their probation but cannot afford to pay court costs are denied the right to vote due to the continuation on their probation. By contrast, otherwise similarly situated people who *can* pay will be discharged from probation and regain the right to vote.

59. North Carolina law provides that "[a]s regular conditions of probation, a defendant must . . . [p]ay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d)." N.C.G.S. § 15A-1343(b)(9). Court costs in North Carolina have increased 400% over the past twenty years. *See* Heather Hunt and Gene Nichol, *Court Fines and Fees: Criminalizing Poverty in North Carolina* ("*Criminalizing Poverty*") at 4, North Carolina Poverty Research Fund (2017). In 1999, a North Carolinian charged with a felony would face a total of $106 in court fines and fees. ACLU of North Carolina, The Consequences of Rising Court Fines and Fees in North Carolina ("ACLU Report") at 10 (2019). But today, "$106 would barely cover two-thirds of the General Court of Justice fee in district court." *Id.*

[2] Data is not presently available for the average length of probation for Class B or C felony offenses. Probation is not available for Class A felony offenses. *See* N.C.G.S. § 15A-1340.17.

60. Notwithstanding the fact that the overwhelming majority of people who are criminal defendants in North Carolina are indigent, the General Assembly has imposed a wide array of court costs on those defendants who are convicted or plead guilty in Superior Court, which has jurisdiction over all felony cases. These costs include:

General Court of Justice Fee	$154.00
Facilities Fee	$30.00
Telecommunications Fee	$4.00
Fee "[f]or the retirement and insurance benefits of . . . law enforcement officers"	$6.25
Fee "for the supplemental pension benefits of sheriffs"	$1.25
Fee "[f]or the services, staffing, and operations of the Criminal Justice Education and Standards Commission"	$2.00
Pretrial Release Services Fee	$15.00
Fee "[f]or each arrest or personal service of criminal process"	$5.00
DNA Fee	$2.00

See N.C.G.S. § 7A-304(a)(1)-(13). Individuals who are unable to pay these fees "within 40 days of the date specified in the court's judgment" must additionally pay a late fee of $50.00. *Id.* § 7A-304(a)(6).

61. The General Assembly has also imposed significant costs arising from probation itself. People must "[p]ay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation." *Id.* § 15A-1343(b)(10). They also must "[p]ay a supervision fee" of $40.00 per month. *Id.* § 15A-1343(b)(6), (c1). Given that the average person convicted of an intermediate felony will serve 26 months of probation, the average person must pay $1,040 in supervision fees alone to satisfy the terms of their probation. On top of that, "[a]ny person placed on house arrest with electronic monitoring . . . shall pay a fee of ninety dollars ($90.00) for the electronic

monitoring device and a daily fee in an amount that reflects the actual cost of providing the electronic monitoring." *Id.* § 15A-1343(c2).

62. These required payments impose substantial hardships on criminal defendants, many of whom lack the requisite resources to make them. Nationally, around 80 to 90% of those charged with a criminal offense are poor enough to qualify for a court-appointed lawyer. *Criminalizing Poverty* at 6. And 60% of those charged earned less than $1,000 per month before their incarceration. *Id.* In North Carolina, people released from incarceration are often unable to obtain employment enabling them to pay these substantial fees given that 30% have no more than a ninth-grade education, and less than 1% have a college education. *Id.*

63. While North Carolina law allows judges to waive certain court costs for "just cause," N.C.G.S. § 7A-304, waivers are exceedingly rare. In 2018, judges issued waivers in only 3% of cases. *See* North Carolina Administrative Office of the Courts, 2019 Report on Criminal Cost Waivers at 35 (2019). While the rate at which judges grant cost waivers has always been low, the rate has plummeted even further after the General Assembly enacted a law in 2015 requiring the Administrative Office of the Courts to track the number of times individual judges issued waivers. *See* ACLU Report, at 13-15; N.C.G.S. § 7A-350.

