

STATE OF NORTH CAROLINA

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 19 CVS 15941

WAKE COUNTY

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

2022 MAR 30 P 3:40

WAKE CO., C.S.C.

Plaintiffs,

BY

vs.

**EMERGENCY MOTION FOR A  
STAY PENDING APPEAL**

TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

Defendants.

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Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (collectively “Legislative Defendants”), respectfully move for a stay of the Court’s order rendered March 28, 2022 pending resolution of their appeal, filed today. State Board Defendants take no position on and Plaintiffs oppose this motion.

### INTRODUCTION

The Court’s order is irreconcilable with the North Carolina Constitution. Under Article VI, § 2, anyone convicted of a felony may not 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, pt. 3. The Court has held unconstitutional the “manner prescribed by law,” found in N.C.G.S. § 13-1, meaning that felons serving sentences outside of prison now have no means of regaining their voting rights—and thus remain disenfranchised under Article VI, § 2. Yet, the Court has ordered Defendants to allow such persons to register and vote. And the Court has done so on the eve of an election.

The Court’s new injunction must be stayed. Although the Court’s original preliminary injunction was also erroneous, rules issued pursuant to that injunction have been in place for over a year. To avoid disruption, Legislative Defendants ask only that the Court stay its permanent injunction to the extent it departs from the status quo under the original preliminary injunction and as reflected by the order of the North Carolina Supreme Court of September 10, 2021.

Due to the extraordinary circumstances created by the proximity of primary elections (indeed, absentee voting has already opened), it would be impracticable for Legislative Defendants to wait beyond April 1, 2022, before seeking a stay in the Court of Appeals. Therefore, if this Court has not acted on this Motion, Legislative Defendants intend to seek relief in the Court of Appeals on the afternoon of April 1.

## RELEVANT BACKGROUND

The North Carolina Constitution provides that “[n]o person adjudged guilty of a felony . . . 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, pt. 3. That manner is prescribed by N.C.G.S. § 13-1, which provides in pertinent part that “[a]ny person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon . . . [t]he unconditional discharge of . . . a probationer[] or of a parolee by the agency of the State having jurisdiction of that person.”

On September 4, 2020, the Court granted summary judgment for Plaintiffs on their claims that § 13-1 creates a wealth-based classification in violation of the Equal Protection Clause, N.C. CONST. art. I, § 19, and imposes a property qualification on voting in violation of N.C. CONST. art. I, § 11. The same day, the Court issued a preliminary injunction that required the Defendants to allow to register to vote any person convicted of a felony whose “only remaining barrier to an ‘unconditional discharge,’ other than regular conditions of probation . . . is the payment of a monetary amount” or who “has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probations was reduced to a civil lien.” Order on Inj. Relief at 10–11, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Sept. 4, 2020), Ex. A.

For nearly a year, the State Board Defendants implemented this injunction pursuant to its plain terms, instructing voters that they were eligible to vote if they were serving extended terms of probation and knew no reason why their terms had been extended other than for non-compliance with their monetary obligations. During trial in August 2021, however, the Court made an oral ruling that all parties had misinterpreted the preliminary injunction, which the Court had

“intended” to cover any “individuals who are subject to post-release supervision, parole, or probation solely by virtue of continuing to owe monetary obligations.” Order on Am. Prelim. Inj. at 7, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021) (“Expanded PI Order”), Ex. B. The expanded preliminary injunction, which was reduced to writing on August 27, 2021, stated “it is necessary for equity and administrability of the intent of the September 4, 2020 preliminary injunction to amend that injunction to include a broader class of individuals,” expanding the scope to restore voting rights to tens of thousands of convicted felons who remained on probation or post-release supervision for reasons other than monetary obligations. Expanded PI Order, Ex. B at 10.

The Court denied the Legislative Defendants’ motion for a stay pending appeal of the expanded preliminary injunction, *see* Order, No. 19 CVS 15941 (Wake Cnty. Super. Ct. Aug. 27, 2021), Ex. C, but the Court of Appeals granted a writ of supersedeas, staying the order, *see* Order, No. P21-340 (N.C. Ct. App. Sept. 3, 2021), Ex. D. The Supreme Court agreed and ordered that the status quo under the original injunction be maintained, with the caveat that any felons who registered to vote during the brief period when the expanded injunction was in effect should remain registered voters. Order, No. 331P21-1 (N.C. Sup. Ct. Sept. 10, 2021), Ex. E. Until the Court’s recent judgment, therefore, the status quo—which was in place for last fall’s municipal elections—was that a felon who had not registered to vote while the expanded preliminary injunction was in effect and was still under some form of supervision could register only if “serving an extended term of probation, post-release supervision, or parole” with “outstanding fines, fees, or restitution” and if the felon did “not know of another reason that [his] probation, post-release supervision, or parole was extended.” *See Who Can Register*, N.C. STATE BD. OF ELECTIONS (as last visited Mar. 30, 2022), <https://bit.ly/3IQAITY>, Ex. F.

On March 28, 2022, the very same day that absentee ballots were made available for the statewide primary, the Court entered judgment in favor of Plaintiffs, concluding that § 13-1 violates the Equal Protection Clause, Article I, § 19, and the Free Elections Clause, Article I, § 10, of the North Carolina Constitution on the ground that it disenfranchises felons, particularly African American felons. Final Judgment and Order at 62, No. 19 CVS 15941 (Wake Cnty. Super. Ct. March 28, 2022) (“Final Order”), Ex. G.

Early voting for North Carolina’s statewide primaries begins on April 28. *Calendar of Events*, N.C. STATE BD. OF ELECTIONS, <https://bit.ly/35115y4> (last visited March 30, 2022). The Court’s new injunction threatens to upset the status quo with precious little time for the State Board Defendants to implement the court’s new injunction, which will expand the franchise to 55,000 felons who are otherwise not eligible to vote because they are on some form of supervision. *See* Ex. F. The timing of the Court’s opinion leaves the State Board with slightly more than the approximate amount of time the Board had previously indicated it would need to implement the expanded preliminary injunction even for off-year municipal elections. *See* Not. and Mot. for Clarification at 6 (Aug. 21, 2021), Ex. H (noting that the State Board needed clarity on the rules by August 23 in order to implement them in time for early voting on September 16). The Court should stay its order to allow for orderly review in the court of appeals while not upending the imminent state-wide election in which voting has already started.

## ARGUMENT

The trial court has the power, in the face of an appeal of an order granting injunctive relief, to “suspend, modify, restore, or grant an injunction during the pendency of the appeal.” N.C. R. Civ. P. 62(c). Such an order is appropriate if (1) the appealing party can show a likelihood of success on the merits and (2) irreparable harm or damage to the party’s rights is likely to happen

in the absence of a stay. See *N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 674 S.E. 2d 436, 443 (N.C. Ct. App. 2009). “[I]n weighing whether to grant” a stay pending appeal, “the trial court should focus on the potential prejudice to the appellant.” *Vizant Techs., LLC v. YRC Worldwide Inc.*, 15 CVS 20654, 2019 WL 995792, at \*4 (N.C. Super. Ct. Mar. 1, 2019).

**I. Defendants are Likely to Succeed on the Merits of Their Appeal.<sup>1</sup>**

The law that Plaintiffs challenged, and that the Court has now permanently enjoined, does not disenfranchise individuals convicted of felonies in North Carolina. The North Carolina Constitution does. Article 6, Section 2 of the North Carolina Constitution says in part:

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.

Section 13-1, which Plaintiffs challenge here, is that “manner prescribed by law.” This leads to two fatal problems for Plaintiffs’ case.

First, because Plaintiffs have alleged injuries stemming from the disenfranchisement of felons who are serving a sentence outside of prison, but have not challenged the validity of the constitutional provision that disenfranchises them, there is no connection between their injuries and the relief they requested (and that the Court has now granted). Lacking a “direct injury” attributable to the functioning of the statute, *State ex rel. Summrell v. Carolina-Virginia Racing Ass’n*, 239 N.C. 591, 594 (1954); see also *Comm. to Elect Dan Forest v. Emp’s Pol. Action Comm.*,

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<sup>1</sup> The Legislative Defendants have filed a notice of appeal that encompasses both the Court’s summary judgment decision and its final judgment. However, for purposes of this stay, the Legislative Defendants seek to preserve the status quo following the Supreme Court’s September 10, 2021 order, which includes the State Board of Elections allowing felons on probation to vote if their only reason for being on probation is outstanding fines, fees, or restitution. So, while Legislative Defendants will appeal the summary judgment ruling that resulted in that practice, they will focus on their likelihood of success on the merits in appealing from the final judgment in this motion.

376 N.C. 558, 608 (2021), Plaintiffs lack standing to challenge it, *see Marriott v. Chatham Cnty.*, 187 N.C. App. 491, 494, 654 S.E.2d 13, 16 (2007) (standing requires “that the [alleged] injury will be redressed by a favorable decision”).

Second, the Court has enjoined Defendants “from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision.” Final Order at 64. While Defendants oversee voter registration, they do not enforce the criminal prohibition on felons voting “without having been restored to the right of citizenship in due course and by the method provided by law.” N.C.G.S. § 163-275(5). That law was not analyzed in the Court’s opinion, and the officials who are responsible for prosecuting violations of that statute are not Defendants to this action, so the Court lacked power to enjoin their enforcement of it, which it did not purport to do. So the result of the Court’s order is that all felons serving sentences outside of prison remain disenfranchised under the North Carolina Constitution, since the Court has enjoined the “manner prescribed by law” for felon re-enfranchisement. N.C. CONST. art. VI, § 2, pt. 3. Thus, the effect of the order can only be to induce violations of § 163-275(5) and to subject violators to prosecution.

Of course, what the Court *attempted* to do in issuing the injunction was to rewrite Section 13-1 to restore the rights of citizenship automatically upon “release from prison” instead of upon “unconditional discharge.” But in doing so, it has exceeded its authority. *See, e.g., State v. Cobb*, 262 N.C. 262, 266, 136 S.E.2d 674, 677 (1964) (“When a court, in effect, constitutes itself a superlegislative body, and attempts to rewrite the law according to its predilections and notions of enlightened legislation, it destroys the separation of powers and thereby upsets the delicate system of checks and balances which has heretofore formed the keystone of our constitutional government.”); *C Invs. 2, LLC v. Auger*, 860 S.E.2d 295, 302 (N.C. Ct. App. 2021) (“The role of

the courts is to interpret statutes as they are written. We do not rewrite statutes to ensure they achieve what we, or the parties in a lawsuit, imagine are the legislature's policy goals."); *Davis v. Craven Cnty. ABC Bd.*, 259 N.C. App. 45, 48, 814 S.E.2d 602, 605 (2018) ("This court is an error-correcting body, not a policy-making or law-making one." (quotation marks omitted)).

Even if we ignore the issues regarding Plaintiffs' standing to challenge § 13-1 and the serious separation of powers concerns raised by the scope of the Court's injunction, Defendants are still likely to succeed on the merits of their appeal. The Court erred in applying strict scrutiny to § 13-1 when analyzing Plaintiffs' Equal Protection challenge. Strict scrutiny is only appropriate where a government classification "impermissibly interferes with the exercise of a fundamental right" or "operates to the peculiar disadvantage of a suspect class." *Liebes v. Guilford Cnty. Dep't of Pub. Health*, 213 N.C. App. 426, 428, 713 S.E.2d 546, 549 (2011) (citation omitted). Otherwise, rational-basis review applies. *Id.*

Here, rational-basis review should have applied because § 13-1 does not interfere with any fundamental right and does not disadvantage any suspect class. As to the first point, the Court held that § 13-1 interferes with "[a] fundamental right to vote," Final Order at 57, but felons do not have such a right. Under the North Carolina Constitution, felons are barred from voting "unless that person shall be first restored to the rights of citizenship in the manner prescribed by law." N.C. CONST. art. VI, § 2, pt. 3. Under that provision, felons for whom the General Assembly provides no path to re-enfranchisement are disenfranchised for life. And when the General Assembly does provide a path to re-enfranchisement, the right to vote is restored only when the conditions for restoration have been met. Similarly, the United States Constitution follows its own Equal Protection Clause immediately with "an affirmative sanction" of "the exclusion of felons from the vote." *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974); *see also* U.S. CONST. amend. 14, § 2. As a



result, federal courts of appeals have uniformly concluded felons do not have a fundamental right to vote. *See, e.g., Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.).

In holding otherwise, the Court did not confront these authorities, but merely asserted that felons who are not currently in prison are “similarly situated” to “North Carolina residents who have not been convicted of a felony” because they “feel an interest in [the State’s] welfare.” Final Order at 57 (quoting *Roberts v. Cannon*, 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260–61 (1839)). That felons and non-felons alike may have an interest in how they are governed does not make them similarly situated for these purposes when both the North Carolina and United States constitutions expressly treat them differently. *See State v. Grady*, 372 N.C. 509, 567, 831 S.E.2d 542, 582 (2019) (“[F]elons do not enjoy the same measure of constitutional protections . . . as do citizens who have not been convicted of a felony.”).

Strict scrutiny is also inappropriate because § 13-1 does not operate to disadvantage a suspect class of people. On its face, § 13-1 makes no distinction between felons based on race, sex, or any other suspect or quasi-suspect class. The *only* distinction it draws is between felons who have completed their sentences and felons who have not—and that “reasonable distinction” does not offend equal protection. *See State v. Stafford*, 274 N.C. 519, 535, 164 S.E.2d 371, 382–83 (1968).

The Court erred when it found that § 13-1 impacts black and white North Carolinians differently<sup>2</sup>—as explained, it functions exactly the same way for everyone. And Plaintiffs did not

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<sup>2</sup> Although the Court credits the testimony of Plaintiffs’ experts purporting to show that black North Carolinians are disproportionately disenfranchised as felons, as explained above, that disenfranchisement is not traceable to § 13-1 but rather to the North Carolina Constitution. Furthermore, the method the Court uses to demonstrate a racial disparity in disenfranchisement has been specifically rejected by the United States Supreme Court. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021).

even attempt to show that as a practical matter Section 13-1 re-enfranchises felons of different races at a different rate, which would be a necessary component of any finding of race discrimination. *See Irby v. Virginia State Bd. of Elections*, 889 F.2d 1352, 1355 (4th Cir. 1989).

The Court erred again when it concluded that § 13-1, which was championed by the NAACP and the only three black members of the General Assembly in 1973, was motivated by racially discriminatory intent. Final Order at 56. The Court failed to presume that the legislature operated in good faith. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). In fact, in crediting circumstantial evidence of the popularity of the “Law and Order” movement, the Court appeared to presume exactly the opposite. *See, e.g.*, Final Order at 22. And the Court misread legislative history, which in fact demonstrates that the 1971 and 1973 changes to the law accomplished the primary goals of the reforming legislators by “substantially relax[ing] the requirements necessary for a convicted felon to have his citizenship restored.” *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974). It was not, as the Court incorrectly concluded, “the goal of these African American legislators and the NC NAACP . . . to eliminate section 13-1’s denial of the franchise to persons released from incarceration,” Final Order at 19, but to make the process automatic upon completion of a felon’s sentence, PX175 at 78:10–14, Ex. I.<sup>3</sup>

The Court also erred in finding that § 13-1 triggers strict scrutiny because it violates the Free Elections Clause. *See* N.C. CONST., art. I, § 10. Again, § 13-1 does not deprive anyone of the right to vote—a felony conviction and the North Carolina Constitution do that. And “a constitution cannot be in violation of itself.” *Stephenson v. Bartlett*, 355 N.C. 354, 378, 562 S.E.2d 377, 394

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<sup>3</sup> The Court also erred in classifying its analysis of the intentions of the 1971 and 1973 sponsors of bills in revising § 13-1, as reflected by the text of the proposed bills, as findings of fact. Because these “findings” go directly to the Court’s conclusions about how § 13-1 ought to be interpreted and applied, they are more properly classified as conclusions of law. *See In re David A. Simpson, P.C.*, 211 N.C. App. 483, 487–88, 711 S.E.2d 165, 169 (2011).

(2002). It cannot be, as the Court held, that North Carolina's elections are not free within the meaning of its constitution merely because some people are *constitutionally* precluded from participating in them. *See* Final Order at 59. What is more, § 13-1 does not deprive anyone of the ability to vote but rather extends the ability to vote to felons who otherwise would be disenfranchised. Therefore, “the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights . . . is inapplicable,” because the distinction being challenged is only “a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise.” *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966).

Without any reason to apply strict scrutiny, the Court should have applied rational-basis review, which § 13-1 would easily survive. Rational-basis review merely requires that a statute “bear *some* rational relationship to a conceivable legitimate government interest.” *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 180, 594 S.E.2d 1, 15 (2004) (emphasis in original). Section 13-1 fulfills a valid government interest in offering felons a method by which to regain their rights, and in fact significantly streamlines the process from previous versions of the law. *See Currie*, 284 N.C. at 565, 202 S.E.2d at 155. In doing so, it reasonably draws a line between the rights of felons who have paid their debt to society and those who have not. These are sensible policy choices that the General Assembly was well within its authority to make, *see Jones v. Gov. of Fla.*, 975 F.3d 1016, 1029–30 (11th Cir. 2020) (en banc), and which are solely within the province of the General Assembly, not the courts, to change, *Davis*, 259 N.C. App. at 48, 814 S.E.2d at 605.

