

SUPREME COURT OF NORTH CAROLINA

COMMUNITY SUCCESS)
INITIATIVE, et al.)
Plaintiff-Appellee,)
v.)
TIMOTHY K. MOORE, IN HIS)
OFFICIAL CAPACITY OF)
SPEAKER OF THE HOUSE OF)
NORTH CAROLINA HOUSE)
OF REPRESENTATIVES, et al.)
Defendants-Appellant.)

From Wake County
No. 19 CVS 15941

AMICUS BRIEF OF INSTITUTE FOR INNOVATION IN
PROSECUTION AT JOHN JAY COLLEGE

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INTRODUCTION

North Carolina's disenfranchisement statutes, which are being challenged herein, have an unstated but unfounded premise: withholding the right to vote from persons with criminal records facilitates their rehabilitation. The overwhelming evidence available indicates this premise is false, and, in fact, the opposite is true.

As the research indicates, disenfranchisement impedes a person's rehabilitation and engagement with his or her community. Studies also show that disenfranchisement creates conditions for recidivism and more dangerous communities.

The Institute for Innovation in Prosecution is a research center at John Jay College, one of the nation's premier criminal-justice institutions. The Institute brings together prosecutors, policy experts, and communities to promote data-driven strategies, cutting-edge scholarship, and innovative thinking. The Institute submits this amicus brief to present critical evidence on the relationship between disenfranchisement and public safety.¹

¹ No outside person or entities wrote any of this brief or contributed any money to support the brief's preparation. *See* N.C.R. App. P. 28(i)(2).

The data discussed in this brief shows that disenfranchisement does not advance law-enforcement goals. Conversely, disenfranchisement destabilizes communities, hinders rehabilitation, and endangers the public.

ARGUMENT

A person's re-entry into society after incarceration requires an effective rehabilitation process. Successful re-entry should also enhance community safety. Notably, the General Assembly has singled out rehabilitation and public safety as priorities of the State's sentencing regime. *See* N.C. Gen. Stat. § 15A-1340.12 (2019).

The disenfranchisement statutes at issue in this appeal undermine these objectives. In light of the foregoing, the Institute urges the Court, when it assesses the statutes' constitutionality, to weigh the real-world harm that disenfranchisement poses for communities and public safety.

I. Disenfranchisement Disrupts a Person's Post-Release Re-Integration into the Community.

To re-enter society from incarceration successfully, a person must establish meaningful ties with her community. Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 *Punishment & Soc'y* 402, 408

(2012). Studies demonstrate that disenfranchisement severely impedes an individual's ability to forge these community ties. And as the trial court recognized, the "[c]ontinued denial of the franchise to persons on community supervision has a stigmatizing effect, and the scholarly literature concludes felony disenfranchisement hinders the reintegration of people convicted of felonies into society." *Community Success Initiative v. Moore*, No. 19 CVS 15941 (Sup. Ct. Mar. 28, 2022) ¶

122. By restricting the formerly incarcerated from engaging in such a vital civic duty, it diminishes their sense of self-worth and fosters a sense of "otherness" that impedes reintegration.

A. Disenfranchisement harms formerly incarcerated individuals' sense of belonging to a community.

Disenfranchisement undermines an individual's sense of belonging to a particular community. No person can feel like a member of a community when she cannot participate in electing the community's leaders. See Note, Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 415 (2012). Instead, a person who cannot vote will always feel like an

outsider, because she is. Erika Wood, Brennan Ctr. for Just., *Restoring the Right to Vote* 9 (2009) (noting that returning prisoners have reported that they feel like they are “not . . . full citizen[s]” upon finishing their sentence and being denied the right to vote).

In this way, disenfranchisement undermines re-integration. Hamilton-Smith & Vogel, *supra*, at 414. Persons disenfranchised after incarceration report feeling “different from everyone else,” “not accepted,” “like [I] don’t matter,” “alienated,” and “like I’m still a criminal.” Bryan Lee Miller & Lauren E. Agnich, *Unpaid Debt to Society: Exploring How Ex-Felons View Restrictions on Voting Rights After the Completion of Their Sentence*, 19 *Contemp. Just. Rev.* 69, 80, 83 (2016). One study, which interviewed fifteen black male ex-felons found, “[b]eing labeled a felon is consistent with the inability to identify as a human being.” Tymesha Whitehead, *African American Male Ex-Felons’ Perspectives Regarding Felon Disenfranchisement*, Walden Univ. 76 (Feb. 22, 2021), <https://scholarworks.waldenu.edu/dissertations/10077/>. These feelings of alienation fuel anger and defiance—the opposite of the pro-social

behaviors that are critical to rehabilitation. *See Miller & Agnich, supra*, at 73.