64. Making matters worse, judges rarely inquire into a defendant's ability to pay court costs even though nearly 90% of persons charged with a crime are indigent. According to recent court observations in Robeson, Edgecombe, and Avery Counties, "a defendant's ability to pay court fines and fees was weighed in 24 percent, 5 percent, and 25 percent of cases, respectively." ACLU Report at 15 n.43.

65. Payment of the fees discussed above is a "condition of probation." N.C.G.S.A. § 15A-1343. And failing to make these payments constitutes a "violation of a condition of

probation" that authorizes the court to extend the term of probation—and thus the denial of the right to vote—to a maximum of five years. *Id.* § 15A-1344(a), (d). A court may extend the term of probation for people convicted of felonies by an additional three years "for the purpose of allowing the defendant to complete a program of restitution." *Id.* § 15A-1342(a).

66. Notwithstanding high rates of indigence and the failure of courts to assess ability to pay, people are regularly arrested and subjected to extended periods of probation for failing to pay court fines. *See* ACLU Report at 24-30. For example, out of 110 court observations conducted in Robeson County in 2017, "[a] staggering 32 observations ended in an individual incarcerated for failure to pay fees and fines." *Id.* at 24. Even when people have otherwise complied with the terms of their probation, courts will extend the period of probation for failing to pay costs. *See id.* at 29-30. The result is that people remain disenfranchised based on their inability to pay court costs.

D. Today's Law Deprives Roughly 70,000 North Carolinians of the Right to Vote Even Though They Have Been Released From Incarceration

67. North Carolina law does not require state authorities to notify people when their rights are restored. Although the law requires the State Board of Elections ("State Board" or "SBOE") to inform people after a felony conviction of their loss of voting rights by mail, *see* N.C.G.S.A. § 163.82.14(c)(3) (previously codified at § 163A-877), no comparable law requires the State Board to notify people when their rights are restored following their "unconditional discharge" from any state-ordered probation or parole.

68. Even after people's rights are restored, some sit out elections based on fear that they will be prosecuted for voting illegally. This lack of clarity is particularly problematic for people with felony convictions, who disproportionately have low levels of education. Trial courts sometimes order this narrow-purpose extension in error, leaving people convicted of

felonies on probation for additional years without legal authority. *See State v. Hoskins*, 242 N.C. App. 168, 775 S.E.2d 15 (2015) (holding that trial court lacked authority for three-year extension and vacating probation violation order after defendant completed full eight years of probation).

69. Under North Carolina law, "a superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally" and informing that person of certain rights and effects of the guilty plea, including possible immigration consequences. N.C.G.S. § 15A-1022(a). The standard plea transcript form sets out additional admonitions, including that "you may forfeit any State licensing privileges you have in the event that your probation is revoked." Form AOC-CR-300. Neither the statute nor the form makes any mention of the loss or restoration of the right to vote.

70. As with loss of the right to vote, the trial court is not required to inform an individual of the existence of post-release supervision as part of a guilty plea. As one criminal justice scholar has noted, this leads to widespread misunderstanding:

> I get a lot of mail from inmates. Lately, many of them have written to express their surprise upon being told by prison officials—for the first time—that they will have to complete a term of post-release supervision when they get out of prison. Sex offenders—especially Class F–I sex offenders, including those convicted of indecent liberties—are *very* surprised to learn that they will be on PRS for five years.

Jamie Markham, "Surprise Post-Release Supervision," *North Carolina Criminal Law Blog* (June 11, 2015). Paradoxically, this surprise period of additional disenfranchisement based on supervision includes conditions that allow people released from incarceration to obtain credits for "reintegration into society". N.C.G.S. § 15A-1368.4(d).