## **II. Defendants Face Irreparable Harm in the Absence of a Stay of the Final Judgment.**

“Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (cleaned up). The injury is exacerbated when an election law is enjoined on the eve of an election. “A State indisputably has a compelling interest

in preserving the integrity of its election process,” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (quotation marks omitted), and “once the election occurs, there can be no do-over and no redress,” *Holmes v. Moore*, 270 N.C. App. 7, 35, 840 S.E.2d 244, 266 (2020) (quotation marks omitted). That is not the only reason courts should avoid changing election rules on the eve of elections: “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4–5; accord, e.g., *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam).

For the second time in seven months, the Court has violated these principles. For over a year—including a presidential election—the State Board of Elections has published clear rules for felon re-enfranchisement pursuant to a preliminary injunction based on certain claims in this case. In August of last year, from the bench at trial over the other claims, the Court ordered the State Board to suddenly adopt different rules and, when the State Board pointed to serious problems with the new rules, the Court sought to enjoin § 13-1’s application to any felons on probation or post-release supervision over a conference call. In the process, the State Board told the Court on August 22, 2021—25 days before one-stop early voting began for municipal elections—that if it were to effectuate the Court’s order it would need to begin implementing changes “immediately.” Req. for Clarification at 8 (Aug. 22, 2021), Ex. J. The Court of Appeals was required to step in to prevent the chaos that the expanded preliminary injunction threatened to create, granting supersedeas and staying the expanded preliminary injunction, and the Supreme Court affirmed.

And now, the Court has issued a new injunction, superseding the same preliminary injunction, on a strikingly similar timeline. Early voting was 31 days away for North Carolina’s statewide primary when the Court issued its order two days ago, and confusion is certain to result

if the Court does not stay execution of its injunction and return to the status quo ante. Time is of the essence—if the State Board begins to implement the order, and a stay comes too late, the State Board must begin to reverse itself (again), and confusion will necessarily result. Of course, this latter sort of confusion would not be the basis for the court of appeals to deny a stay, for such a rule would create incentives for trial courts to issue injunctions on the eve of an election in an effort to prevent the court of appeals from acting to correct an erroneous order.

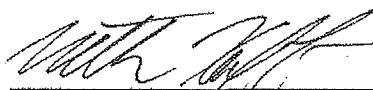
Leaving aside voter confusion and the difficulty of administering a significant change on the eve of an election, if the Court's order is not stayed other harms are sure to result. All eligible voters stand to have their vote diluted by felons who are still ineligible to vote under the North Carolina Constitution. Indeed, the Court found that its own injunction could swing the results of dozens of elections where the margin of victory was considerably less than the 56,000-plus people who it has suddenly enjoined Defendants to include on the voter rolls. Final Order at 38–39.

### CONCLUSION

Accordingly, this Court should stay implementation of its Final Order pending appeal and, in view of the nearness of the primary elections, restoring the Court's original preliminary injunction. *See* N.C. R. Civ. P. 62(c).

Dated: March 30, 2022

Respectfully Submitted,

 (with permission)

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**CERTIFICATE OF SERVICE**

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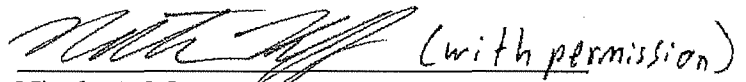
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# EXHIBIT A

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NORTH CAROLINA 2020 SEP -4 PM 4: 29 IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE WAKE CO., C.S.C. SUPERIOR COURT DIVISION  
FILE NO. 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

Defendants.

ORDER ON INJUNCTIVE RELIEF

This matter comes before the undersigned three-judge panel upon Plaintiff's motion for summary judgment or, in the alternative, a preliminary injunction.

In this litigation, Plaintiffs seek a declaration that N.C.G.S. § 13-1, the North Carolina statute providing for the restoration of rights of citizenship—which includes the right to vote—for persons convicted of a crime, is facially unconstitutional and invalid under the North Carolina Constitution to the extent it prevents persons on probation, parole, or post-release supervision from voting in North Carolina elections. Specifically, Plaintiffs contend Section 13-1 of our General Statutes violates Article I, Sections 10, 11, 12, 14, and 19 of our Constitution. Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from 1) preventing North Carolina citizens released from incarceration or not sentenced to incarceration from registering to vote and voting due to a felony conviction, and 2) conditioning restoration of the ability to vote on payment of any financial obligation.

### Procedural History

Plaintiffs filed the initial complaint in this matter on November 20, 2019, and an amended complaint on December 3, 2019. Defendants filed answers to and motions to dismiss the amended complaint in January 2020; the motions to dismiss were subsequently withdrawn. On May 11, 2020, Plaintiffs filed the present motion for summary judgment or, in the alternative, a preliminary injunction.

On June 17, 2020, this action was transferred to a three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4). On June 24, 2020, the Chief Justice of the Supreme Court of North Carolina, pursuant to N.C.G.S. § 1-267.1, assigned the undersigned three-judge panel to preside over the facial constitutional challenges raised in this litigation.

On August 19, 2020, Plaintiffs' motion was virtually heard by the undersigned three-judge panel via WebEx pursuant to the Chief Justice's orders regarding virtual hearings in light of the COVID-19 pandemic. The matter was thereafter taken under advisement.

Upon considering the pleadings, parties' and amici's briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

#### Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o 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(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads 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. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

#### History of Restoration of Rights of Citizenship in North Carolina

The manner prescribed by law to restore the rights of citizenship for certain persons has a long and relevant history. In 1835, North Carolina amended its constitution to permit the enactment of general laws regulating the methods by which rights of citizenship—

including the right to vote—are restored to persons convicted of “infamous crimes.”

Infamous crimes included offenses which warranted “infamous punishments.” Thereafter in 1840, a general law was passed regulating the restoration of rights, including granting the courts unfettered discretion in restoring rights of citizenship.

After the civil war, North Carolina adopted a new constitution which allowed all men to vote, eliminated property-based voting limitations, and abolished slavery. Persons convicted of specific crimes were not expressly forbidden by the constitution from voting; however, a combination of constitutional amendments—including an amendment in 1875 that provided for the disenfranchisement of persons convicted of felonies and infamous crimes—and laws passed over the following decades maintained limitations on the restoration of rights for persons convicted of certain crimes, thereby continuing to deny such persons the ability to vote. Judicial discretion remained part of the process for restoring a person’s rights of citizenship.

These limitations lasted until 1971, when the reference to infamous crimes was removed from the constitutional provision and voting rights were taken away from only persons convicted of felonies. Later, the statute was further amended to remove certain, express requirements that must be met by a person convicted of a felony to have their rights of citizenship restored.

Today, the restoration of rights under N.C.G.S. § 13-1 is automatic upon a person’s “unconditional discharge” and is not expressly subject to a discretionary decision by a government official, e.g., a judge. But while the final decision to restore a person’s rights of citizenship is not left to the discretion of a judge, there do remain a number of discretionary decisions, especially in sentencing, that have a direct effect upon when a person’s right to vote is restored, along with the qualifications and requirements that must ultimately be satisfied before a person convicted of a felony is permitted to vote. Importantly in this case,

one such group of decisions pertain to the assessment of monetary costs arising from a felony conviction, e.g., fees, fines, costs, restitution, and other debts.

### Injunctive Relief

Plaintiffs have moved, in the alternative, for a preliminary injunction pending a resolution of this action on the merits. "The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an "extraordinary remedy" and will issue "only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge "should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability." *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Article VI, § 2(3), of our Constitution takes away the right to vote from persons convicted of felonies but does not command the manner in which the right to vote is restored, leaving it only to be in "the manner prescribed by law." Hence, it is the implementing legislation that determines whether a person convicted of a felony has met the requisite qualifications to exercise the fundamental right to vote. Plaintiffs in this case challenge the facial constitutionality of that implementing legislation, contending N.C.G.S.

§ 13-1 violates rights guaranteed by multiple provisions of the Declaration of Rights in Article I of our Constitution. Plaintiffs specifically contend that the statute unconstitutionally conditions the ability to vote on the possession and remittance of certain monetary amounts arising out of a person's felony conviction and that the statute unconstitutionally prevents persons convicted of a felony who have been released from incarceration, or were not sentenced to incarceration, from registering to vote and voting.

Plaintiffs' burden to show a likelihood of success on the merits of their claims is substantial because when a plaintiff challenges the facial constitutionality of a statute, the courts presume "that any act passed by the legislature is constitutional," and "will not strike it down if [it] can be upheld on any reasonable ground." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 486 (2005) (quoting *State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 281-82 (1998)); *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 111 (2018) (explaining that courts will not declare a law invalid unless it is determined to be "unconstitutional beyond a reasonable doubt"). Accordingly, "[a]n individual challenging the facial constitutionality of a legislative act 'must establish that no set of circumstances exists under which the [a]ct would be valid.'" *Thompson*, 349 N.C. at 491 (second alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100 (1987)).

*Plaintiffs' Claims Relating to Persons Subject to Financial Obligations  
as a Result of a Felony Conviction*

Section 13-1 of our General Statutes imposes upon a person convicted of a felony the requirement of an "unconditional discharge"—and, consequently, the inherent qualifications persons must meet to obtain such a discharge—to regain the right to vote. Even though N.C.G.S. § 13-1 was enacted due to Article VI, § 2(3), of our Constitution, this statute, like all enacted laws, must not run counter to a constitutional limitation or

prohibition, including those guaranteed in the Declaration of Rights contained in Article I of our Constitution. Section 11 of Article I declares 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,” N.C. Const. art. I, § 11, and Section 19 of Article I declares, in relevant part, that “[n]o person shall be denied the equal protection of the laws,” N.C. Const. art. I, § 19. Importantly, the “fundamental purpose” for which the Declaration of Rights was enacted is “to provide citizens with protection from the State’s encroachment upon these [enumerated] rights.” *Corum v. Univ. of N.C.*, 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992).

Article I, § 11, of our Constitution is clear: no property qualification shall affect the right to vote. Therefore, when legislation is enacted that restores the right to vote, thereby establishing qualifications which certain persons must meet to exercise their right to vote, such legislation must not do so in a way that makes the ability to vote dependent on a property qualification. The requirement of an “unconditional discharge” imposed by N.C.G.S. § 13-1 does exactly that—the ability for a person convicted of a felony to vote is conditioned on whether that person possesses, at minimum, a monetary amount equal to any fees, fines, and debts assessed as a result of that person’s felony conviction.

Article I, § 19, of our Constitution is equally clear that no person shall be denied the equal protection of the laws. Therefore, when legislation is enacted that restores the right to vote, thereby establishing terms upon which certain persons are able to exercise their right to vote, such legislation must not do so in a way that imposes unequal terms. The requirement of an “unconditional discharge” imposed by N.C.G.S. § 13-1 does exactly that—the terms upon which a person convicted of a felony is able to exercise the right to vote are not equal; the terms are instead dependent on that person’s financial status and whether

that person has the ability to pay the fees, fines, and debts assessed as a result of the person's felony conviction.

In light of the above, the Court finds there is a substantial likelihood that Plaintiffs will prevail on the merits and show beyond a reasonable doubt that N.C.G.S. § 13-1 is in violation of Article I, §§ 11 and 19 of the North Carolina Constitution because, by requiring an "unconditional discharge," the statute makes the ability to vote by a person convicted of a felony dependent on a property qualification and imposes unequal terms on that person exercising the right to vote.

The loss to Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable with voting set to commence in a matter of weeks for the upcoming 2020 general election. As discussed above, Plaintiffs have shown a likelihood of succeeding on the merits of their claims that N.C.G.S. § 13-1 violates multiple fundamental rights guaranteed by the North Carolina Constitution as those rights pertain to persons convicted of felonies and assessed fees, fines, and debts as a result of that conviction. As such, the Court finds that Plaintiffs are likely to sustain irreparable loss to their fundamental rights guaranteed by the North Carolina Constitution unless the injunction is issued, and likewise, issuance is necessary for the continued protection of Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation until there has been a full and final adjudication of *all* claims asserted in Plaintiffs' amended complaint.

As to a balancing of the equities, after weighing the potential harm to Plaintiffs if the preliminary injunction is not issued against the potential harm to Defendants if injunctive relief is granted, the Court concludes the balance of the equities weighs in Plaintiffs' favor. Indeed, the harm alleged by Plaintiffs is both substantial and irreparable should an election pass by with Plaintiffs being precluded from exercising their



fundamental right to vote simply as a result of them being subject to an assessment of fees, fines, and debts arising from a felony conviction.

*Plaintiffs' Claims Relating to Persons Released from, or Not Subject to, Incarceration,  
as a Result of a Felony Conviction*

Plaintiffs also contend N.C.G.S. § 13-1 impermissibly violates Article I, §§ 10, 12, 14, and 19 of our Constitution because the statute, by conditioning a restoration of the right to vote on an "unconditional discharge of an inmate, of a probationer, or of a parolee," precludes persons convicted of felonies who have been released from incarceration, or were not subject to incarceration, from registering to vote and voting.

Plaintiffs have put forward persuasive, historical evidence regarding the restoration of rights in our State for those persons convicted of felonies, particularly as it relates to the discretion left to government officials that ultimately determines when a person's rights are restored, as well as the disparate impact of that discretion on persons of lower wealth and persons of color. Defendants, however, have also put forward numerous state interests supporting the statute's requirement that rights be restored to persons convicted of felonies only upon and until such time as that person is unconditionally discharged, without regard to whether a person has been subject to incarceration.

Based upon the record thus far, while not making any findings whether the interests put forward by the state are supported by the facts or empirical evidence, the Court cannot conclude that Plaintiffs have met their substantial burden to demonstrate beyond a reasonable doubt that N.C.G.S. § 13-1 facially violates Article I, §§ 10, 12, 14, and 19 by preventing persons convicted of a felony who have been released from incarceration, or were not subject to incarceration, from registering to vote and voting. The Court therefore limits the injunctive relief provided in this order to those issues on which Plaintiffs prevail on their Motions for Summary Judgment.

### Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regard to those persons convicted of a felony and currently precluded from exercising their fundamental right to vote solely as a result of them being subject to an assessment of fees, fines, or other debts arising from a felony conviction. The Court further concludes, in its discretion and after a careful balancing of the equities, that the requested injunctive relief shall not issue in regard to those persons convicted of a felony who have been released from incarceration, or were not subject to incarceration, but remain precluded from registering to vote and voting solely on account of that person not being incarcerated. The Court further concludes that security is required of Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted.

The Honorable John M. Dunlop concurs in part and dissents in part from portions of this Order.

For the foregoing reasons, Plaintiffs' alternative motion for a preliminary injunction is GRANTED in part and DENIED in part as follows:

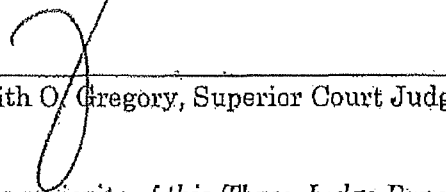
- I. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 11 and 19 for those persons convicted of a felony and, as a result, made subject to property qualifications is GRANTED.
  - a. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that person's only remaining barrier to obtaining an "unconditional discharge," other than regular conditions of probation pursuant to N.C.G.S. § 15A-1343(b), is the payment of a monetary amount.

- b. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probations was reduced to a civil lien.
- c. References in this Order to "Defendants" encompasses all individuals and entities referenced in this paragraph.

- II. Plaintiffs' motion for a preliminary injunction regarding Plaintiffs' claims under Article I, §§ 10, 12, 14, and 19 for those persons convicted of a felony but not subject to incarceration is DENIED.
- III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.
- IV. Plaintiffs' bond in the amount of \$1000 is sufficient and proper for the issuance of this Order.

SO ORDERED, this the 4 day of September, 2020.

  
\_\_\_\_\_  
Lisa C. Bell, Superior Court Judge

  
\_\_\_\_\_  
Keith O. Gregory, Superior Court Judge

*as a majority of this Three Judge Panel*

NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

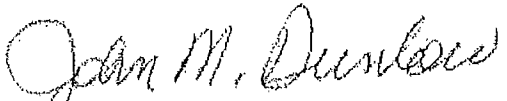
Defendants.

ORDER ON INJUNCTIVE RELIEF  
(DISSENT)

John Dunlow, dissenting.

For the reasons specified in my dissent to the majority's Order on summary judgment, I would find that Plaintiffs have not shown a likelihood of success on the merits of the case and deny injunctive relief.

This the 4<sup>th</sup> day of September, 2020.

  
\_\_\_\_\_  
John M. Dunlow

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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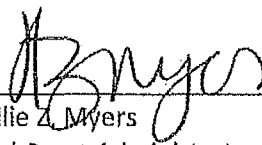
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\*Admitted pro hac vice

This the 4<sup>th</sup> day of September 2020.