The trial court emphasized the alienation that disenfranchisement causes by quoting testimony from Plaintiff Shakita Norman:

Well, most people that's like me, even though I'm on probation, I still pay taxes, I go to work every day, I take care of my family. I should -- I should be able to have that, to have that moment. I should be able to say something, and I want people that's in the future that's in the situation that I'm in to be able to have that voice and be able to say something and it gets heard.

Moore, No. 19 CVS 15941, ¶ 142.

In contrast, when a person can exercise the same right to vote that every other community member enjoys, she perceives herself as a member of that community, not as an outsider. *See Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 195 (2004) (“The right to vote is one of the defining elements of citizenship in a democratic polity and participation in democratic rituals such as elections affirms membership in the larger community . . .”). Such a person is also more likely to approve of and have faith in a community’s institutions and values. Victoria Shineman, *Restoring Rights, Restoring*

Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government, U. Pittsburgh 4–5 (Oct. 25, 2018), <https://ssrn.com/abstract=3272694>. After all, the right to vote invites participation in civic life and reinforces the obligation to follow community norms. Wood, *supra*, at 9, 11.

At least one community has recognized the inconsistency between, on the one hand, shutting former prisoners out from the political process, and on the other, expecting them to fully integrate back into society. Lansing, Michigan made news this year by instituting a ballot measure that, if approved by voters, would change the city charter to allow ex-felons to serve on municipal boards and commissions. Todd Heywood, *Ex-felon inspires Lansing charter amendment vote in General Election*, Lansing City Pulse, June 23, 2022, <https://www.lansingcitypulse.com/stories/ex-felon-inspires-lansing-charter-amendment-vote-in-general-election,21471>.

Lansing’s mayor, who championed the proposed measure, believes that felons bring “an important voice and representation to the table.” *Id.* This decision has been part of a larger program by the Michigan

Department of Corrections to increase successful social re-entry for individuals with criminal records. *Id.*

B. Disenfranchisement harms the community's perception of formerly incarcerated individuals.

Disenfranchisement colors not only the perceptions of the person who cannot vote, but also the perceptions of her fellow community members. Being disenfranchised imposes a stigma. The Superior Court recognized as much. *Moore*, No. 19 CVS 15941 (Sup. Ct. Mar. 28, 2022) ¶ 122 (“Continued denial of the franchise to persons on community supervision has a stigmatizing effect.”). When the law treats someone as unworthy of casting a vote—unworthy of having a say in how society is governed—her community will treat her as something less than a true member. Regina Austin, *“The Shame of it All”: Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons*, 36 Colum. Hum. Rts. L. Rev. 173, 174, 177 (2004). In the eyes of her community, she is morally deficient, unredeemable, or worse. *Id.* at 177.

Additionally, disenfranchisement laws harm a community's perception of formerly incarcerated individuals because they treat all ex-felons the same. Nancy Leong, *Felon Reenfranchisement: Political*

Implications and Potential for Individual Rehabilitative Benefits, Stan. Univ. 9 (Apr. 3, 2007),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=977280 (noting that disenfranchisement “impedes rehabilitation by promoting overgeneralizing about ex-felons”). Regardless of the type of felony an individual committed or the efforts the individual made toward rehabilitation, disenfranchisement ascribes the same stigma to all ex-offenders.

This resulting stigma within the community has harmful effects because the negative perceptions foment distrust and weaken the very ties between the person and the community that effective re-entry requires. Austin, *supra*, at 174, 176. The stigma “erects boundaries or barriers between persons who would otherwise belong to the same community.” *Id.* at 174. Additionally, disenfranchisement’s overgeneralization of ex-felons in the eyes of the community can further exacerbate the individual’s own feelings of isolation because “those who have committed relatively moderate crimes may come to see themselves as even more alienated from society than they actually are.” Leong, *supra*, at 14.

In sum, disenfranchisement statutes undermine rehabilitation. Disenfranchisement stifles a person's community participation by triggering both alienation and stigma, turning the former prisoner and the community against one another. Without the right to vote, former prisoners feel that they are lesser citizens, which thereby discourages them from reintegrating in society.