71. According to a 2017 estimate, 69,386 North Carolina voting-aged citizens are unable to vote because they remain on felony probation or post-release supervision. *See* Southern Coalition for Social Justice, The Freedom to Vote: Felony Disenfranchisement in North

Carolina at 5 (August 2019) ("Southern Coalition Report"). These estimates do not capture those who are eligible to vote but remain off the rolls due to misinformation or fear of prosecution. Indeed, it is virtually impossible to calculate the full extent of disenfranchisement due to the persistent failure of state authorities to inform people with felony convictions about their voting rights.

72. These nearly 70,000 North Carolinians disenfranchised by the state are among those whom CSI, Justice Served, Wash Away Unemployment, and the North Carolina NAACP help transition back into society, work with to provide resources as they overcome the collateral consequences of their criminal convictions, and assist in understanding their voting rights. Voting restrictions on these citizens force these organizational plaintiffs to divert resources toward voting rights education efforts and away from other programming initiatives including those geared at facilitating reintegration, providing necessary resources for employment, housing, and other basic needs, and otherwise assisting their full civic engagement.

73. The number of North Carolinians effected by probation or post-release felony disenfranchisement is substantial compared to the narrow margins of victories by which elections in North Carolina are often decided. In 2014, for example, a nonpartisan election for District Court Judge was decided by five votes out of more than 60,000 votes cast, with the winner prevailing by a margin of 30,746 to 30,741. *See* SBOE, 2014 Election Results.[3] Municipal elections are often decided by comparably small margins. In November 2019, for example, a nonpartisan city council race in Burlington, North Carolina was decided by a margin of 2,780 to

[3] https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=JUD&contest=0.

2,739. *See* SBOE, 2019 Election Results.[4] Similarly, elections to the General Assembly are often decided by just hundreds of votes. *See, e.g.*, SBOE, 2018 Election Results.[5]

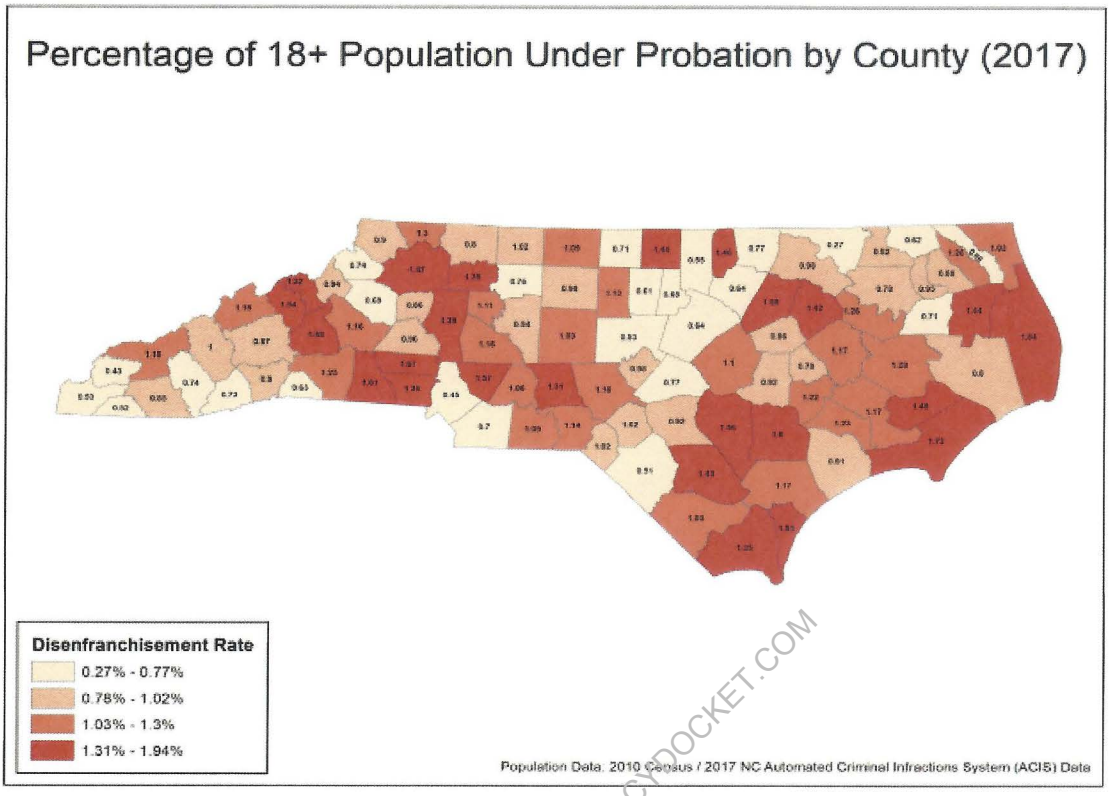
74. By denying the fundamental right to vote to substantial numbers of voting-aged citizens who are otherwise full participants in society, North Carolina's felony disenfranchisement laws create a significant risk that election results may not reflect the will of the majority.