  
\_\_\_\_\_  
Kellie Z. Myers  
Trial Court Administrator, 10<sup>th</sup> Judicial District  
kellie.z.myers@nccourts.org

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

# EXHIBIT B

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FILED

NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 19 CVS 15941

WAKE CO., C.S.C.

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

Defendants.

**ORDER ON AMENDED PRELIMINARY  
INJUNCTION**

This matter comes before the undersigned three-judge panel upon State Board Defendant's Motion for Clarification filed on August 21, 2021.

In this litigation, Plaintiffs seek a declaration that N.C.G.S. § 13-1, the North Carolina statute providing for the restoration of rights of citizenship—which includes the right to vote—for persons convicted of a crime, is facially unconstitutional and invalid under the North Carolina Constitution to the extent it prevents persons on probation, parole, or post-release supervision from voting in North Carolina elections. Plaintiffs also seek, in the alternative, injunctive relief. Specifically, Plaintiffs contend Section 13-1 of our General Statutes violates Article I, Sections 10, 11, 12, 14, and 19 of our Constitution.

Procedural History

Plaintiffs filed the initial complaint in this matter on November 20, 2019, and an amended complaint on December 3, 2019. Defendants filed answers to and motions to dismiss the amended complaint in January 2020; the motions to dismiss were subsequently withdrawn. On May 11, 2020, Plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction.

On June 17, 2020, this action was transferred to a three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4). On June 24, 2020, the Chief Justice of the Supreme Court of North Carolina, pursuant to N.C.G.S. § 1-267.1, assigned the undersigned three-judge panel to preside over the facial constitutional challenges raised in this litigation.

On September 4, 2020, a majority of the undersigned panel granted in part and denied in part Plaintiffs' motion for summary judgment, granted summary judgment in part to Defendants, and granted a preliminary injunction. The preliminary injunction was granted with respect to Plaintiff's claims under Article I, §§ 11 and 19 for those persons convicted of a felony and, as a result, made subject to property qualifications. Specifically, the preliminary injunction stated:

- a. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that person's only remaining barrier to obtaining an "unconditional discharge," other than regular conditions of probation pursuant to N.C.G.S. § 15A-1343(b), is the payment of a monetary amount.
- b. Defendants, their officers, agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them who receive actual notice in any manner of this Order are hereby enjoined from preventing a person convicted of a felony from registering to vote and exercising their right to vote if that has been discharged from probation, but owed a monetary amount upon the termination of their probation or if any monetary amount owed upon discharge from probation was reduced to a civil lien.

The following three claims remained for trial following the preliminary injunction and summary judgment:

1. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving all persons with felony convictions subject to probation, parole, or post-



- release supervision, who are not incarcerated, of the right to vote;
2. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving the African American community of substantially equal voting power; and
  3. that N.C.G.S. § 13-1 violates the Free Elections Clause of the North Carolina Constitution.

Trial on these claims was held in Wake County before the three-judge panel on August 16, 2021 through August 19, 2021. On August 19, 2021, the panel issued a clarifying ruling from the bench pertaining to the language on the forms promulgated by the State Board of Elections regarding voter eligibility in light of the September 4, 2020, preliminary injunction. In response to this ruling, State Board Defendants filed a Motion for Clarification, citing concerns on the administrability of a requirement that they identify a smaller segment of the population of North Carolinians whose only barrier to completing the conditions of their probation is the payment of a monetary obligation. A conference was held on the matter via WebEx on August 20, 2021 and the panel announced an oral ruling via conference on WebEx on August 23, 2021.

#### Voting Qualifications for Persons Convicted of Felonies

Article VI, Section 2 of the North Carolina Constitution delineates certain qualifications, or disqualifications, affecting a person's ability to vote in our State. Relevant to this case is Article VI, Subsection 2(3), which dictates that "[n]o 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(3).

Plaintiffs' action challenges the "manner prescribed by law" in which voting rights are automatically restored to persons convicted of felonies. The current iteration of the restoration of rights statute reads 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. § 13-1. That the present-day version of the statute requires the *unconditional* discharge of a person convicted of a felony is of particular import in this case when considering 1) the history of how our State has provided for the restoration of rights of citizenship, and 2) what is required of a person convicted of a felony to ultimately obtain an unconditional discharge.

#### History of Restoration of Rights of Citizenship in North Carolina

The manner prescribed by law to restore the rights of citizenship for certain persons has a long and relevant history. In 1835, North Carolina amended its constitution to permit the enactment of general laws regulating the methods by which rights of citizenship—including the right to vote—are restored to persons convicted of "infamous crimes." Infamous crimes included offenses which warranted "infamous punishments." Thereafter in

1840, a general law was passed regulating the restoration of rights, including granting the courts unfettered discretion in restoring rights of citizenship.

After the civil war, North Carolina adopted a new constitution which allowed all men to vote, eliminated property-based voting limitations, and abolished slavery. Persons convicted of specific crimes were not expressly forbidden by the constitution from voting; however, a combination of constitutional amendments—including an amendment in 1875 that provided for the disenfranchisement of persons convicted of felonies and infamous crimes—and laws passed over the following decades maintained limitations on the restoration of rights for persons convicted of certain crimes, thereby continuing to deny such persons the ability to vote. Judicial discretion remained part of the process for restoring a person's rights of citizenship.

These limitations lasted until 1971, when the reference to infamous crimes was removed from the constitutional provision and voting rights were taken away from only persons convicted of felonies. Later, the statute was further amended to remove certain, express requirements that must be met by a person convicted of a felony to have their rights of citizenship restored.

Today, the restoration of rights under N.C.G.S. § 13--1 is automatic upon a person's "unconditional discharge" and is not expressly subject to a discretionary decision by a government official, e.g., a judge. But while the final decision to restore a person's rights of citizenship is not left to the discretion of a judge, there do remain a number of discretionary decisions, especially in sentencing, but also in whether to charge an individual, what offenses to charge, whether to reduce charges, and whether a plea offer is extended, that have a direct effect upon when a person's right to vote is restored, along with the qualifications and requirements that must ultimately be satisfied before a person convicted of a felony is permitted to vote.

### Injunctive Relief

"The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an "extraordinary remedy" and will issue "only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge "should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability." *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Article VI, § 2(3), of our Constitution takes away the right to vote from persons convicted of felonies but does not command the manner in which the right to vote is restored, leaving it only to be in "the manner prescribed by law." Hence, it is the implementing legislation that determines whether a person convicted of a felony has met the requisite qualifications to exercise the fundamental right to vote. Plaintiffs in this case challenge the facial constitutionality of that implementing legislation, contending N.C.G.S. § 13-1 violates rights guaranteed by multiple provisions of the Declaration of Rights in Article I of our Constitution.

Plaintiffs' burden to show a likelihood of success on the merits of their claims is substantial because when a plaintiff challenges the facial constitutionality of a statute, the courts presume "that any act passed by the legislature is constitutional," and "will not strike it down if [it] can be upheld on any reasonable ground." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 486 (2005) (quoting *State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 281-82 (1998)); *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 111 (2018) (explaining that courts will not declare a law invalid unless it is determined to be "unconstitutional beyond a reasonable doubt"). Accordingly, "[a]n individual challenging the facial constitutionality of a legislative act 'must establish that no set of circumstances exists under which the [a]ct would be valid.'" *Thompson*, 349 N.C. at 491 (second alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100 (1987)).

In addition to the authority to grant and deny equitable relief, North Carolina trial courts have the power to shape that relief as a matter of discretion. *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 399, 474 S.E.2d 783, 787 (1996). It is the "unique role of the courts" to be able to "fashion equitable remedies" such as injunctions when it is necessary to "protect and promote the principles of equity." *Lankford v. Wright*, 347 N.C. 115, 120, 489 S.E.2d 604, 607 (1997).

*Expanding the Scope of the September 4, 2020, Preliminary Injunction to a Wider Class of Individuals*

The September 4, 2020, preliminary injunction was intended to allow those individuals who are subject to post-release supervision, parole, or probation solely by virtue of continuing to owe monetary obligations to register to vote. The language on State Board of Elections forms was changed to reflect the preliminary injunction; however, through no intentional fault of either party, this language does not adequately reflect the intent of the

preliminary injunction. The panel advised the parties of this on August 19, 2021, and indicated that an immediate change would need to be made to the forms to accurately reflect the preliminary injunction's intent and effect.

The panel met with the parties on August 20, 2021, upon concerns from State Board Defendants and Plaintiffs about implementation and administrability of the language as proposed by State Board Defendants. After a careful analysis of the issues presented, the Court has determined that a modification of the preliminary injunction to enjoin denial of voter registration for any convicted felon who is on community supervision, whether probation, post release supervision, or parole, is required.

Plaintiffs have demonstrated a likelihood of success based on their remaining claims that stood for trial, in addition to the likelihood of success on the merits of their claims as addressed in this Court's September 4, 2020, preliminary injunction. As acknowledged by Legislative Defendants at trial, there is no denying the insidious, discriminatory history surrounding voter disenfranchisement and efforts for voting rights restoration in North Carolina. As to a balancing of the equities, after weighing the potential harm to Plaintiffs if the preliminary injunction is not modified to include a broader class of individuals against the harm to Defendants if the injunction is modified, the Court concludes the balance of equities weighs in Plaintiffs' favor.

As an initial matter, the State Board Defendants represented to the Court that there was an immediate need for clarification and definitive language on State Board of Election forms in light up the upcoming municipal elections. There are several administrability challenges expressed by State Board Defendants that present a serious threat of harm to Plaintiffs and their clients. It is apparent to the Court that State Board Defendants may be unable to effectively identify individuals covered by the September 4, 2020, preliminary injunction. State Board Defendants asserted that it may be impossible for the North

Carolina Department of Safety (DPS) to be able to isolate individuals who are on post-release supervision, parole, or probation solely as the result of a monetary obligation. DPS has no mechanism for identifying whether individuals would not be serving probation but for those monetary obligations.

State Board Defendants presented the Court with two proposed avenues to implement the September 4, 2020, preliminary injunction. The first avenue would place the burden of disproving ineligibility on voters who may be eligible under the original injunction language. State Board Defendants admit this may result in preventing individuals who are eligible to vote from voting. The second proposal would involve DPS removing all individuals with monetary obligations as a term of their probation from their feed of supervision, thereby allowing all of those individuals to register and vote. However, that could lead to individuals who are not in fact covered by the September 4, 2020, preliminary injunction being erroneously told that they are eligible to vote. This could expose these individuals to criminal liability, as it is a Class I felony in North Carolina for a felon to vote without having had their voting rights restored. *See* N.C.G.S §163-275. Both of these solutions are untenable.

Further, neither of the proposals would address the 5,075 federal probationers who are not subject to conditions of probation under North Carolina law, but are ineligible to vote due to their felon status.

The harm alleged by Plaintiffs is both substantial and irreparable should yet another election pass by with Plaintiffs being precluded from their fundamental right to vote by virtue of them being on parole, probation, or post-release supervision as a result of a felony conviction. In addition, expanding the scope of the Courts prior preliminary injunction will ease the administrative burden on State Board Defendants.

Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that it is necessary for equity and administrability of the intent of the September 4, 2020, preliminary injunction to amend that injunction to include a broader class of individuals. The Court further concludes that the security already submitted by Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted is sufficient and no further security is needed.

The Honorable John M. Dunlow dissents from this Order.

For the foregoing reasons, and in light of the need for clarification and clear administrability of the September 4, 2020, preliminary injunction, it is ORDERED that:

- I. The September 4, 2020, Preliminary Injunction is modified to enjoin Defendants from denying voter registration to any convicted felon who is on community supervision, whether probation, post release supervision, or parole.
- II. This ruling applies to persons convicted in both North Carolina state and federal courts and is effective immediately.
- III. This Preliminary Injunction shall continue in effect until there is a full determination of the merits of the claims in this action, unless otherwise expressly superseded by a subsequent order of the Court.
- IV. Plaintiffs' previously submitted bond in the amount of \$1000 is sufficient and proper for the issuance of this Order.

SO ORDERED, this the 27<sup>th</sup> day of August, 2021.

  
\_\_\_\_\_  
Lisa C. Bell, Superior Court Judge

  
\_\_\_\_\_  
Keith O. Gregory, Superior Court Judge

*as a majority of this Three Judge Panel*



NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

Plaintiffs,

v.

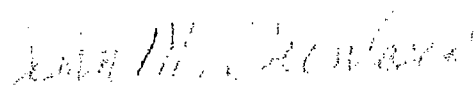
TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

Defendants.

**ORDER ON AMENDED PRELIMINARY  
INJUNCTION  
(DISSENT)**

John Dunlow, dissenting.

For the reasons specified in my dissent to the majority's September 4, 2020, Order on summary judgment and preliminary injunction, I would find that Plaintiffs have not shown a likelihood of success on the merits of the case and would not amend the preliminary injunction.



John M. Dunlow, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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*Counsel for Legislative Defendants*

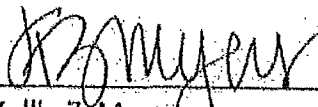
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*Counsel for Plaintiffs*

\*Admitted pro hac vice

This the 27<sup>th</sup> day of August 2021.

  
\_\_\_\_\_  
Kelle Z. Myers  
Trial Court Administrator  
10<sup>th</sup> Judicial District  
kelle.z.myers@nccourts.org

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

# EXHIBIT C

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2021 AUG 27 PM 4:06

FILE NO: 19 CVS 15941

COMMUNITY SUCCESS INITIATIVE, C.S.C.  
*et al.*, )

Plaintiffs, )

v. )

TIMOTHY K. MOORE, in his official, )  
capacity as speaker of the North Carolina )  
House of Representatives, *et al.*, )  
Defendants. )

**ORDER**

This matter comes before the undersigned three-judge panel upon Legislative Defendants' Motion for a Stay Pending Appeal. After considering Legislative Defendants' Motion and the matters contained there, and having reviewed the submissions of the parties, the Court, in its discretion, hereby **DENIES** the Legislative Defendants' Motion.

This the 27th day of August, 2021.

  
\_\_\_\_\_  
Keith O. Gregory, Superior Court Judge

**/s/ Keith O. Gregory**  
\_\_\_\_\_  
Keith O. Gregory, Superior Court Judge

**/s/ John M. Dunlow**  
\_\_\_\_\_  
John M. Dunlow, Superior Court Judge

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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Whitley Carpenter  
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*Counsel for Legislative Defendants*

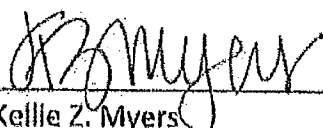
R. Stanton Jones\*  
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*Counsel for Plaintiffs*

\*Admitted pro hac vice

This the 27<sup>th</sup> day of August 2021.

  
\_\_\_\_\_  
Kelle Z. Myers  
Trial Court Administrator  
10<sup>th</sup> Judicial District  
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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

# EXHIBIT D

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## North Carolina Court of Appeals

Fax: (919) 831-3615  
Web: <https://www.nccourts.gov>

EUGENE H. SOAR, Clerk  
Court of Appeals Building  
One West Morgan Street  
Raleigh, NC 27601  
(919) 831-3600

Mailing Address:  
P. O. Box 2779  
Raleigh, NC 27602

No. P21-340

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  
AND SHAKITA NORMAN,

PLAINTIFFS,

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; AND DAVID C. BLACK, IN  
HIS OFFICIAL CAPACITY AS MEMBER OF THE  
NORTH CAROLINA STATE BOARD OF  
ELECTIONS.

DEFENDANTS.

From Wake  
( 19CVS15941 )

**ORDER**

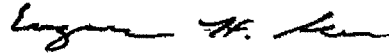
The following order was entered:

The petition for writ of supersedeas filed in this cause by defendants Timothy Moore, in his official capacity as Speaker of the North Carolina House of Representatives, and Phillip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, on 30 August 2021 is allowed. The 'Order on Amended Preliminary Injunction' entered on 27 August 2021 is hereby stayed pending disposition of defendants' appeal or until further order of this Court.

By order of the Court this the 3rd of September 2021.

The above order is therefore certified to the Clerk of the , Wake County.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 3rd day of September 2021.



Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K. and Berger, Philip E.  
Mr. Nathan A. Huff, Attorney at Law  
Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al  
Ms. Whitley J. Carpenter, Attorney at Law  
Ms. Kathleen F. Roblez, Attorney at Law  
Ms. Ashley Mitchell, Attorney at Law  
Mr. Terence Steed, Assistant Attorney General  
Mr. Paul Mason Cox, Special Deputy Attorney General  
Hon. Frank Blair Williams, Clerk of

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# EXHIBIT E

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SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

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; AND )  
SHAKITA NORMAN )

) WAKE COUNTY

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; AND )  
DAVID C. BLACK, IN HIS OFFICIAL )

CAPACITY AS MEMBER OF THE NORTH )  
CAROLINA STATE BOARD OF )  
ELECTIONS )

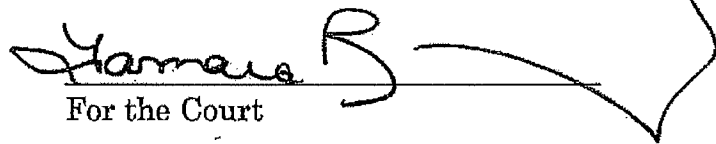
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ORDER

On Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay, this Court orders that the status quo be preserved pending defendant's appeal of the expanded preliminary injunction issued initially by the trial court on 23 August 2021 in open court by maintaining in effect the original preliminary injunction issued on 4 September 2020 as it was understood at the time and implemented for the November 2020 elections. Further, the Court orders that the Court of Appeals stay issued 3 September 2021 be implemented prospectively only, meaning that any person who registered to vote at a time when it was legal for that person to register under then-valid court orders as they were interpreted at the time, shall remain legally registered voters. The North Carolina Board of Elections shall not remove from the voter registration database any person legally registered under the expanded preliminary injunction between 23 August 2021 and 3 September 2021, and those persons are legally registered voters until further Order.