II. Disenfranchisement Harms Public Safety.

The disenfranchisement statute constitutes a tangible threat to public safety. A disenfranchised individual – one who is unable to vote and thereby alienated from and stigmatized by her community (*see supra* at 5) – is more likely to commit another crime. *See* Hamilton-Smith & Vogel, *supra*, at 428; *see also* Cyrus R. Vance Jr. et al., Prosecutors, Reentry, and Public Safety 2 (2019).

By promoting the idea that rehabilitation is impossible, disenfranchisement contributes to the creation of, “a permanent criminal underclass of outcasts.” Hamilton-Smith & Vogel, *supra*, at 413, 428. Without any prospect of rehabilitation, members of the underclass engage in anti-social behavior. *See* Miller & Agnich, *supra*, at 72. And, research shows that once a person is labeled as a deviant

and an outsider by society, those labels create a self-fulfilling prophecy. *Id.* at 72-73.

Empirical studies demonstrate a positive correlation between disenfranchisement and recidivism. Hamilton-Smith & Vogel, *supra*, at 426. Controlling for factors such as demographics and criminal history, Hamilton-Smith & Vogel compared recidivism rates of ex-offenders in states that restore voting rights post-release with those in states that permanently disenfranchise ex-offenders. *Id.* at 426-27. According to their study, ex-offenders released in states that permanently disenfranchise are at least ten percent more likely to commit another crime than those in states that restore voting rights. *Id.* at 427.

Other studies looking into the relationship between voting and criminality have found the same. For example, non-voters in particular elections were found to have higher rates of arrest and incarceration than those who had voted. Uggen & Manza, *supra*, at 208. Moreover, non-voters were three times more likely than voters to be arrested within three years of an election. *Id.* at 204-05. This study also found that those who vote are less likely to commit violent crimes than those who do not vote. *Id.* at 207. Specifically, forty-two percent of non-voters

polled in the study reported committing or threatening violent acts following the studied election, while only twenty-seven percent of voters reported committing or threatening violent acts during the same period. *Id.* Meanwhile, eighteen percent of non-voters reported committing property crimes after the studied election, with only eleven percent of voters reporting the same. *Id.* Based on the weight of the data, the researchers concluded that disenfranchisement has a positive correlation with increased rates of recidivism. *Id.* at 213-15.

Interviews with disenfranchised individuals support this conclusion. In one study, disenfranchised individuals reported they felt they were more likely to commit crimes than if they were permitted to vote, because they have no voice in electing their leaders. Miller & Spillane, *supra*, at 415. One disenfranchised individual stated that, “people who don’t feel like they’re part of the community do other things: they either go back to selling drugs, smoking drugs, or doing crime.” *Id.* In total, thirty-nine percent of respondents in the study saw a direct connection between their inability to vote and their inability to avoid a return to criminality. *Id.* at 422.

The disparity in recidivism rates between states that

disenfranchise ex-offenders and those that restore voting rights also undermines any deterrence argument. *See supra* at 10-11. If disenfranchisement deterred criminality, recidivism would drop among those most affected by it. Instead, studies indicate the opposite.

Interviews of ex-offenders confirm this point. Large-scale studies demonstrate a positive correlation between losing the right to vote and a rise in criminal behavior among ex-offenders, and interviews of ex-offenders, like Ms. Bratcher (*see infra* at 13), support the argument that this is not only a correlation, but a cause. Hamilton-Smith & Vogel, *supra*, at 426.

While some might argue that disenfranchisement promotes deterrence, the facts show otherwise. Wood, *supra*, at 10-11. That is, the threat of disenfranchisement has a low deterrence value for those who have not yet committed crimes because that consequence, disenfranchisement, is not widely known to the public at-large. Miller & Agnich, *supra*, at 72. The publicized example of Lanisha Bratcher – a 32-year-old Hoke County resident who voted in 2016 while on probation – is illustrative. Because Ms. Bratcher voted, she has been charged with a class I felony and faces potential prison time. She was unaware that

she was prohibited from voting as a probationer. Sam Levin, *A Black Woman Faces Prison for a Voting Mistake; Prosecutors Just Doubled the Charges*, Guardian (July 21, 2020), <https://www.theguardian.com/usnews/2020/jul/21/voting-arrest-racist-law-north-carolina-lanishabrachter>.