E. Today's Law Disproportionately Disenfranchises African Americans

75. Today, as in the Jim-Crow era, the policy of disenfranchising people even after their release from incarceration continues to disproportionately harm people of color today. Although African Americans represent about 20% of the voting population in North Carolina, they represent roughly 40% of the people disenfranchised following release from incarceration. *See* U.S. Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race Alone or in Combination* (2018). African-American men, in particular, comprise a disproportionate percentage of the post-release supervision population. According to data from 2017, black men make up 9.2% of the North Carolina voting age population, but comprise 40% of the male probation population in the state. *See id.* Black women are nearly 11% of the voting population, but comprise about 24% of the female probation population. *See id.*

76. Unsurprisingly, the burdens of North Carolina's felony disenfranchisement law fall disproportionately on the eastern part of the State, where much of North Carolina's African American population resides.

[4] https://er.ncsbe.gov/?election_dt=11/05/2019&county_id=0&office=CCL&contest=0.
[5] https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=0&office=FED&contest=0.



See Southern Coalition Report at 7; *see also id.* at 22-44 (providing data on county-by-county disenfranchisement rates).

F. There Is No Legitimate Government Interest in Continuing to Disenfranchise People With Past Felony Convictions Who Live in North Carolina Communities

77. There is no legitimate, let alone compelling, government interest in continuing to disenfranchise people with past felony convictions who live in North Carolina communities and are subject to the laws and policies enacted by elected officials.

78. On the contrary, research overwhelmingly shows that civic engagement plays a critical role in helping persons with felony convictions re-join society. As one study observes, "[p]eople who are part of the decision making process not only have a greater investment in the decisions, but a greater investment in society as well. . . . Those who participate in the democratic process have a greater investment in the resulting decisions, and more importantly,

an investment in preserving that process." *See* Holona Leanne Ochs, *"Colorblind" Policy in Black and White: Racial Consequences of Disenfranchisement Policy*, 34 Pol'y Stud. J. 81, 89 (2006). Another found that the "desire to be productive and give something back to society" was critical to reintegration. *See* Christopher Uggen et al., *'Less Than the Average Citizen': Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, in *After Crime and Punishment: Pathways to Offender Reintegration* 263 (Shadd Maruna & Russ Immarigeon eds., 2004).

79. Studies also show that civically engaged citizens are less likely to recidivate. The data shows that "bringing people into the political process makes them stakeholders, which in turn helps steer them away from future crimes." Brennan Center for Justice: Florida: An Outlier in Denying Voting Rights at 18 (2016). For example, Florida (which until 2019 required felons to affirmatively petition to have their rights restored) has published data comparing recidivism rates among people previously convicted of felonies who have been re-enfranchised to those who remain disenfranchised, and the numbers are stunning. Although the average annual recidivism rate in Florida is around 30 percent, virtually no one who had their rights restored re-offended. *See id.* ("In 2011, of the 52 people granted [restoration of civil rights ("RCR")], zero were returned to custody. In 2012, out of the 342 people granted RCR, only one re-offended. In 2013, out of 569 people granted RCR, zero re-offended. In 2014, of 562 people granted RCR, three re-offended. In 2015, of 427 people granted RCR, one re-offended.").