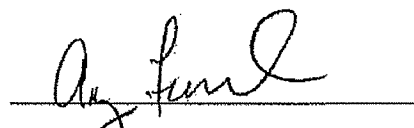
In all other respects, Plaintiffs' Petition for a Writ of Supersedeas and Emergency Motion for a Temporary Stay is denied without prejudice.

By order of the Court in conference, this the 10th day of September 2021.

  
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina,  
this the 10 day of September 2021.



  
AMY D. FUNDERBURK  
Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals

Ms. Nicole J. Moss, Attorney at Law, For Moore, Timothy K., et al - (By Email)

Mr. Nathan A. Huff, Attorney at Law, For Moore, Timothy K., et al - (By Email)

Mr. Daryl V. Atkinson, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Ms. Whitley J. Carpenter, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Ms. Kathleen F. Roblez, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Ms. Ashley Mitchell, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections - (By Email)

Mr. Stephen D. Feldman, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Mr. Matthew W. Sawchak, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Mr. Adam K. Doerr, Attorney at Law, For Community Success Initiative, et al. - (By Email)

Ms. Caitlin Swain, Attorney at Law, For Community Success Initiative, et al.

Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections - (By Email)

Mr. Jared M. Butner, Attorney at Law, For Moore, Timothy K., et al - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)

West Publishing - (By Email)

Lexis-Nexis - (By Email)

# EXHIBIT F

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## Who Can Register



### Qualifications to Register to Vote

To register to vote in North Carolina, you must:

- Be a U.S. citizen.
  - See the USCIS website for citizenship information.  
(<https://www.uscis.gov/forms/explore-my-options/proof-of-citizenship-for-us-citizens>)
  - Citizenship documents are NOT required to register.

Live in the county where you are registering, and have resided there for at least 30 days prior to the date of the election.

- The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) allows certain voters who are active duty military or their families as well as U.S. citizens abroad special rights that provide an expedited means to register and vote by mail-in ballot. Find more information on [Military and Overseas Voting](https://www.ncsbe.gov/voting/vote-mail/military-and-overseas-voting). (<https://www.ncsbe.gov/voting/vote-mail/military-and-overseas-voting>)
- Be at least 18 years old, or will be by the date of the general election.
  - [16- and 17-year-olds may preregister to vote. \(/node/33\)](#)
  - 17-year-olds may vote in a primary election if they will be 18 at the time of the general election.
- Not be serving a sentence for a felony conviction, including probation, parole, or post-release supervision.
  - Note: By order of the court, you may now register and vote if you are serving an extended term of probation, post-release supervision, or parole, you have outstanding fines, fees, or restitution, and you do not know of another reason that your probation, post-release supervision, or parole was extended.
  - Once you have completed a felony sentence, including any probation, parole, or post-release supervision, or received a pardon, you are eligible to register and vote. No additional documentation is needed.
  - If you have been discharged from probation, you are eligible to register and vote, even if you still owe money or have a civil lien.

Note: An inactive voter is still a registered voter. A voter who is inactive status will be asked to confirm their addresses when they appear to vote. No special document is required.

## Registering as a College Student

Find out where to register and how to register during the one-stop early voting period at [Registering as a College Student. \(/registering/who-can-register/registering-college-student\)](#)

## Registering as a Person in the NC Criminal Justice System

To register to vote, you must not be currently serving a felony sentence, including any probation, post-release supervision, or parole. Find more information at [Registering as a Person in the NC Criminal System. \(/registering/who-can-register/registering-person-criminal-justice-system\)](#)

## Preregistering to Vote When You are 16 or 17 Years Old

Eligible voters who preregister will automatically be registered to vote when they turn 18 years old. Find more information at [Preregistering to Vote When You are 16 or 17 Years Old](#). ([/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old](#))

Learn how to register ([/registering/how-register](#)) →

### Related Content

[Determine if You Are a U.S. Citizen | USCIS](#) (<https://www.uscis.gov/forms/explore-my-options/proof-of-citizenship-for-us-citizens>)

[Military and Overseas Voting](#) ([/voting/vote-mail/military-and-overseas-voting](#))

[N.C.G.S. Chapter 163, Article 6: Qualifications of Voters.](#)

([https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter 163/Article 6.html](https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter%20163/Article%206.html))

[N.C.G.S. Chapter 163, Article 7A: Registration of Voters.](#)

([https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter 163/Article 7A.html](https://www.ncleg.gov/EnactedLegislation/Statutes/html/ByArticle/Chapter%20163/Article%207A.html))

[Registering as a College Student](#) ([/registering/who-can-register/registering-college-student](#))

[Registering as a Person in the NC Criminal Justice System](#) ([/registering/who-can-register/registering-person-criminal-justice-system](#))

[Preregistering to Vote When You are 16 or 17 Years Old](#) ([/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old](#))

[Registering](#) ([/registering](#))

### Registering



**[FAQ: Voter Registration \(/registering/faq-voter-registration\)](/registering/faq-voter-registration)**

**[Who Can Register \(/registering/who-can-register\)](/registering/who-can-register)**

**[Registering as a College Student \(/registering/who-can-register/registering-college-student\)](/registering/who-can-register/registering-college-student)**

**[Registering as a Person in the Criminal Justice System \(/registering/who-can-register/registering-person-criminal-justice-system\)](/registering/who-can-register/registering-person-criminal-justice-system)**

**[Preregistering to Vote When You are 16 or 17 Years Old \(/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old\)](/registering/who-can-register/preregistering-vote-when-you-are-16-or-17-years-old)**

**[How to Register \(/registering/how-register\)](/registering/how-register)**

**[Checking Your Registration \(/registering/checking-your-registration\)](/registering/checking-your-registration)**

**[Updating Registration \(/registering/updating-registration\)](/registering/updating-registration)**

**[Choosing Your Party Affiliation \(/registering/choosing-your-party-affiliation\)](/registering/choosing-your-party-affiliation)**

**[Hosting Voter Registration Drives \(/registering/hosting-voter-registration-drives\)](/registering/hosting-voter-registration-drives)**

**[National Voter Registration Act \(NVRA\) \(/registering/national-voter-registration-act-nvra\)](/registering/national-voter-registration-act-nvra)**

<https://www.ncsbe.gov/registering/who-can-register>

# EXHIBIT G

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NORTH CAROLINA

2022 MAR 28 PM 4: 28

THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

WAKE CO. ~~SSC~~

SUPERIOR COURT DIVISION

FILE NO. 19 CVS 15941

BY: SOJ

COMMUNITY SUCCESS INITIATIVE,  
*et al.*,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives, *et al.*,

Defendants.

FINAL JUDGMENT AND ORDER

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## TABLE OF CONTENTS

	Page
<b>BACKGROUND</b> .....	3
<b>LEGAL STANDARD</b> .....	5
<b>FINDINGS OF FACT</b> .....	8
<b>A. The History and Intent of N.C.G.S. § 13-1 Are Rooted in Racial Discrimination Against African American People and Suppression of African American Political Power</b> .....	8
1. The 1800s .....	9
2. 1897 to 1970 .....	16
3. The Early 1970s .....	17
<b>B. Present Day Effect of N.C.G.S. § 13-1.</b> .....	23
1. Denial of the Franchise to Over 56,000 Persons on Community Supervision. ....	24
2. Racial Disparities in Felon Disenfranchisement .....	25
<b>C. N.C.G.S. § 13-1 Denies the Franchise to Persons on Community Supervision Who Would Otherwise Register and Vote and Likely Affects the Outcome of Elections.</b> .....	29
1. Expected Voter Turnout Among People on Felony Supervision .....	30
2. The Potential Impact on Elections .....	37
<b>D. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest and Causes Substantial Harm.</b> .....	39
1. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest .....	39
2. N.C.G.S. § 13-1 Does Substantial Harm .....	43
<b>CONCLUSIONS OF LAW</b> .....	55
<b>I. N.C.G.S. § 13-1's Denial of the Franchise to Persons on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Equal Protection Clause</b> .....	55
<b>A. N.C.G.S. § 13-1 Impermissibly Discriminates Against African American People in Intent and Effect and Denies Substantially Equal Voting Power to African American People</b> .....	56

B.	N.C.G.S. § 13-1 Impermissibly Deprives All Individuals on Felony Probation, Parole, or Post-Release Supervision of the Fundamental Right to Vote.....	57
C.	N.C.G.S. § 13-1's Violation of Article 1, § 19 Triggers Strict Scrutiny.....	58
II.	N.C.G.S. § 13-1's Denial of the Franchise to Individuals on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Free Elections Clause.....	59
A.	N.C.G.S. § 13-1 Prevents Elections from Ascertaining the Will of the People.....	59
B.	N.C.G.S. § 13-1's Interference with Free Elections Triggers Strict Scrutiny.....	60
III.	N.C.G.S. § 13-1's Denial of the Franchise to Persons on Community Supervision Cannot Satisfy Strict or Any Scrutiny.....	61
IV.	The Constitutional Provision Regarding Felony Disenfranchisement Does Not Insulate N.C.G.S. § 13-1 From Constitutional Challenge ....	63
	DISSENT .....	66

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This matter came on for trial in Wake County before the undersigned three-judge panel on August 16 through August 19, 2021. In this litigation, Plaintiffs seek a declaration that N.C.G.S. § 13-1, the North Carolina statute providing for the restoration of rights of citizenship—which includes the right to vote—for persons convicted of a crime, is facially unconstitutional and invalid under the North Carolina Constitution to the extent it prevents persons on probation, parole, or post-release supervision from voting in North Carolina elections. Plaintiffs also seek, in the alternative, injunctive relief. Specifically, Plaintiffs contend Section 13-1 of our General Statutes violates Article I, Sections 10, 11, 12, 14, and 19 of our Constitution.

### **BACKGROUND**

1. Plaintiffs filed the initial complaint in this matter on November 20, 2019, and an amended complaint on December 3, 2019. Defendants filed answers to and motions to dismiss the amended complaint in January 2020; the motions to dismiss were subsequently withdrawn. On May 11, 2020, Plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction.

2. On June 17, 2020, this action was transferred to a three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4). On June 24, 2020, the Chief Justice of the Supreme Court of North Carolina, pursuant to N.C.G.S. § 1-267.1, assigned the undersigned three-judge panel to preside over the facial constitutional challenges raised in this litigation.

3. On September 4, 2020, a majority of the undersigned panel granted in part and denied in part Plaintiffs' motion for summary judgment, granted summary

judgment in part to Defendants, and granted a preliminary injunction. The preliminary injunction was granted with respect to Plaintiffs' claims under Article I, §§ 11 and 19 for those persons convicted of a felony and, as a result, made subject to property qualifications.

4. The following three claims remained for trial following the preliminary injunction and summary judgment:

- a. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving all persons with felony convictions subject to probation, parole, or post-release supervision, who are not incarcerated, of the right to vote;
- b. that N.C.G.S. § 13-1 violates the Equal Protection Clause of the North Carolina Constitution by depriving the African American community of substantially equal voting power; and
- c. that N.C.G.S. § 13-1 violates the Free Elections Clause of the North Carolina Constitution.

5. Trial on these claims was held in Wake County before the three-judge panel on August 16, 2021, through August 19, 2021. On August 19, 2021, the panel issued a clarifying ruling from the bench pertaining to the language on the forms promulgated by the State Board of Elections regarding voter eligibility in light of the September 4, 2020, preliminary injunction.

6. On August 23, 2021, the panel orally issued an amended preliminary injunction expanding the injunction entered on September 4, 2020, to enjoin

Defendants from denying voter registration to any convicted felon who is on community supervision, whether probation, post-release supervision, or parole. This Order applied to individuals convicted in North Carolina state court and those individuals convicted in federal courts. The amended preliminary injunction was filed on August 27, 2021.

## LEGAL STANDARD

### **A. Facial Constitutional Challenges**

7. “It is well settled in North Carolina that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016)(quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989).

### **B. Equal Protection**

8. *Village of Arlington Heights v. Metro Hous. Dev. Corp.* sets out the appropriate framework by which to analyze whether an official action was motivated by discriminatory purpose. 429 U.S. 252 (1977). The North Carolina Court of Appeals discussed this framework in *Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 (2020). “[P]roof of a racially discriminatory intent or purpose” will show “a violation of the Equal Protection Clause.” *Id.*



9. *Arlington Heights* laid out a non-exhaustive list of factors for courts to consider. *Id.* at 18, 840 S.E.2d 244 at 254 (2020). Those factors include: (1) the law’s historical background, (2) the specific sequence of events leading to the law’s enactment, including any departure from the normal procedural sequence, (3) the legislative history of the decision, and (4) the impact of the law and whether it bears more heavily on one race than another. *Arlington Heights*, 429 U.S. at 266-68.

10. Plaintiffs “need not show that discriminatory purpose was the ‘sole[ ]’ or even a ‘primary’ motive for the legislation, just that it was ‘a motivating factor.’” *Holmes*, 270 N.C. App. at 16–17 (quoting *Arlington Heights*).

11. “Once racial discrimination is shown to have been a substantial or motivating factor behind enactment of the law, the burden shifts to the law’s defenders to demonstrate that the law would have been enacted without this factor. Although . . . North Carolina caselaw generally gives acts of the General Assembly great deference, such deference is not warranted when the burden shifts to a law’s defender after a challenger has shown the law to be the product of a racially discriminatory purpose or intent.” *Holmes*, 270 N.C. App. at 19 (quotation marks and citations omitted).

12. The injury in an equal protection claim lies in the denial of equal treatment itself, not the ultimate inability to obtain the benefit. *Holmes*, 270 N.C. App. at 14 n. 4. The fact that Plaintiffs may ultimately be able to comply with the requirements of N.C.G.S. § 13-1 and vote is not determinative of whether

compliance with the requirements of N.C.G.S. § 13-1 results in an injury to Plaintiffs. *See id.*

13. Further, North Carolina's Equal Protection Clause expansively 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 (2002). "It is well settled in this State that the right to vote on equal terms is a fundamental right." *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted).

14. If a statute interferes with the exercise of a fundamental right, strict scrutiny applies even if the affected group is not a suspect class. *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394; *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990).

### C. Free Elections Clause

15. The Free Elections Clause, Art. I, § 10, mandates that elections must be conducted freely and honestly, to ascertain, fairly and truthfully, the will of the people.

16. Our Supreme Court has elevated this principle to the highest legal standard, noting that it is a "compelling interest" of the State "in having fair, honest elections." *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993).

17. North Carolina's Free Elections Clause dates back to the North Carolina Declaration of Rights of 1776. *Harper v. Hall*, 2022-NCSC-17, P134 (2022). The framers of the Declaration of Rights modeled it on a provision in the 1689

English Bill of Rights stating that “election of members of parliament ought to be free.” *Id.* (quoting Bill of Rights 1689, 1 W. & M. c. 2 (Eng.)).

18. As the Supreme Court of North Carolina explained 145 years ago, “[o]ur government is founded on the will of the people,” and “[t]heir will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875)). A “free” election, therefore, must reflect to the greatest extent possible the will of *all* people living in North Carolina communities. *Id.* at 222-23 (the franchise belongs to “every” resident, as “government affects his business, trade, market, health, comfort, pleasure, taxes, property and person”).

#### **FINDINGS OF FACT**

##### **A. The History and Intent of N.C.G.S. § 13-1 Are Rooted in Racial Discrimination Against African American People and Suppression of African American Political Power**

19. Plaintiffs’ expert Dr. Vernon Burton serves as the Judge Matthew J. Perry Distinguished Professor of History at Clemson University. 8/16/21 Trial Tr. 64:16-17; PX-27 at 1 (Burton Report); PX-28 (Burton CV). The Court accepted Dr. Burton as an expert in American history with a particular focus on the American South, race relations and racial discrimination in the American South, the Civil War and Reconstruction, and the civil rights movement. 8/16/21 Trial Tr. 76:8-23. Dr. Burton described the history and intent behind North Carolina’s felony disenfranchisement and rights restoration provisions. The Court credits Dr. Burton’s testimony, as well as the materials on which he relied, and accepts his findings and conclusions.