In short, the absence of any demonstrated deterrence stemming from disenfranchisement underscores the senseless nature of the statute at issue here. The overwhelming evidence indicates that disenfranchisement statutes promote recidivism, the opposite of the foremost purpose of our criminal legal system - promoting public safety. See N.C. Gen. Stat. § 15A-1340.12.

III. Disenfranchisement Breeds Hardships for Families and Communities.

Finally, disenfranchisement affects the families and communities of the disenfranchised in troubling ways. *See* Wood, *supra*, at 12. As the Superior Court observed in its Final Judgment and Order, “Denial of the franchise to persons on felony supervision harms individuals, families, and communities for years even after such supervision ends.” *Moore*, No. 19 CVS 15941 (Sup. Ct. Mar. 28, 2022) ¶ 124.

As discussed above, disenfranchisement creates a ripple effect in the form of stigma. Families of disenfranchised persons who have completed terms of incarceration experience as much, if not more, stigmatization as the disenfranchised persons themselves experience. Austin, *supra*, at 180. Communities with many disenfranchised residents experience the same stigma. *Id.* at 183. When families and communities feel unfit to participate in the political process, social bonds weaken, leading to an increased likelihood of anti-social behavior. See Miller & Agnich, *supra*, at 73.

That anti-social behavior includes low levels of civic participation. Disenfranchising the head of a household discourages the entire family from civic participation. Wood, *supra*, at 12. That effect is especially pronounced for children because a child's decision to vote depends on what she has seen her parents do. *Id.* A parent's disenfranchisement thus yields irrational consequences: families with an immense stake in government policies—including policies on housing, child welfare, and social benefits—do not vote for the officials who shape those policies. Austin, *supra*, at 18485. A high level of disenfranchisement in a community, as the Superior Court reasoned,

“can discourage other young people from voting, because voting is a social phenomenon.” *Moore*, No. 19 CVS 15941 (Sup. Ct. Mar. 28, 2022) ¶ 123; see also Nancy Leong, *Felon Reenfranchisement: Political Implications and Potential for Individual Rehabilitative Benefits* 4 (2006) (recognizing the “halo effect” of disenfranchisement and noting that high levels of felon disenfranchisement may cause non-felon members of the community to “vote at lower rates because they believe that their participation will not matter”).

This alienation of entire families and communities can have profound consequences. As shown above, a person who is not engaged in civic participation has a greater chance of deviating from community norms and violating the law. See *supra* pp. 3-9. These consequences, moreover, can spread through families and even entire communities. When disenfranchisement is more restrictive, a community’s voter turnout is lower. See Aman McLeod et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications of Reform*, 11 Va. J. Soc. Pol’y & L. 66, 80-81 (2003); see also Final Judgement and Order at ¶ 123 (noting that communities “have less political equality as a

consequence of the denial of the franchise to people on felony supervision”). Moreover, a high level of community disenfranchisement has been linked to negative mental and physical health outcomes in people of color. Patricia A. Homan & Tyson H. Brown, *Sick and Tired of Being Excluded: Structural Racism in Disenfranchisement as a Threat to Population Health Equity*, 41 *Health Equity* 219, 224 (2022).

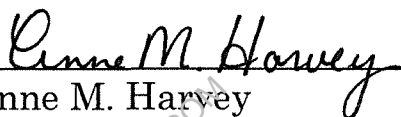
Troublingly, the reverberating stigma of disenfranchisement—extending beyond individuals to harm their families and communities—embodies the discriminatory purpose behind N.C.G.S. § 13-1. See Final Judgment & Order at ¶ 36 (“Legislative Defendants conceded at trial that the goal of the 1870’s legislative enactments was to discriminate against African Americans”) (citing Trial Tr. 176:19-177:7).

Disenfranchisement, then, affects more than the person no longer incarcerated. It leads to limited civic participation in families and communities. And that limited participation is correlated with an increased likelihood of criminal activity.

CONCLUSION

The Institute asks the Court to affirm the judgment of the lower court, and hold that the statutes at issue violate the Constitution of the State of North Carolina.

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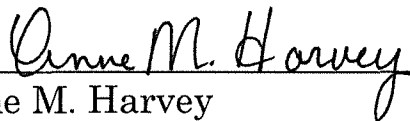
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This the 17th day of August, 2022.



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