80. Voting restrictions on citizens no longer incarcerated (or who never were incarcerated) also harm entire families. Studies show that when heads of households are disenfranchised, the level of civic engagement for the entire family drops. *See* Erika Wood, *Restoring the Right to Vote*, Brennan Ctr. for Justice, at 13 (2009). Children frequently learn

about the importance of voting from their parents. Many parents take their children with them into the voting booth—a formative experience that is often a child's first act of civic engagement. *See id.* (explaining that "[a] parent's electoral participation plays a significant role in determining whether his child will become civically engaged"). According to one study, a parent's political participation has more influence on a child's decision to vote in the future than any other factor. *See* Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 Am. Pol. Sci. Rev. 41, 43 (2002). The ripple effects of disenfranchisement are felt across generations.

81. For these reasons, probation and parole officers—who work with persons with felony convictions and are among the closest to understanding the relevant interests at stake—frequently assert that voting restrictions lack a coherent justification. *See* Amicus Br. of American Probation & Parole Assoc. at 13-15, *Hand v. Scott*, NO. 18-11388 (11th Cir. 2018) ("Probation and parole officers are the state officials most directly responsible for reintegrating offenders back into society after their term of imprisonment. Among these officers, there is a growing consensus that voting plays an important role in the reintegration process."). The American Probation and Parole Association, the American Correctional Association, and the Association of Paroling Authorities International have each enacted resolutions supporting the restoration of voting rights for persons with felony convictions. *See id.* The American Correctional Association maintains, for example, that voting restrictions on a person after successful discharge from correctional supervision is "contradictory to the goals of a democracy, the rehabilitation of felons, and their successful reentry to the community." Am. Corr. Ass'n, *Public Correctional Policy on Restoration of Voting Rights for Felony Offenders 2005-3*, in *Public Correctional Policies* 73 (Jan. 25, 2017).

82. Prosecutors and other law enforcement officials have echoed these views. The former President of the Police Foundation has asserted that, rather than treating persons with felony convictions as a "pariah class," we need to bring people back as whole citizens" in order to have "effective policing." Wood, *Restoring the Right to Vote* at 10. The former President of the Police Executive Research Forum has asserted that it is "better to remove any obstacles that stand in the way of offenders resuming a full, healthy, productive life." *Id.* And a former prosecutor from Kentucky has added that "we spend millions to rehabilitate offenders and bring them back into society only to let an outdated system push them back with one hand while we pull with the other." R. David Stengel, *Let's Simplify the Process for Disenfranchised Voters*, Cent. Ky. News-J (Jan. 28, 2007).[6]

83. The General Assembly's unconstitutional and arbitrary voting restrictions thus pose a significant barrier to individuals with past felony convictions seeking to reintegrate and be productive and contributing members of society. These restrictions are plainly at odds with the missions of CSI, Justice Served, Wash Away Unemployment, and the North Carolina NAACP and force these organizational plaintiffs to divert resources toward voter education efforts about these restrictions and away from other programming that helps individuals transition back to and participate fully in society.

84. Eliminating voting restrictions on North Carolinians with felony convictions living in community will also reduce inaccurate voter purges. North Carolina removes approximately 10,000 citizens from its voter rolls each year due to felony convictions. *See* Melissa Boughton: *Monday Numbers: Who has been removed from NC's voter rolls?*, N.C. Policy Watch (Aug. 19, 2019) (8,574 registered voters with felony convictions removed from the

[6] https://bit.ly/2Kia8Ea.