1.       **The 1800s**

20.       Between 1835 and 1868, North Carolina's Constitution forbid African Americans, including free African Americans, from voting. During this period, North Carolina did not have a disenfranchisement provision specific to felons, but rather excluded "infamous" persons from suffrage. N.C. Const. Art. I, § 4, pt. 4 (1776, amended in 1835) (authorizing the legislature to pass laws for restoration of rights to "infamous" persons). Infamy could result either from a conviction for an infamous crime such as treason, bribery, or perjury, or from the receipt of an infamous punishment such as whipping. 8/16/21 Trial Tr. 82:2-16; Joint Stipulation of Facts ("Fact Stip.") ¶ 21 (attached as Exhibit 1 to the parties' Proposed Joint Pre-Trial Order).

21.       In 1868, after the Civil War, North Carolina adopted a new Constitution as a condition of rejoining the Union. Approximately 15 of the 120 delegates to the 1868 Convention were African American, and others were prominent advocates for equality. 8/16/21 Trial Tr. 97:4-15. The 1868 Constitution provided for universal male suffrage, eliminated property requirements to vote, and abolished slavery. N.C. Const. of 1868, art. I, § 33; *id.* art. VI, § 1; Fact Stip. ¶ 24. The 1868 Constitution did not contain a felony disenfranchisement provision. 8/16/21 Trial Tr. 97:23-25.

22.       The 1868 Constitution, particularly its universal suffrage provision, provoked a violent backlash by White supremacists, called the Kirk Holden War. *Id.* at 98:1-25. The Ku Klux Klan murdered African American elected officials and

White Republicans and engaged in a campaign of fraud and violent intimidation of African American voters. *Id.*; PX-27 at 24-26.

23. As part of this backlash against African American suffrage, in the late 1860s, White former Confederates in North Carolina conducted an extensive campaign of convicting African American men of petty crimes *en masse* and whipping them to disenfranchise them “in advance” of the Fifteenth Amendment. 8/16/21 Trial Tr. 83:22-93:2; PX-27 at 19-22. Contemporary newspapers acknowledged that the goal of this whipping campaign was to take advantage of North Carolina’s law in existence at the time that disenfranchised anyone subject to a punishment of whipping. A January 1867 article in the National Anti-Slavery Standard explained that “in all country towns the whipping of Negroes is being carried on extensively,” that the “real motive ... is to guard against their voting in the future, there being a law in North Carolina depriving those publicly whipped of the right to vote,” and that “the practice was carried on upon such a scale at Raleigh that crowds gathered every day at the courthouse to see the Negroes whipped.” PX-161. An 1867 article in *Harper’s Weekly* described “the public whipping of colored men as fast as they were convicted and sentenced to be whipped by the court,” taking place “every day during about a month,” and explained the purpose: “even if the suffrage were extended to colored men,” those punished by a whipping “are disqualified in advance.” PX-158; *see also* PX-159 (March 1867 Atlantic Monthly article recounting same). Rep. Thaddeus Stevens described this vicious campaign on the floor of the U.S. House of Representatives, explaining that “in one county ...

they whipped *every adult male* negro whom they knew of. They were all convicted and sentenced at once, and [the Freedmen's Bureau official] ascertained by intermingling with the people that it was for the purpose of preventing these negroes from voting." PX-160 (emphasis added). Stevens understood that this tactic would continue unless Congress stepped in and accordingly proposed a federal law banning disenfranchisement "for any crime other than for insurrection or treason," *id.*, but it did not become law.

24. As a consequence of their campaign to disenfranchise African American men, White Democrats regained control of the General Assembly in 1870 and, by 1875, further gains enabled them to call a constitutional convention to amend the 1868 Constitution. The "overarching aim" of those amendments was to "instill White supremacy and particularly to disenfranchise African-American voters." 8/16/21 Trial Tr. 100:2-6; *see id.* at 104:10-105:14. The amendments were ratified in 1876 and included provisions banning interracial marriage and requiring segregation in public schools. 1875 Amendments to the N.C. Const. of 1868, Amends. XXVI & XXX; Fact Stip. ¶ 25. Another amendment stripped counties of the ability to elect their own local officials, including judges, giving that power instead to the General Assembly. Amend. XXV; Fact Stip. ¶ 25. The purpose of this amendment was to prevent African Americans from electing African American judges, or judges who were likely to support equality. PX-27 at 31; 8/16/21 Trial Tr. 104:10-105:14.

25. Notably, the 1876 constitutional amendments also disenfranchised everyone “adjudged guilty of felony.” 1875 Amendments to the N.C. Const. of 1868, Amend. XXIV. The amendment further provided that such persons would be “restored to the rights of citizenship in a mode prescribed by law.” *Id.* This was the first time in North Carolina’s history that the State allowed for the disenfranchisement of all persons convicted of any type of felony.

26. In 1877, in the first legislative session after the 1876 constitutional amendments were ratified, the General Assembly enacted a law implementing the felony disenfranchisement constitutional provision. Fact Stip. ¶ 26. The 1877 law barred all people with felony convictions from voting unless their rights were restored “in the manner prescribed by law.” *Id.*; PX-52 at 519-20 (1876-77 Sess. Laws 519, Ch. 275, § 10); 8/16/21 Trial Tr. 108:19-110:6.

27. For the method of rights restoration, the 1877 disenfranchisement statute incorporated a preexisting statute from 1840 that governed rights restoration for individuals convicted of the most heinous crimes—treason and other “infamous” crimes. Fact Stip. ¶¶ 23, 27. The 1877 statute took all of the onerous requirements for rights restoration that had previously applied only to people convicted of treason and for the first time extended them to anyone convicted of any felony. 8/16/21 Trial Tr. 112:20-113:10, 165:15-18.

28. The 1877 law did not just disenfranchise people with felony convictions, it also continued that disenfranchisement even after those individuals were released from incarceration and living in North Carolina communities.

29. Extending the 1840 statute to apply to felonies meant that individuals had to wait four years from the date of their felony conviction to file the petition seeking rights restoration. They also had to secure the testimony of “five respectable witnesses who have been acquainted with the petitioner’s character for three years next preceding the filing of the petition, that his character for truth and honesty during that time has been good.” Fact Stip. ¶ 23. The witness requirement meant that no one could petition for rights restoration until at least three years had elapsed since their release from prison. 8/16/21 Trial Tr. 112:8-19. In addition, the extension of the 1840 statute meant that anyone convicted of a felony was required to individually petition a judge for the restoration of voting rights, and the judge had unfettered discretion to reject the petition. Fact Stip. ¶ 23. Likewise, anyone convicted of a felony was required to post their petition for rights restoration on the courthouse door for a 3-month period before their hearing, and anyone from the community could come in to oppose the petition. *Id.* Until 1877, these requirements applied only to people convicted of the most egregious crimes against the community, like treason.

30. The 1877 implementing legislation also created harsh new penalties for voting before one’s rights were restored. PX-52 at 537 (1876-77 N.C. Sess. Laws., Ch. 275, § 62). The legislation provided that a person who voted before their rights were restored after a felony conviction “shall be punished by a fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding two years, or both.” *Id.* Dr. Burton described that penalty as “extraordinary for the time,”



particularly in light of the fact that the per capita income of African American people in the South at the time was just \$40.01. 8/16/201 Trial Tr. 113:12-114:2; PX-27 at 36. These penalties carry through to this day. Under current North Carolina law, illegally voting while on probation, parole, or post-release supervision is a felony that carries a maximum sentence of two years in prison. N.C.G.S. §§ 163-275, 15A-1340.17.

31. The goal of the felony disenfranchisement regime established in 1876 and 1877, including the 1877 expansion of the onerous 1840 rights restoration regime to apply to all felonies, was to discriminate against and disenfranchise African American people. 8/16/21 Trial Tr. 114:10-19; PX-27 at 24-37.

32. White Democrats drew on the success of the whipping campaign, when they for the first time realized that they could use crime-based disenfranchisement as a tool to suppress African American votes and African American political power. *Id.* at 95:16-96:2. The idea was to accomplish indirectly what the Fifteenth Amendment prohibited North Carolina from doing directly. The state constitutional amendment was proposed by Colonel Coleman, a former Confederate who had been instructed by his nominating county to lead a “crusade” against the “radical civil rights officers’ holders party,” *i.e.*, the party that supported equal rights for African American people. *Id.* at 100:25-102:5. The committee that prepared the 1877 implementing legislation was chaired by Colonel John Henderson, another former Confederate who later would preside over the lynching of three African Americans. *Id.* at 105:18-106:12.

33. The disenfranchisement regime capitalized on Black Codes that North Carolina had enacted in 1866, which allowed sheriffs to charge African American people with crimes at their discretion, thus disenfranchising them. 8/16/21 Trial Tr. 82:17-83:21.

34. All the African American delegates at the 1876 convention voted against felony disenfranchisement; one explained that the “measure was intended to disenfranchise his people.” *Id.* at 103:15-104:9. A contemporary North Carolina newspaper advocating for the provision stated in 1876 that “the great majority of the criminals are Negroes” and that felony disenfranchisement would therefore tend to “restrain their race from crime.” PX-162; PX-27 at 31. White North Carolinians declared that “all Negroes are natural born thieves.” PX-27 at 33-34. Other Democrats used coded language, like asserting that felony disenfranchisement was needed to ensure the “purity of the ballot box,” signaling to all that their efforts targeted African American voters. *Id.* at 25, 29-31.

35. The 1877 law’s adoption of the requirement to petition an individual judge for restoration had a particularly discriminatory effect against African American people considering the contemporaneous 1876 constitutional amendment stripping African American communities of the ability to elect local judges. The judges appointed by the Democrat-controlled legislature in the 1870s were White Democrats who were committed to White supremacy and were unlikely to grant a petition to restore an African American person’s voting rights. 8/16/21 Trial Tr. 111:12-112:7.

36. Legislative Defendants conceded at trial that the goal of the 1870s legislative enactments was to discriminate against African Americans:

So now I'm going to turn to the second -- the second claim -- the second claim of plaintiffs that 13-1 has this impermissible intent and purpose of discriminating against African American voters. The plaintiffs here presented a lot of evidence; much of it, if not all of it, all of it, troubling and irrefutable. You can't -- I can't say anything about a newspaper report that says what it says. I can't say anything about the history that is in the -- in the archives. What I can say is that the evidence that Dr. Burton presented certainly demonstrates a shameful history of our state's use of laws, and with regard to voting in particular, to suppress the African American population. That I can't -- I can't contest that. We never tried to contest that.

8/19/21 Trial Tr. 176:19-177:7.

37. The Court reiterates its finding in the expanded preliminary injunction order: "As acknowledged by Legislative Defendants at trial, there is no denying the insidious, discriminatory history surrounding voter disenfranchisement and efforts for voting rights restoration in North Carolina." 8/27/21 Order on Am. Prelim. Inj. ("Am. PI Order") at 8.

38. North Carolina's decision in 1877 to disenfranchise people with felony convictions even after they are released from incarceration and are living in the community has remained unchanged to this day.

## 2. 1897 to 1970

39. Between 1897 and 1970, the legislature made various small adjustments to the procedure for restoration of rights and recodified that law at N.C.G.S. § 13-1, but the substance of the law was largely unchanged. Individuals

convicted of felonies were still required to petition individual judges for the restoration of their voting rights.

40. In 1933, a change in the law instituted a requirement that felons wait “two years from the date of discharge” instead of four years from the date of conviction before they were eligible to petition for voting rights restoration. 8/16/21 Trial Tr. 121:1-12; LDX-46. And petitioners were still required to present five witnesses who had been acquainted with them for the three years directly preceding the restoration petition. LDX-1 (1969 version of N.C.G.S. § 13-1). Though the requirements for rights restoration were slightly relaxed in certain ways during this period, none of those changes were likely to help African American people, who had been “effectively” disenfranchised by this time “by other means,” including North Carolina’s poll tax and literacy test established in 1899. 8/16/21 Trial Tr. 173:13-174:1; PX-27 at 41.

### 3. The Early 1970s

41. In the early 1970s, the only African American legislators in the General Assembly—two of them in 1971, and three in 1973—tried to amend section 13-1 to eliminate its denial of the franchise to people who had finished serving their prison sentence. As Senator Mickey Michaux explained, the African American legislators’ priority at that time, and the “priority” of the North Carolina NAACP, was “automatic restoration applicable across the board—at the least, the restoration of your citizenship rights after you completed imprisonment.” PX-156 ¶ 15 (Michaux Affidavit).

42. In 1971, Reps. Joy Johnson and Henry Frye proposed a bill amending section 13-1 to eliminate the petition and witness requirement and to “automatically” restore citizenship rights to anyone convicted of a felony “upon the full completion of his sentence.” PX-55 at 1; 8/16/21 Trial Tr. 132:2-133:16. But their proposal was rejected. Their proposed bill was amended to retain section 13-1’s denial of the franchise to people living in North Carolina’s communities. In particular, the African American legislators’ 1971 proposal was successfully amended in committee to specifically require the completion of “any period of probation or parole”—words that had not appeared in Rep. Johnson and Frye’s original proposal—and then successfully amended again to require “two years [to] have elapsed since release by the Department of Corrections, including probation or parole.” PX-55 at 2 (Committee Substitute); *id.* at 6 (Odom Amendment); 8/16/21 Trial Tr. 134:10-135:12. The amendments also deleted the word “automatically” and added a requirement to take an oath before a judge to obtain rights restoration. PX-55 at 2 (Committee Substitute). The 1971 revision to section 13-1 passed as amended. It thus required people with felony convictions to wait two years from the date of the completion of their probation or parole, and then to go before a judge and take an oath to secure their voting rights. LDX-2 (1971 session law).

43. Rep. Frye explained on the floor of the North Carolina House of Representatives in July 1971 that “he preferred the bill’s original provisions which called for automatic restoration of citizenship when a felon had finished his prison sentence, but he would go along with the amendment if necessary to get the bill

passed.” PX-56 (“Felon Citizenship Bill Gets House Approval,” *The News & Observer* (Raleigh, NC), July 8, 1971); see 8/16/21 Trial Tr. 138:14-19.

44. In 1973, the three African American legislators were able to convince their 167 White colleagues to further amend the law to eliminate the oath requirement and to eliminate the two-year waiting period after completion of probation and parole, but they were not able to reinstate voting rights upon release from incarceration. LDX-6. Senator Michaux explained, with respect to the 1973 revision, that “[o]ur aim was a total reinstatement of rights, but we had to compromise to reinstate citizenship voting rights only after completion of a sentence of parole or probation.” PX-156 ¶ 16 (Michaux Affidavit); PX-175 at 85:22-24 (Michaux Deposition). “To achieve even that victory, we vehemently argued and appealed to our colleagues that if you had served your time, you were entitled to your rights. Ultimately, what we achieved was a compromise.” PX-156 ¶ 16.

45. The record evidence is clear and irrefutable that the goal of these African American legislators and the NC NAACP was to eliminate section 13-1’s denial of the franchise to persons released from incarceration and living in the community, but that they were forced to compromise in light of opposition by their 167 White colleagues to achieve other goals, such as eliminating the petition requirement. Both Henry Frye’s statement on the House floor and Senator Michaux’s affidavit makes clear that the African American legislators wanted disenfranchisement to end at the conclusion of “prison” or “imprisonment.” PX-56; PX-156 ¶¶ 15-17. But as Senator Michaux explained: “We understood at the time

that we would have to swallow the bitter pill of the original motivations of the law—the disenfranchisement at its core was racially motivated—to try to make the system practiced in North Carolina somewhat less discriminatory and to ease the burdens placed on those who were disenfranchised by the state.” PX-156 ¶ 18.

46. Defendants have argued that the original 1971 bill proposed by the African American legislators was ambiguous because it referred to restoration after completion of a “sentence,” and did not use the word prison. The Court rejects this argument. Henry Frye’s statement on the House floor made clear that that term referred to a “prison” sentence, and there would have been no need to amend the bill to add “probation or parole” on Legislative Defendants’ theory. Defendants nonetheless suggest that the addition of the words “probation or parole” in amendments to the 1971 bill simply “clarified” what the original bill meant all along. The Court does not find this persuasive in light of Henry Frye’s contemporaneous statement that he *opposed* the amendments and preferred the original language which he said he understood to mean the completion of a “prison” sentence. PX-56.

47. In support of this argument, Defendants also point to a single ambiguous sentence from Senator Michaux’s deposition. 8/16/21 Trial Tr. 199:5-200:4. When read as a whole, Senator Michaux’s deposition and affidavit contradict Defendants’ arguments. The deposition and affidavit conclusively establish—consistent with the official legislative records and contemporaneous news report—that the African American legislators intended and in fact initially proposed a bill to

eliminate the disenfranchisement of people on felony supervision. *Id.* at 200:9-20; PX-56; PX-156 ¶¶ 15-16 (Michaux Affidavit); PX-175 (Michaux Deposition).

48. It was well understood and plainly known in the 1970s that the historical and original motivation for denial of the franchise to persons on community supervision in the post-reconstruction era had been to attack and curb the political rights of African Americans. PX-56 ¶ 14. It was also clear that section 13-1's implementation was mostly focused on and intended to negatively affect African Americans' political participation. *Id.* Indeed, the reason the NC NAACP made a push to amend the statute was precisely because the law was having a major impact on African American's registration opportunities. *Id.* No Defendant disputed during trial that the legislators in the 1970s understood the law's racist origins and discriminatory effects, nor did Defendants introduce any contrary evidence.

49. Rep. Jim Ramsey, who chaired the House Committee offering the committee substitute adding back in the words "probation and parole," openly acknowledged in 1971 that the provision governing restoration of voting rights was "archaic and inequitable." PX-56. Rep. Ramsey provided no explanation for the Committee's decision to nonetheless preserve the existing law's disenfranchisement of people after their release from any incarceration.

50. Defendants presented no evidence at any time during trial advancing any race-neutral explanation for the legislature's decision in 1971 and 1973 to



preserve, rather than eliminate, the 1877 bill's denial of the franchise to persons on community supervision.

51. There was no independent justification or race-neutral explanation for retaining the rule from 1877 that denied the franchise to individuals after release from incarceration in the 1971 and 1973 amendments to section 13-1. 8/16/21 Trial Tr. 148:10-18. That provision was added back without explanation.

52. As Legislative Defendants acknowledged at trial, racism against African Americans remained rife in North Carolina, including in the General Assembly, in the 1970s. There were 3 African American legislators and 167 White ones. PX-56 ¶ 10. Many of the White legislators openly held racist views. *Id.* Legislators used racial slurs to refer to then-Reps. Johnson, Frye, and Michaux. *Id.* ¶ 11. The Ku Klux Klan was active, arch-segregationist George Wallace won North Carolina's presidential primary in 1972, and Jesse Helms was elected to the U.S. Senate. *Id.* ¶ 6; PX-27 at 47, 59; 8/16/21 Trial Tr. 128:15-16. An effort to repeal North Carolina's racist literacy test failed in 1970.

53. The "Law and Order" movement of the 1960s and 1970s painted African American individuals as criminals and focused on increasing the severity of criminal punishments. 8/16/21 Trial Tr. 123:1-125:25; 126:25-127:19. As explained by the News & Observer in 1968 that, "[t]o many North Carolinians, law and order means keep the [n-word] in their place." PX-168.

54. North Carolinians clearly associated the expansion of voting rights for people with felony convictions with the expansion of voting rights for African

Americans, even during the 1960s and 1970s. 8/16/21 Trial Tr. 128:17-129:6. A piece in the Asheville Citizen Times warned against the passage of federal “voting rights legislation” on the ground that it would enable “unconfined felons” to vote, *i.e.*, people with felony convictions who were living in the community on probation, parole, or supervision. *Id.* The Chairman of North Carolina’s Board of Elections issued a statement in 1970 warning against amendments to the Voting Rights Act on the ground that it would enable felons to vote. *Id.* at 129:7-22. Even in the 1970s, people in North Carolina understood that maintaining felony disenfranchisement “is one way of ... keeping African-American people from voting.” *Id.* at 130:7-16. .

55. The 1971 and 1973 revisions to section 13-1 carried forward three key elements of the original, racist 1877 legislation: the disenfranchisement of all people with any felony conviction, not just a subset; the criminal penalty for voting before a person’s voting rights are restored, and the denial of the franchise to persons living in the community after release from any term incarceration. *Id.* at 148:16-149:6. The current version of section 13-1 continues to carry over and reflect the same racist goals that drove the original 19th century enactment. *Id.* at 149:7-15.

**B. Present Day Effect of N.C.G.S. § 13-1.**

56. Plaintiffs’ expert Dr. Frank Baumgartner serves as the Richard J. Richardson Distinguished Professorship in Political Science at the University of North Carolina at Chapel Hill. PX-1 at 1 (Baumgartner Report); PX-2 at 1 (Baumgartner CV). The Court accepted Dr. Baumgartner as an expert in political science, public policy, statistics, and the intersection of race and the criminal justice system. 8/18/21 Trial Tr. 9:22-10:7. Dr. Baumgartner addressed, among other

issues, the number of persons denied the franchise due to felony probation, parole, or post-release supervision in North Carolina, as well as the racial demographics of such persons, at both the statewide and county levels. All parties stipulated to Dr. Baumgartner's main findings regarding the number of people on felony probation, parole, or post-release supervision, and many of his findings regarding the extreme racial disparities in disenfranchisement among African American and White North Carolinians. Fact Stip. ¶¶ 40-42, 46-56. The Court credits Dr. Baumgartner's testimony and accepts his conclusions.

**1. Denial of the Franchise to Over 56,000 Persons on Community Supervision.**

57. At least 56,516 individuals in North Carolina are denied the franchise due to probation, parole, or post-release supervision from a felony conviction in North Carolina state or federal court. 8/18/21 Trial Tr. 14:25-20:6; PX-3; Fact Stip. ¶¶ 40-42. Of these persons, 51,441 are on probation or post-release supervision from a felony conviction in North Carolina state court—40,832 are on probation and 12,376 are on parole or post-release supervision, with some persons being on both probation and post-release supervision simultaneously. PX-3; Fact Stip. ¶ 40. Based on data published by the federal government, 5,075 individuals are denied the franchise due to probation from a felony conviction in North Carolina federal court. PX-3; Fact Stip. ¶ 42 (data as of December 31, 2019); *see also* Fact Stip. ¶ 41 (5,064 individuals as of June 30, 2020).

58. In individual counties, the overall rate of disenfranchisement ranges from 0.25% to roughly 1.4% of the voting-age population. *Id.* at 20:19-22:16.

59. 25 counties in North Carolina have an overall disenfranchisement rate lower than 0.48% (the 25th percentile and below); 50 counties have an overall disenfranchisement rate from 0.48% to 0.83% (the 25th to 75th percentile); and 25 counties have an overall disenfranchisement rate higher than 0.83% (the 75th percentile and above). 8/18/21 Trial Tr. 23:4-22. These numerical cutoffs at 0.48% to 0.83% can be used generally to designate counties as having “low,” “medium,” and “high” rates of disenfranchisement. *Id.* at 23:23-24:3.

60. In 9 counties—Cleveland, McDowell, Pamlico, Beaufort, Madison, Sampson, Duplin, Lincoln, and Scotland Counties—more than 1% of the entire voting-age population is denied the franchise due to felony probation, parole, or post-release supervision. 8/18/21 Trial Tr. at 24:4-25; PX-1 at 10; PX-7; Fact Stip. ¶ 46.

## 2. Racial Disparities in Felon Disenfranchisement

61. North Carolina’s denial of the franchise on felony probation, parole, or post-release supervision disproportionately affects African Americans by wide margins at both the statewide and county levels. 8/18/21 Trial Tr. 12:16-19; PX-1 at 3-4. African Americans comprise 21% of North Carolina’s voting-age population, but over 42% of those denied the franchise due to felony probation, parole, or post-release supervision from a North Carolina state court conviction alone. 8/18/21 Trial Tr. 27:20-28:14; PX-4; Fact Stip. ¶ 47. African American men are 9.2% of the voting-age population, but 36.6% of those denied the franchise. PX-1 at 7; Fact Stip. ¶ 50. In comparison, White people comprise 72% of the voting-age population, but only

52% of those denied the franchise. 8/18/21 Trial Tr. 27:20-28:14; PX-4. These numbers are the very definition of a racial disparity. 8/18/21 Trial Tr. 28:3-4.

62. In total, 1.24% of the entire African American voting-age population in North Carolina are denied the franchise due to felony probation, parole, or post-release supervision, whereas only 0.45% of the White voting-age population are denied the franchise. 8/18/21 Trial Tr. 28:15-29:12; PX-4; PX-6; Fact Stip. ¶ 48. The African American population is therefore denied the franchise at a rate 2.76 times as high as the rate of the White population. 8/18/21 Trial Tr. 29:13-22; PX-4. If there were no racial disparity in the impact of section 13-1, that ratio would be 1.0. The African American-White disenfranchisement ratio of 2.76 shows a very high degree of racial disparity in disenfranchisement among African American and White North Carolinians. 8/18/21 Trial Tr. 29:20-30:2.

63. Although more White people are denied the franchise due to felony post-release supervision than African American people in aggregate, this does not affect the finding that African American people are disproportionately affected by section 13-1. *Id.* at 30:3-17. There are nearly 6 million voting-age White people in North Carolina, compared to fewer than 1.8 million voting-age African American people. PX-4. Thus, to determine whether racial disparities exist, it is necessary to compare African American and White rates of disenfranchisement, rather than aggregate numbers of disenfranchised African American and White people. 8/18/21 Trial Tr. 30:3-17.

64. The statewide data reveal an extremely high degree of racial disparity, with African American people denied the franchise due to felony probation, parole, or post-release supervision at a much higher rate than White people. *Id.* at 34:24-35:9.

65. Extreme racial disparities in denial of the franchise to persons on community supervision also exist at the county level. PX-1 at 9-20. In 77 counties, the rate of African Americans denied the franchise due to felony probation, parole, or post-release supervision is high (more than 0.83% of the African American voting-age population), whereas there are only 2 counties where the rate of African American disenfranchisement is low (less than 0.48% of the African American voting-age population). 8/18/21 Trial Tr. 37:8-17; PX-8. In comparison, the rate of White disenfranchisement is high in only 10 counties, while the rate of White disenfranchisement is low in 53 counties. 8/18/21 Trial Tr. 36:21-37:7; PX-8. These numbers show the extreme racial disparities in denial of the franchise to persons on community supervision. 8/18/21 Trial Tr. 37:18-38:7.

66. In 19 counties, more than 2% of the entire African American voting-age population are denied the franchise due to felony probation, parole, or post-release supervision. 8/18/21 Trial Tr. 44:10-15; PX-9; Fact Stip. ¶ 49. In 4 counties, more than 3% of the African American voting-age population are denied the franchise. 8/18/21 Trial Tr. 44:21-24. In 1 county, more than 5% of the African American voting-age population are denied the franchise, meaning that 1 in every 20 African American adult residents of that county cannot vote due to felony probation, parole,

or post-release supervision. *Id.* at 44:24-45:21. In comparison, the highest rate of White disenfranchisement in any county in North Carolina is 1.25%. *Id.* at 40:18-41:11, 45:22-25; Fact Stip. ¶ 49. These numbers, too, show the extreme racial disparities in denial of the franchise to persons on community supervision. 8/18/21 Trial Tr. 46:3-17.

67. In 44 counties, the percentage of the African American voting-age population that is denied the franchise due to probation, parole, or post-release supervision from a felony conviction in North Carolina state court is more than three times greater than the comparable percentage of the White population. Fact Stip. ¶ 51.

68. Among the 84 counties where there is sufficient data for comparison, African Americans are denied the franchise due to felony probation, parole, or post-release supervision at a higher rate than White people in every single county. *Id.* at 53:4-9; PX-1 at 15; PX-11. There is not a single county where the White disenfranchisement rate is greater than the African American rate, and there are only 2 counties where the rates are close. 8/18/21 Trial Tr. 53:10-16. In 24 counties, the African American disenfranchisement rate is at least four times greater than the White rate. *Id.* at 54:2-14. In 8 counties, the African American disenfranchisement rate is at least five times greater than the White rate. *Id.* at 56:3-19.

69. In sum, North Carolina's denial of the franchise to persons on felony probation, parole, or post-release supervision has an extreme disparate impact on

African American people. At both the statewide level and the county, African American people are disproportionately denied the franchise by wide margins.

8/18/21 Trial Tr. 78:2-22. As Dr. Baumgartner aptly put it, “We find in every case that it works to the detriment of the African American population.” *Id.* at 78:21-22.

70. Legislative Defendants’ expert Dr. Keegan Callanan opined that there is no racial disparity in denial of the franchise to persons on community supervision because “100% of felons of every race in North Carolina” are disenfranchised. LDX-13 at 3; PX-177 (Callanan Dep.). In its September 2020 summary judgment order, the Court found that Dr. Callanan’s report was entitled to “no weight” because it was “unpersuasive in rebutting the testimony of Plaintiffs’ experts, was flawed in some of its analysis and, while Dr. Callanan is an expert in the broad field of political science, his experience and expertise in the particular issues before this panel are lacking.” MSJ Order at 8. Dr. Callanan’s opinions still are entitled to no weight.

**C. N.C.G.S. § 13-1 Denies the Franchise to Persons on Community Supervision Who Would Otherwise Register and Vote and Likely Affects the Outcome of Elections.**

71. Of the 56,000-plus people denied the franchise due to felony supervision, a substantial percentage of them—thousands of people—would register and vote if they were not denied the franchise. Given how close elections often are in North Carolina, excluding such large numbers of would-be voters from the electorate has the potential to affect election outcomes.



1. **Expected Voter Turnout Among People on Felony Supervision**

72. Plaintiffs' expert Dr. Traci Burch is an Associate Professor of Political Science at Northwestern University and a Research Professor at the American Bar Foundation. PX-30 (Burch CV); PX-29 at 1 (Burch Report); 8/17/21 Trial Tr. 7:5-8. The Court accepted Dr. Burch as an expert in political science, public policy, statistics, and racial disparities in political participation. 8/17/21 Trial Tr. 13:20-14:10. Dr. Burch analyzed, among other issues, voter turnout and registration for persons who have been denied the franchise in North Carolina due to felony probation, parole, or post-release supervision. *Id.* at 14:12-15:2; PX-29 at 3. The Court credits Dr. Burch's testimony and accepts her conclusions.

73. Section 13-1 prevents thousands of people living in North Carolina communities from voting who would vote if not for the disenfranchisement. PX-29 at 4; 8/17/21 Trial Tr. 15:16-22. It would be reasonable to expect that at least 38.5% of this population under felony supervision would register to vote, and that at least 20% of them would vote in the next presidential election if they were not denied the franchise due to section 13-1. Many subgroups, including older voters, African American voters, and women voters, may vote at rates higher than 30%. PX-29 at 20-21; 8/17/21 Trial Tr. 37:6-38:3.

74. To examine the recent voter registration and turnout statistics of people in North Carolina with felony convictions, Dr. Burch matched data on felony offenders from the North Carolina Department of Public Safety ("DPS") to voter registration and history data containing information on all registered voters from the North Carolina State Board of Elections. PX-29 at 8; 8/17/21 Trial Tr. 17:10-22.

75. 38.5% of North Carolinians currently on felony supervision had registered to vote in the past, and about 20.1% of otherwise eligible voters now on felony supervision, who were over the age of 18 and were not serving a sentence for a felony conviction in 2016, voted in the 2016 presidential election. PX-31; 8/17/21 Trial Tr. 20:11-17.

76. 39.8% of African Americans currently on felony supervision, and 38.5% of Whites, had ever registered to vote. Voter turnout was also similar between the two groups: 20.3% of African Americans currently on felony supervision, and 21.3% of Whites, voted in the 2016 general election. PX-32; 8/17/21 Trial Tr. 21:7-24.

77. Despite these similar registration and turnout rates, about 1.5 million African Americans were registered to vote in North Carolina in 2016, compared with 4.8 million Whites. The number of African American individuals on community supervision that are denied the franchise under section 13-1 relative to the overall number of African American registered voters is almost three times as high as number of White individuals on community supervision that are denied the franchise under section 13-1. PX-29 at 12; 8/17/21 Trial Tr. 22:2-11.

78. Despite roughly similar turnout in the past among African Americans and Whites on felony supervision, the denial of the franchise to persons under community supervision has a greater impact on African American voter turnout than White voter turnout because African Americans are a smaller percentage of the total voting-age population. PX-29 at 12; 8/17/21 Trial Tr. 22:2-11.

79. Dr. Burch also analyzed gender differences in the voting behavior of the community supervised population. Her methodology likely produced underestimates for turnout among women primarily because the matching approach will underestimate voter registration and turnout among women who change their names because of entering or leaving a marriage. PX-29 at 13; 8/17/21 Trial Tr. 24:4-8.

80. Women registered in the past at higher rates than men: 43.1% of women currently on felony supervision had registered to vote in the past, compared with only 37.3% of men. Turnout rates in the presidential election were also higher: 21.8% of women currently on felony supervision voted in the 2016 general election, compared with 19.6% of men. PX-32; 8/17/21 Trial Tr. 24:9-21.

81. The pattern of voting participation by age largely mirrors that of the broader population: older individuals vote at higher rates than younger individuals and voting among younger cohorts in the community supervised population lags significantly behind voting among older people on felony supervision. PX-29 at 14; 8/17/21 Trial Tr. 27:17-25.

82. Among people currently on felony supervision who were ages 18 to 29 at the time of the 2016 general election (about 39% of the community supervised population), 36.1% had ever registered to vote and 15.1% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 25:19-23. Among those ages 30 to 44 at the time of the election, 40% had ever registered to vote and 21% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 26:6-9. Among those ages 45 to 60 at the time of

the election, 48.2% had ever registered to vote and 30% turned out to vote in 2016. Those over the age of 61 at the time of the election reported the highest participation: 50% of these older persons had ever registered and 36% voted in the 2016 general election. PX-34; 8/17/21 Trial Tr. 26:10-25, 27:1-16.