North Carolina rolls in 2018; 9,150 in 2017). But these purges are often inaccurate, as the State Board of Elections frequently misclassifies voters and inaccurately removes voters from the rolls in reliance on its rules prohibiting people from voting due to a prior felony conviction, even after their release from incarceration. *See, e.g.*, Proposed Findings of Fact & Conclusions of Law ¶ 214, *League of Women Voters v. North Carolina*, 997 F. Supp. 2d 322 (M.D.N.C. Aug. 17, 2015) (sworn testimony asserting that voters have been "incorrectly identified as having been convicted of a felony and purged from [the] voter roll").

CLAIMS FOR RELIEF

COUNT ONE
Violation of North Carolina's Free Elections Clause, Art. I, § 10

85. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

86. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that "All elections shall be free."

87. North Carolina's Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that "Elections of members of Parliament ought to be free." Bill of Rights 1689, 1 W. & M. c.2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797-98 (1992).

88. This provision in the English Bill of Rights responded to efforts by the king to manipulate parliamentary elections by manipulating the composition of the electorate. J.R. Jones, *The Revolution of 1688 in England 148* (1972). The king could modify voter eligibility rules by issuing municipal charters, and in some areas he would issue new charters to shrink the electorate to help his allies, while in others, he expanded the electorate to ensure his opponents would lose. *See* George H. Jones, *Convergent Forces: Immediate Causes of the Revolution of 1688 in England* 75-78 (1990). The king thus manipulated the electorate in different areas

"based on the detailed suggestions of the [king's] agents as to what specific local rights could, with electoral advantage, be confirmed or extended." J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king's efforts to manipulate elections led to a revolution. After dethroning the king, the revolutionaries called for a "free and lawful parliament" as a critical reform, and they enacted the free elections clause. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

89. Numerous states in addition to North Carolina have free elections clauses that trace their roots to the English Bill of Rights. For instance, Pennsylvania adopted its version of free elections clause in 1776. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 806-07 (Pa. 2018). As the Pennsylvania Supreme Court has explained, Pennsylvania's free elections provision reflected "a desire to secure access to the election process by all people with an interest in the communities in which they lived—universal suffrage—by prohibiting exclusion from the election process of those without property or financial means." *Id.* at 807. "It, thus, established a critical leveling protection in an effort to establish the uniform right of the people . . . to select their representatives in government," and "sought to ensure that this right of the people would forever remain equal no matter their financial situation or social class." *Id.*

90. North Carolina adopted its Free Elections Clause in 1776, the same year as Pennsylvania, and North Carolina has strengthened its Free Elections Clause since to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provided that "elections of members, to serve as Representatives in the General Assembly, ought to be free." N.C. Declaration of Rights, VI (1776). The North Carolina Constitution of 1868 adopted after the Civil War, which initially expanded the political

rights of African Americans, included a revised Free Elections Clause stating that "[*a*]*ll* elections ought to be free." N.C. Const. art. I, § 10 (1868). And when North Carolina adopted its current constitution in 1971, it revised the provision again to state that "[a]ll elections *shall* be free." N.C. Const. art. I, § 10. This change was intended to "make [it] clear" that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights "are commands and not mere admonitions" to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

91. In light of the text and history of this provision, a North Carolina court recently held that "the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This . . . is a fundamental right of the citizens enshrined in our Constitution's Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government." *Common Cause*, 2019 WL 4569584, at *110.

92. Citing the Free Elections Clause, the North Carolina Supreme Court similarly has explained that "[t]he right to vote is one of the most cherished rights in our system of government." *Blankenship v. Bartlett*, 363 N.C. 518 (2009) (citing N.C. Const. art. I, Sec. 10). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Id.* internal quotation marks omitted)).

93. North Carolina's felony disenfranchisement statute, which indiscriminately denies the right to vote to all people with felony convictions even after their release, until they receive an "unconditional discharge[]" from probation or parole, facially violates the Free Elections Clause. Just like the King of England's efforts to influence elections by manipulating the

eligible electorate, North Carolina's statutory scheme prolonging disenfranchisement through probation or parole, restricts North Carolina's electorate.

94. In so doing, North Carolina's felony disenfranchisement statute violates the Free Election Clause's guarantee that elections in North Carolina must "honestly . . . ascertain, fairly and truthfully, the will of the people." *Common Cause*, 2019 WL 4569584, at *2. The statute denies the right to vote to roughly 70,000 North Carolina voting-age citizens who are currently living in North Carolina communities on some form of probation or post-release supervision. Particularly given the razor-thin margins of many North Carolina elections, the disenfranchisement statute prevents the "will of the people—the majority" from prevailing. *Id.* at 300 (emphasis added) (quoting *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897)).

95. The disenfranchisement statute's requirement that people released from incarceration pay all financial obligations before regaining the right to vote is an especially pernicious violation of the Free Elections Clause. Elections in North Carolina are not free when voting is conditioned on some people's ability to make financial payments.

96. Although the North Carolina Constitution authorizes the General Assembly to regulate rights restoration for people with felony convictions, the General Assembly's rights restoration statutes must comply with North Carolina law, including other provisions of the North Carolina Constitution. By continuing disenfranchisement through probation or parole, the General Assembly's scheme violates the Free Elections Clause.

COUNT TWO
Violation of the North Carolina Constitution's Equal Protection Clause, Art. I, § 19

97. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

98. The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that "[n]o person shall be denied the equal protection of the laws." N.C. Const., art. I, § 19.

99. This provision provides for greater protections than its federal counterpart. In particular, North Carolina's Equal Protection Clause protects the right to "substantially equal voting power." *Stephenson*, 355 N.C. at 379. "It is well settled in this State that the right to vote on equal terms is a fundamental right." *Id.* at 378 (emphasis added).

100. North Carolina's felony disenfranchisement statute violates the Equal Protection Clause in three distinct ways.

101. First, the statute deprives all people with past felony convictions subject to probation or parole of "substantially equal voting power"—indeed, of any "voting power" at all.

102. Second, the statute has the intent and effect of discriminating against African Americans. The continued disenfranchisement of people with felony convictions through probation or parole, even after their release, disproportionately impacts African Americans and deprives the African American community of "substantially equal voting power."

103. Third, in conditioning the right to vote on the ability to make financial payments, the statute creates an impermissible class-based classification.

104. Strict scrutiny applies to each of these classifications. Defendants cannot provide any legitimate government interest—let alone a compelling government interest—in denying the right to vote to all people with felony convictions until they are discharged from probation or parole. There is no legitimate justification for denying the right to vote to upwards of 70,000 citizens who are living amongst society and whose lives will be governed by the laws enacted and enforced by elected officials. Nor is North Carolina's felony disenfranchisement statute

narrowly tailored to any conceivable government interest. The statute indiscriminately disenfranchises all people with felony convictions until they complete probation or parole.

105. Although the North Carolina Constitution authorizes the General Assembly to regulate rights restoration for people with felony convictions, the General Assembly's rights restoration statutes must comply with North Carolina law, including other provisions of the North Carolina Constitution. By continuing disenfranchisement through probation or parole, even beyond releasee the General Assembly's scheme violates the Equal Protection Clause.

COUNT THREE
Violation of North Carolina Constitution's
Freedom of Speech and Assembly Clauses, Art. I, §§ 12 & 14

106. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

107. Article I, Section 12 of the North Carolina Constitution provides that "[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances."

108. Article I, Section 14 of the North Carolina Constitution provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained."

109. These provisions provide broader rights than do their counterparts in the U.S. constitution. *Common Cause*, 2019 WL 4569584, at *118.

110. "[V]oting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses." *Id.* at 119. "Voting provides citizens a direct means of expressing support for a candidate and his views." *Id.*

111. North Carolina's disenfranchisement statute constitutes an outright ban on "core . . . political expression." *Id.* The statute denies tens of thousands of North Carolina citizens of

the most "direct means" that exists of "expressing support for a candidate and his views." *Id.* The statute is no different from a law that prevents people with felony convictions from giving a speech about matters of public importance in the town square.