83. The type of punishment a person received also impacted the voting behavior of people under felony supervision. Among the overall community supervised population, there is some small participation differences between people who have served time in prison for a felony conviction and those who have not. PX-29 at 15; 8/17/21 Trial Tr. 26:10-25, 27:1-16. Among those currently on felony supervision who have never served time in prison for a felony conviction, 40.5% have registered to vote in the past and 20.6% voted in the 2016 general election. PX-29 at 15; 8/17/21 Trial Tr. 28:19-25. In comparison, among those who have served time in prison for a felony conviction in the past, 37.0% have registered to vote in the past and 19.7% voted in the 2016 general election. PX-29 at 15-16; 8/17/21 Trial Tr. 29:4-10.

84. Of the 372,422 eligible North Carolina voters who have completed their felony probation, parole, or post-release supervision at the time of the 2016 general election, 103,130 or 27.69% voted in the 2016 general election. PX-35; 8/17/21 Trial Tr. 32:7-19.

85. Turnout among the group of people who had completed their felony supervision at the time of the 2016 general election varied by demographic characteristics. African Americans in this cohort voted at a slightly higher rate than

Whites (29.8% to 26.3%). Turnout among those under age 30 was lower (13.1%) than that of the oldest group of voters (35.46%). PX-35; 8/17/21 Trial Tr. 33:10-35. People who had served only felony supervision without time in prison voted at a slightly higher rate than those who had served some time in prison (28.5 to 27.3%). PX-29 at 17; 8/17/21 Trial Tr. 34:5-13.

86. A substantial number of the 34,644 people who were eligible voters at the time of the 2016 general election and experienced their first felony conviction and disenfranchisement after the election—20.4%—voted in the 2016 general election. PX-29 at 18; PX-36; 8/17/21 Trial Tr. 34:14-20, 35:16-20. Turnout rates among this group were lower than the population who had finished serving their felony sentences at the time of the 2016 general election because this group was disproportionately younger, with half of them under age 30 at the time of the 2016 general election. PX-36; 8/17/21 Trial Tr. 35:21-36:1-4. Among this group, those who experienced their first felony conviction after age 61 voted at nearly three times the rate of those under age 30 at the time of the 2016 general election. PX-36; 8/17/21 Trial Tr. 36:14-21.

87. There is also a large disparity in turnout rates across punishment type. Only 17.7% of people who would eventually serve time in prison voted in the 2016 general election, compared with 22.7% of those would serve only a felony supervision sentence with no time in prison. PX-29 at 20; 8/17/21 Trial Tr. 36:22-37:1-5.

88. The Court accepts Dr. Burch's conclusion that, based on her analyses, at least 20% of persons on felony supervision in North Carolina would vote in upcoming elections if they were not denied the franchise. The Court further accepts Dr. Burch's conclusion that important subgroups of this class of voters—including women, African Americans, and older people—would vote at even higher rates. PX-39 at 2; 8/17/21 Trial Tr. 39:1-14, 40:10-16.

89. The Court agrees that Dr. Burch's 20% estimate is conservative for several reasons: (1) the process of matching DPS files with election records underestimates the registration and turnout of women because they may change their names due to marriage, divorce, or other life events; (2) the process relies on exact matching so typographical and other errors will cause false negatives; and (3) some individuals may have moved out of state and thus are no longer eligible voters in North Carolina, or may have lived and voted in different states prior to their North Carolina conviction. PX-39 at 2; 8/17/21 Trial Tr. 39:15-40:1-9.

90. Both voter turnout and voter registration are indications of future voting behavior, and political scientists sort voters into two categories: "core voters"—people who vote consistently in every election—and "peripheral voters"—people who vote episodically in elections of high interest. PX-39 at 3; 8/17/21 Trial Tr. 41:12-42:1-3.

91. Looking at only 2016 turnout data might accurately capture the voting behavior of "core voters," but ignoring registration rates and other data would underestimate the extent to which "peripheral voters" might participate in a given

election if they were not denied franchise due to being on community supervision.

PX-39 at 3; 8/17/21 Trial Tr. 42:12-43:1.

92. Additionally, 22.6% of people currently on felony supervision who were eligible during the 2012 general election voted. PX-39 at 4; 8/17/21 Trial Tr. 43:16-21.

93. When Dr. Burch combined the data from the 2012 and 2016 elections, she observed that the North Carolina felony supervision population is split into core and peripheral voters. PX-39 at 4; 8/17/21 Trial Tr. 43:22-45:2. 18% of the eligible population voted in only one of the 2012 and 2016 general elections, but not both. These are peripheral voters. PX -40; 8/17/21 Trial Tr. 44:16-19. Additionally, 13.7% of the people on felony supervision voted in both 2012 and 2016 elections. These are core voters. PX-40; 8/17/21 Trial Tr. 44:20-23.

94. 31.7% of people currently under felony supervision voted in one or both of the 2012 and 2016 presidential elections. At least 20% of those currently on felony supervision would vote in upcoming elections if they were not disenfranchised. PX-40; 8/17/21 Trial Tr. 45:3-17, 45:18-46:1-4.

95. People convicted of felonies who later completed a felony supervision sentence in North Carolina have turnout rates at or above 20% over the last three presidential elections. PX-39 at 6; 8/17/21 Trial Tr. 46:20-48:19. At least 20% of those currently on felony supervision would vote in upcoming elections if they were not disenfranchised.

## 2. The Potential Impact on Elections

96. To evaluate whether the denial of the franchise to persons on community supervision may affect election outcomes in North Carolina, Plaintiffs' expert Dr. Baumgartner analyzed recent statewide and county elections in which the vote margin in the election was less than the number of disenfranchised persons in the relevant geographic area. 8/18/21 Trial Tr. 89:4-17; PX-1 at 26. The Court credits Dr. Baumgartner's testimony and accepts his conclusions.

97. In 2018 alone, there were 16 different county elections where the margin of victory in the election was less than the number of people denied the franchise due to felony supervision in that county. 8/18/21 Trial Tr. 91:19-92:3; PX-21; Fact Stip. ¶ 57. For instance, the Allegheny County Board of Commissions race was decided by only 6 votes, whereas 68 people in Allegheny County are denied the franchise due to felony supervision—more than eleven times the vote margin. 8/18/21 Trial Tr. 92:5-93:5. The Ashe County Board of Education race was decided by only 16 votes, whereas 125 people in Ashe County are denied the franchise due to felony supervision—nearly eight times the vote margin. *Id.* at 93:21-94:2. The Beaufort County Board of Commissioners race was decided by only 63 votes, whereas 457 people in Beaufort County are denied the franchise due to felony supervision—more than seven times the vote margin. *Id.* at 94:3-11.

98. The number of African Americans denied the franchise due to being on felony supervision exceeds the vote margin in some elections. For instance, the number of African Americans denied the franchise in Beaufort County (235) exceeds the vote margin in the Beaufort County Board of Commissioners race (63). *Id.* at



94:12-95:10. The number of African Americans denied the franchise in Columbus County (143) exceeds the vote margin in the Columbus County Sheriff's race (43). *Id.* at 95:11-96:2. The number of African Americans denied the franchise in Lee County (152) exceeds the vote margin in the Lee County Board of Education race (78). *Id.* at 96:15-97:1.

99. People living in the community on felony supervision have an interest in the outcome of county elections, as does everyone. *Id.* at 93:6-20. That is especially true of a county sheriff's race. As Dr. Baumgartner explained:

[W]e all have an interest in every race. Democracy matters, but people in this case and the people in this category have a particular interest in the criminal justice actors, district attorney, sheriffs, judges, but they have an interest in everything, but certainly a County Sheriff, you know, runs the jail. That's an important function in criminal justice, so people certainly have an interest in those races in particular, the people of this cat- -- the people that we're talking about who are disenfranchised under these policies.

*Id.* at 96:3-14. This Court agrees.

100. Legislative Defendants' expert Dr. Callanan attempted to offer some criticisms of Dr. Baumgartner's analysis regarding the potential impact on election outcomes. Dr. Baumgartner explained why those criticisms are incorrect, *id.* at 97:4-100:17; PX-25, and the Court once again concludes that Dr. Callanan's report is entitled to no weight.

101. In addition to county-level elections, there are statewide races where the vote margin in the election was less than the number of people denied the franchise due to being on community supervision statewide. *Id.* at 100:18-22. For

instance, the 2016 Governor's race was decided by just over 10,000 votes, far less than the 56,000-plus people denied the franchise statewide. *Id.* at 100:23-101:13. In 2020, two prominent statewide races were decided by vote margins that are only a fraction of the number of persons denied the franchise statewide. *Id.* at 101:14-22.

102. There are also many 2018 state House and state Senate races that had a vote margin of less than 100 votes. *Id.* at 101:23-102:6; PX-22. Dr. Baumgartner did not receive data that would have allowed him to calculate the number of disenfranchised persons in each of these House or Senate districts. 8/18/21 Trial Tr. 102:17-103:1. Nevertheless, the closer the margin of any election, the greater the chance that North Carolina's denial of the franchise to over 56,000 persons on felony supervision could affect the outcome of the election. *Id.* at 103:2-20.

**D. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest and Causes Substantial Harm.**

**1. N.C.G.S. § 13-1 Does Not Serve Any Legitimate State Interest**

103. As the Court noted in September 2020, in its interrogatory responses, Defendants initially put forward "numerous" possible state interests that section 13-1 might be thought to serve. 9/4/20 Order of Inj. Relief ("PI Order") at 9; *see* LDX-144; SDX-146. The Court at that time accordingly denied summary judgment and a preliminary injunction on Plaintiffs' broader claims concerning the denial of the franchise to all persons on felony supervision, noting that Defendants should have the opportunity to offer "facts or empirical evidence" supporting those purported state interests. PI Order at 9.

104. Nevertheless, at trial in August 2021, Defendants failed to introduce any evidence supporting a view that section 13-1's denial of the franchise to people on felony supervision serves any valid state interest today.

105. The State Board's Executive Director testified that the State Board is *not* asserting those interests to justify enforcing the challenged law today. PX-176 (excerpts from Bell 30(b)(6) Dep.). The State Board Defendants' interrogatory response identified interests including "regulating, streamlining, and promoting voter registration and electoral participation among North Carolinians convicted of felonies who have been reformed"; "simplifying the administration of the process to restore the rights of citizenship to North Carolinians convicted of felonies who have served their sentences"; "avoiding confusion among North Carolinians convicted of felonies as to when their rights are restored"; "eliminating burdens on North Carolinians convicted of felonies to take extra steps to have their rights restored after having completed their sentences"; "encouraging compliance with court orders." *Id.* at 176:20-206:15. The Executive Director testified that the State Board is not asserting that the denial of the franchise to people on felony supervision serves any of these interests as a factual matter in the present day, and she admitted that the State Board is unaware of any evidence that denying the franchise to such people advances any of these interests. *Id.*

106. Indeed, the State Board's Executive Director conceded that *striking down* section 13-1's denial of the franchise to people on felony supervision would "promote their voter registration and electoral participation." *Id.* at 182:17-22.

107. The State Board Defendants did not introduce facts or empirical evidence at trial supporting any assertion that section 13-1's denial of the franchise to persons on felony supervision serves *any* legitimate governmental interest.

108. The Legislative Defendants did not introduce facts or empirical evidence at trial supporting any assertion that section 13-1's denial of the franchise to people on felony supervision serves *any* legitimate governmental interest.

109. In closing argument, Legislative Defendants asserted that section 13-1 serves an interest in "creat[ing] . . . the finish line for when . . . the loss of rights is finished, when it terminates." 8/19/21 Trial Tr. 166:2-10. The Court does not find this alleged interest persuasive or legitimate.

110. Legislative Defendants also asserted in closing argument that section 13-1 serves an interest in "t[ying] the restoration to the completion of the sentence," including the completion of any period of supervision. *Id.* at 166:11-22. But Defendants did not support this circular logic with any evidence to justify why it is a legitimate interest.

111. To the extent Defendants still contend that the challenged scheme serves interests "requiring felons to complete all conditions of probation, parole, and post-trial supervision," as they did in interrogatory responses, those interests are tautological. Nor have Defendants introduced any evidence that withholding the franchise encourages completion of post-release and probationary conditions, and there is no empirical evidence to support such a claim in any of the scholarly literature. PX-29 at 22-34 (Burch Report).

112. To the extent Defendants still contend that the challenged scheme serves an interest in withholding restoration of voting rights from people with felony convictions who do not abide by court orders, they have introduced no evidence that the prospect of disenfranchisement results in higher rates of compliance with court orders, and there is no support in the scholarly literature for such a claim. *Id.* at 32. In any event, section 13-1 denies the franchise to people on felony supervision *regardless* of whether they are complying with court orders and the conditions of their supervision.

113. Defendants have argued that the changes to section 13-1 in the early 1970s served a valid state interest in eliminating onerous procedural requirements for rights restoration, such as a requirement to petition a court with supporting witnesses or swear an oath before a judge. *See, e.g.*, 8/19/21 Trial Tr. 166:23-167:18, 169:17-22. But those procedural requirements are not at issue in this case. Plaintiffs instead challenge section 13-1's denial of the franchise to people on felony supervision.

114. In any event, while the final decision to restore a person's voting rights is no longer left to the discretion of a judge, there remains a number of discretionary decisions, especially in sentencing, but also in whether to charge an individual, what offenses to charge, whether to reduce charges, and whether a plea offer is extended, that have a direct effect upon when a person's right to vote is restored. Am. PI Order at 5. Section 13-1's denial of the franchise to people on probation, parole, or post-release supervision exacerbates the inequitable effects of that

judicial discretion, because judges retain discretion in deciding the length of probation and whether to terminate a person's probation. Pursuant to N.C.G.S. § 15A-1342(a), a court may place a convicted person on probation for the appropriate period as specified in N.C.G.S. § 15A-1343.2(d), not to exceed a maximum of five years. And pursuant to N.C.G.S. § 15A-1342(b), a court has discretion to terminate an individual's probation "at any time ... if warranted by the conduct of the defendant and the ends of justice." *See also* Fact Stip. ¶ 44. The median duration of probation for persons sentenced to felony probation in North Carolina state court is thirty months. *Id.* ¶ 43.

## **2. N.C.G.S. § 13-1 Does Substantial Harm**

115. In contrast to the absence of evidence that section 13-1's denial of the franchise to people on felony supervision serves any valid state interest today, the evidence establishes that such denial of the franchise causes serious harm to individuals and communities, and in fact undermines important state interests including several of the interests put forward by Defendants.

### **a. Testimony of Plaintiffs' Expert Dr. Burch**

116. Section 13-1's denial of the franchise to persons on felony supervision does not advance those interests put forward by the State and instead causes only harm.<sup>1</sup>

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<sup>1</sup> Much of Dr. Burch's analysis of potential state interests in her report concerned the effect of conditioning rights restoration on the satisfaction of financial conditions of supervision, which was no longer relevant at trial given the Court's September 2020 summary judgment order.

117. The scholarly literature does not support the claim that section 13-1 “eliminat[es] burdens” in ways that “promote the voter registration and electoral participation of people who completed their sentences.” In fact, section 13-1 may even decrease turnout. PX-29 at 36-37; 8/17/21 Trial Tr. 58:4-13.

118. Turnout among people aged 18-29 who had been convicted but completed supervision by 2016 (13.01%) was several percentage points lower than turnout of people in 2016 who were later convicted of their first felony (15.7%). PX-29 at 39; 8/17/21 Trial Tr. 60:2-18. In other words, the experience of being denied the franchise decreases turnout among an otherwise similarly situated population. 8/17/21 Trial Tr. 64:8-65:2.

119. People who served probation sentences for misdemeanors are 15% less likely to vote following their sentence, whereas people who served probation sentences for felony convictions (and thus were denied the franchise) are 40% less likely to vote following their sentence. This 25% differential in turnout rates can be attributed to the experience of felony disenfranchisement. PX-39 at 9-10; 8/17/21 Trial Tr. 63:9-64:5.

120. The scholarly literature shows that the existence of felony disenfranchisement laws themselves lead to widespread confusion and misunderstandings among people with felony convictions about whether they can vote, even in states with automatic restoration. Audit studies have shown that, despite official policies, local bureaucrats themselves can contribute to confusion

about voting rights by failing to respond to questions or by answering questions incorrectly. PX-29 at 37; 8/17/21 Trial Tr. 58:14-59:1-5.

121. A 2014 peer-reviewed study of North Carolina's re-enfranchisement notification procedures concluded that those procedures have no effect on registration and turnout among people who have finished serving their sentences, including probation and parole. 8/17/21 Trial Tr. 59:6-60:1. The researchers concluded that North Carolina's forms and guidance "lacked clarity" and that the information tended to be lost or crowded out. *Id.* Although Defendants asserted that the documents provided to people ending probation have changed since 2014, they did not introduce any evidence that the documents used today are any clearer than those used at the time of the 2014 study.

122. Continued denial of the franchise to persons on community supervision has a stigmatizing effect, and the scholarly literature concludes that felony disenfranchisement hinders the reintegration of people convicted of felonies into society. *Id.* at 65:13-66:18. Felony disenfranchisement is among a long list of stigmatizing and wide-ranging collateral consequences for people convicted of felonies, including civil restrictions on voting, officeholding, and jury service; employment and occupational licensing, and even economic exclusions from welfare, housing, and other public benefits. There are more than 35,000 such penalties in state and federal law across the United States. *Id.* at 65:13-66:1; PX-29 at 40.