112. Because the disenfranchisement statute prohibits protected expression and association for people released from incarceration, strict scrutiny applies. Defendants cannot provide any legitimate government interest—let alone any compelling government interest—in denying people the right to vote until they complete probation or parole. There is no legitimate justification for denying the right to vote of 70,000 citizens who are living amongst society and whose lives will be governed by the laws enacted and enforced by elected officials. Nor is North Carolina's disenfranchisement statute narrowly tailored to any conceivable government interest. The statute indiscriminately disenfranchises all people with felony convictions until they complete probation or parole.

113. Although the North Carolina Constitution authorizes the General Assembly to regulate rights restoration for people with felony convictions, the General Assembly's rights restoration statutes must comply with North Carolina law, including other provisions of the North Carolina Constitution. By continuing disenfranchisement through probation, parole, or post-release supervision, beyond release, the General Assembly's scheme violates the Freedom of Speech and Assembly Clauses.

COUNT FOUR
Violation of North Carolina Constitution's
Ban on Property Qualifications, Art. I, § 11

114. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

115. Article I, Section 11 of the North Carolina Constitution provides that "[a]s political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office."

116. North Carolina's felony disenfranchisement statute violates this provision by conditioning the right to vote on whether people have a type of property—money. *E.g.*, *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338 (1979) ("Money, of course, is a form of property."). The statute conditions the right to vote on a person's ability to pay court costs and fees. It provides that a person convicted of a felony shall have their citizenship rights restored only upon their "unconditional discharge" from probation. N.C.G.S. § 13-1(1). If the person fails to "[p]ay the costs of court, any fine ordered by the court, and make restitution or reparation," N.C.G.S. § 15A-1343(b)(9), he or she has committed a "violation of a condition of probation" that authorizes the court to extend the term of probation—and thus the denial of the right to vote—to as much as five years. N.C.G.S. §§ 15A-1342(a), 15A-1344(a), (d). North Carolinians who have otherwise completed the terms of their probation are routinely subjected to extended probation—and thus extended disenfranchisement—for failing to pay court fees. Indeed, while probation may not be revoked based on nonpayment of costs when poverty prevents that person from paying the costs, *State v. Robinson*, 248 N.C. 282, 103 S.E.2d 376 (1958), the inability to pay provides no relief from the continuation or extension of probation. An individual on probation must pay these financial obligations in order regain the right to vote, rendering these obligations the functional equivalent of a poll tax.

117. Because North Carolina's felony disenfranchisement statute makes re-enfranchisement "dependent" on whether an individual has sufficient money to pay court costs, fees, and restitution, the statute violates the ban on property qualifications set forth in Article I, § 11 of the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and;

a. Declare that N.C.G.S. § 13-1's disenfranchisement of individuals while on probation, parole, or suspended sentence is facially unconstitutional and invalid under the North Carolina's Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; the Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14; and the Ban on Property Qualifications, Art. I, § 11.

b. Enjoin Defendants, their agents, officers, and employees from preventing North Carolina citizens released from incarceration or not sentenced to incarceration from registering to vote and exercising the right to vote based on their felony conviction.

c. Enjoin Defendants, their agents, officers, and employees from conditioning restoration of the right to vote on payment of any financial obligation.

d. Require Defendants, their agents, officers, and employees to notify all people with past felony convictions who have already been released from incarceration or are released from incarceration in the future that their right to vote was restored upon release from incarceration or upon not being placed under community supervision and that they may lawfully register to vote and vote in North Carolina elections.

e. Require Defendants, their agents, officers, and employees to engage in and take such additional steps as this Court deems just and appropriate to ensure that

affected citizens are informed of their restored rights and are able to register to vote and vote in North Carolina elections.

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

FORWARD JUSTICE

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**Pro Hac Vice* motion forthcoming