123. Denial of the franchise to people on felony supervision reduces political opportunity and the quality of representation across entire communities in North



Carolina. The population of people on felony supervision who are denied the franchise in North Carolina is highly concentrated into particular neighborhoods. 8/17/21 Trial Tr. 67:3-23. Felony disenfranchisement rates of young adults living in certain neighborhoods in North Carolina is as high as 18 to 20 percent. *Id.* Such a high level of communal denial of the franchise can discourage other young people from voting, because voting is a social phenomenon. Indeed, turnout among eligible voters is lower in communities with higher rates of denial of the franchise among people living in those communities. *Id.* at 67:24-68:15. These communities are less likely to be the subject of voter mobilization efforts by political parties, have less turnout, and have less political power and political equality as a consequence of the denial of the franchise to people on felony supervision. *Id.* at 66:22-67:23, 68:16-69:17; PX-29 at 43.

124. Denial of the franchise to persons on felony supervision harms individuals, families, and communities for years even after such supervision ends. PX-29 at 45; 8/17/21 Trial Tr. 69:18-70:6.

**b. Testimony from the Department of Public Safety**

125. DPS documents given to impacted individuals about their voting rights are unclear and can easily lead to confusion. It is critically important for DPS documents to inform people about their voting rights in simple, clear, plain English terms, and it is critically important to confirm that affected individuals have received, read, and clearly understood any written materials provided to them about their voting rights. 8/19/21 Trial Tr. 70:1-20. But the DPS forms are not simple or

clear, and they do not speak in plain English about the basic question of whether the person is permitted to vote.

126. One DPS form contains multiple lists of things that people on probation are and are not permitted to do, but not one of those lists mentions voting. *Id.* at 75:20-78:10 (discussing SDX-28). The form further states that “upon completion of your sentence,” your voting rights are restored,” but the “sentence” referred to there is different than the “active sentence” referred to earlier on the same page; one refers to probation and the other refers to incarceration. *Id.* at 79:21-80:16. DPS does not have any policy directing probation officers to explain to people on probation receiving this form that the reference to a “sentence” at the end of the form is different than the “active sentence” referred to earlier on the same page. *Id.* at 80:25-81:8. While this form may be clear to someone who has spent decades working as a probation officer and top DPS official focused on community supervision, it could easily confuse a person on probation.

127. Another DPS form designed to inform people about the restoration of their voting rights does not even use any iteration of the word “vote.” *Id.* at 90:15-91:14 (discussing SDX-15).

128. DPS does not provide any information about voting rights to people being transferred from supervised to unsupervised probation. *Id.* at 93:20-94:4. Nor does DPS provide people with any information about voting rights (or anything else) upon completion of their unsupervised probation. *Id.* at 94:9-22. Despite her many years of experience at DPS working on community supervision, Maggie Brewer.

DPS's Deputy Director of Community Supervision, testified that she does not even know whether people on unsupervised probation are permitted to vote. *Id.* at 87:18-24, 94:5-8.

129. Section 13-1's denial of the franchise to people on felony supervision does not avoid confusion, but instead engenders it. If section 13-1 applied only to people who were incarcerated, all people with felony convictions could simply be told upon their release from prison that they are eligible to vote.

**c. Testimony from the State Board of Elections**

130. In addition to confirming that the State Board is not advancing state interests in support of the denial of the franchise to persons on felony supervision today, the State Board's Executive Director also made it clear that such denial of the franchise is very difficult to administer and leads to material errors and problems.

131. For instance, according to a 2016 audit titled "Post-Election Audit Report," in a data-matching process used by the State Board, 100 out of 541 individuals who were initially identified as having voted illegally due to a felony conviction were in fact eligible voters, based on further investigation. PX-50 at 408; 8/18/21 Trial Tr. 194:2-22. That is a false positive rate of nearly 20%. *Id.*

132. The State Board uses a related data-matching process to identify people convicted of felonies in North Carolina state courts who are registered voters, and these individuals' registrations are then canceled. But when a voter is identified by this data-matching process as being ineligible to vote based on a felony conviction, the State Board does not conduct any further investigation to determine

the accuracy of the persons identified in the data match as ineligible based on a felony conviction. 8/18/21 Trial Tr. 195:5-23.

133. Voter registration application materials used by the State Board of Elections as recently as February of 2020 explained to voters that: “if [you were] previously convicted of a felony, you must have completed your sentence, including probation and/or parole” but did not include the words “post-release supervision” anywhere on the form. 8/18/2021 Trial Tr. 197:7-25; 198:1-11 (discussing PX-43 at 352). Multiple State Board guides providing instructions to poll workers from as recently as the 2020 elections likewise mention “probation or parole” but not “post-release supervision.” *Id.* at 201:1-25; 202:1-24; 203:1-3 (discussing PX-51 at 557, 559); 8/18/21 Trial Tr. 204: 24-25; 205:1-20 (discussing PX-46 at 256). The State Board’s Executive Director acknowledged that if a person on post-release supervision asked a poll worker, “I finished serving my jail sentence or prison sentence but I’m on post-release supervision. Can I vote?” the poll worker might consult the State Board’s instructions and conclude, incorrectly, that the answer was “yes.” 8/18/21 Trial Tr. 203:20-25; 204:1-3.

134. A person on post-release supervision could truthfully answer the question poll workers are trained to ask, “Are you currently on probation or parole for a felony conviction?” with the answer: “no.” Based on their “no” answer, that person would be permitted to cast a ballot. Notwithstanding the voter’s honest answer, the person could then be prosecuted for the crime of voting illegally. 8/18/21 Trial Tr. 205:17-25; 206:1-7.

**d. Testimony of the Organizational Plaintiffs**

135. The Organizational Plaintiffs' testimony further demonstrates the harms caused by section 13-1's denial of the franchise to people living in the community on felony supervision.

136. There is rampant confusion among persons on felony supervision about their voting rights. For example:

- a. Dennis Gaddy, the Executive Director of Community Success Initiative, testified that CSI's clients are often confused about whether they are allowed to vote. 8/16/2021 Trial Tr. 53:8-9, 56:21-57:1-21. He further testified that when clients are disenfranchised due to felony supervision, they cannot effectively advocate for themselves, their families, or their communities. *Id.* at 58:16-59:16. Mr. Gaddy testified that during his seventeen years of educating people convicted of felonies about their voting rights, he has witnessed how not being able to vote causes many people to lose hope, and not being able to vote means that you do not have a civic voice. Mr. Gaddy lamented that clients often feel frustrated on being required to pay taxes but not being allowed to vote. *Id.* at 59:10-60:4.
- b. Diana Powell, the Executive Director of Justice Served NC, testified that section 13-1 is confusing, that many impacted community members are afraid to vote, and that due to frequent address changes, many people are never informed that their rights are

restored. She testified that most people are unsure as to whether they have a felony or misdemeanor conviction and are afraid of being rearrested for voting. 8/17/21 Trial Tr. 163:21-165:7.

c. Corey Purdie, the Executive Director of Wash Away

Unemployment, testified that it is difficult to discuss voting with impacted community members because it is difficult to convince them that they are legally able to participate in the process. 8/19/21 Trial Tr. 45:3-7. In his interactions with impacted community members, Mr. Purdie finds that people are in fear of voting after incarceration due to the confusing nature of the law, and many fear being charged with another felony and facing even more prison time for mistakenly voting under this law. *Id.* at 45:10- 46:2. Mr. Purdie testified that in his community outreach, he finds that people are confused and scared to vote “all the time.” *Id.* at 46:3

d. Rev. T. Anthony Spearman, President of the North Carolina

NAACP, testified that he explains the current felony disenfranchisement law to NC NAACP members “all the time”; and that the individuals he speaks to are often confused about whether they are eligible to vote under N.C.G.S. 13-1. *Id.* at 20:15-23. He testified that “the NAACP is very much concerned about helping these persons be the best somebodies they can be, and they cannot do that...without being mentored to know what their rights are.”

*Id.* at 20:08-12. Rev. Spearman further testified that “the vote is one of the most powerful nonviolent change agents in the world, and to rob a man or woman of their right to vote ... it’s just hard to conceive of, that we would do that.” *Id.* at 23:09-16.

- e. Individual Plaintiff Timmy Locklear also testified that confusion about his eligibility to vote has kept him from voting in past elections. *Id.* at 30:18-30:23.

137. Section 13-1’s denial of the franchise to people on felony supervision also harms the Organizational Plaintiffs themselves, forcing them to divert scarce resources and interfering with the missions of their organizations. Fact Stip. ¶¶ 3-15; 8/16/21 Trial Tr. 58:4-59:16 (Mr. Gaddy); 8/17/21 Trial Tr. 165:23-166:7, 167:4-13 (Ms. Powell); 8/19/21 Trial Tr. 46:23-48:4 (Mr. Purdie); 8/19/21 Trial Tr. 17:23-20:19, 22:8-23:8 (Rev. Spearman).

138. Mr. Gaddy also testified movingly about the devastating impact that disenfranchisement had on him personally after he was released from incarceration and living in the community on felony supervision. After release from incarceration, Mr. Gaddy could not vote for another seven years because he was on probation. He lamented that he missed a lot of elections over those seven years and was particularly devastated to miss the election of the first African American President in 2008. 8/16/2021 Trial Tr. 60:5-61:1-24.

139. Mr. Purdie had a similar experience. He testified that the fear and confusion created by this law, combined with the carceral experience, creates a

feeling of hopelessness. 8/19/21 Trial Tr. 36:23-37:16 (Purdie). This law has a silencing affect, making impacted people feel as if their voice does not matter. *Id.* at 49:22-50:10. Mr. Purdie testified that to restore a sense of hope, we must unmute our impacted community members—we must restore their voice. *Id.* at 51:16-21.

**e. Testimony of the Individual Plaintiffs**

140. The testimony of two Individual Plaintiffs fully demonstrated the profound damage that section 13-1 does to people living in communities across North Carolina.

141. Timmy Locklear, a 58-old member native of Lumberton, North Carolina, now lives in Wilmington. 8/19/21 Trial Tr. 25:14-22. Since his release from prison in October 2019, he has worked directing traffic at the New Hanover County Landfill, and he never had any violations of the conditions of his post-release supervision. *Id.* at 28:11-19. Before his 2018 felony conviction, he participated in North Carolina elections, and he testified that he would have voted in the March 2020 primary elections if he were not disenfranchised due to post-release supervision. *Id.* at 30:6-31:1. When Mr. Locklear completed his post-release supervision in July 2020, his probation officer did not talk to him about his voting rights or give him a voter-registration form, and they never sent him any forms in the mail about voting. *Id.* at 29:1-30:5. Mr. Locklear nevertheless re-registered to vote and voted in the November 2020 elections. *Id.* at 31:2-8. When asked why it was important for him to vote, he testified: “It felt good. I hadn't voted in a long time.” *Id.* at 31:9-11.



142. Shakita Norman lives in Wake County, where she works as an Assistant General Manager at Jiffy Lube, takes care of her five children, and pays her taxes. 8/17/21 Trial Tr. 148:16-149:14, 154:20-23. She wants to vote, particularly for members of the school board because all of her children attend Wake County Public Schools. *Id.* at 148:25-149:5, 153:16-22. But she cannot vote because, due to a felony conviction in 2018, she has been stuck on “special probation” for 2.5 years running. *Id.* at 152:9-25. To complete her special probation, she must serve a total of 200 more days of “weekend jail.” *Id.* at 151:02-13. But she has not been able to serve any weekend jail since March 2020 because the jails are closed due to the pandemic. *Id.* at 151:18-152:5. Ms. Norman has now been on probation and thus prohibited from voting for nearly three years, even though she has had no probation violations. *Id.* at 152:9-25. Ms. Norman does not know when she will be able to complete her required weekend jail days, or when she will be off probation and able to vote again. *Id.* at 152:6-8, 154:14-16. She voted in North Carolina elections before her conviction, and she testified that she would have voted in the March and November 2020 elections if she were not disenfranchised. *Id.* at 153:3-154:5. When asked why she believes that people on felony supervision should have the right to vote, she testified:

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.

*Id.* at 154:17-155:2.

Based on the foregoing Findings of Fact, the Court makes the following:

### CONCLUSIONS OF LAW

**I. N.C.G.S. § 13-1's Denial of the Franchise to Persons on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Equal Protection Clause**

1. The Equal Protection Clause of the North Carolina Constitution guarantees that "[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const., art. I, § 19.

2. It is well-established that North Carolina's Equal Protection Clause provides greater protection for voting rights than federal equal protection provisions. *Stephenson v. Bartlett*, 355 N.C. 354, 377-81 & n.6, 562 S.E.2d 377, 393-96 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 522-28, 681 S.E.2d 759, 763-66 (2009)). North Carolina courts have repeatedly applied this broader protection for voting rights to strike down election laws under Article I, § 19. *Stephenson*, 355 N.C. at 377-81 & n.6, 562 S.E.2d at 393-95 & n.6; *Blankenship*, 363 N.C. at 522-24, 681 S.E.2d at 762-64.

3. Section 13-1's denial of the franchise to people on felony supervision violates North Carolina's Equal Protection Clause both because it discriminates against African Americans and because it denies all people on felony supervision the fundamental right to vote.

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**A. N.C.G.S. § 13-1 Impermissibly Discriminates Against African American People in Intent and Effect and Denies Substantially Equal Voting Power to African American People**

4. Section 13-1's denial of the franchise to people on felony supervision has the intent and effect of discriminating against African Americans, and unconstitutionally denies substantially equal voting power on the basis of race.

5. To prevail on a race discrimination claim under Article I, § 19, a plaintiff "need not show that discriminatory purpose was the sole or even a primary motive for the legislation, just that it was a motivating factor." *Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254-55 (2020) (internal quotation marks omitted). "Discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Id.* (internal quotation marks omitted).

6. The legislature cannot purge through the mere passage of time an impermissibly racially discriminatory intent. *See Hunter v. Underwood*, 471 U.S. 222 (1985) (striking down a felony disenfranchisement law originally passed with the intent to target African Americans); *see also Ramos v. Louisiana*, 140 S. Ct. 1390, 1410 (2020) (Sotomayor, J., concurring) ("[W]here a legislature actually confronts a law's tawdry past in reenacting it[,] the new law may well be free of discriminatory taint," but "[t]hat cannot be said of the laws at issue here.").

7. The legislature's decision in the 1970s to preserve section 13-1's denial of the franchise to people living in the community was itself independently motivated by racism.

8. There is no evidence to demonstrate that N.C.G.S. § 13-1 would have been enacted without a motivation impermissibly based on race discrimination, and the Court concludes that it would not have been.

9. Section 13-1's denial of the franchise to people living in the community on felony supervision was enacted with the intent of discriminating against African American people and has a demonstrably disproportionate and discriminatory impact.

**B. N.C.G.S. § 13-1 Impermissibly Deprives All Individuals on Felony Probation, Parole, or Post-Release Supervision of the Fundamental Right to Vote.**

10. N.C.G.S. § 13-1 interferes with the fundamental right to vote on equal terms as it prohibits people with felony convictions from regaining the right to vote even while they are living in communities in North Carolina, so long as they have not completed probation, parole, or post-release supervision. *See Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393.

11. People on felony supervision share the same interest as, and are "similarly situated" to, North Carolina residents who have not been convicted of a felony or who have completed their supervision. "The right to vote is the right to participate in the decision-making process of government" among all those "sharing an identity with the broader humane, economic, ideological, and political concerns of the human body politic." *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980). North Carolinians on felony supervision share in the State's "public [burdens]" and "feel an interest in its welfare." *Roberts v. Cannon*, 20 N.C. 398, 4 Dev. & Bat. (Orig. Ed.) 256, 260-61 (1839).

12. As the Court held in its preliminary injunction order in September 2020, under Article I, § 19, when legislation is enacted that restores the right to vote, thereby establishing terms upon which certain persons are able to exercise their right to vote, such legislation must not do so in a way that imposes unequal terms. As allowed by Article VI, § 2(3), of our Constitution, the legislature has chosen to restore citizen rights—specifically here, the right to vote—to those with felony convictions. But in N.C.G.S. § 13-1, it has done so on unequal terms in violation of Article I, § 19.

**C. N.C.G.S. § 13-1's Violation of Article I, § 19 Triggers Strict Scrutiny**

13. Under Article I, § 19, strict scrutiny applies where either: (1) a “classification impermissibly interferes with the exercise of a fundamental right,” or (2) a statute “operates to the peculiar disadvantage of a suspect class.” *Stephenson*, 355 N.C. at 377, 562 S.E.2d at 393 (internal quotation marks omitted); *accord Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746, 392 S.E.2d 352, 355 (1990). Thus, if a statute interferes with the exercise of a fundamental right, strict scrutiny applies even if the affected group is not a suspect class. *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394; *Northampton County*, 326 N.C. at 747, 392 S.E.2d at 356.

14. N.C.G.S. § 13-1 both interferes with the exercise of the fundamental right of voting and operates to disadvantage a suspect class. Therefore, it is subject to strict scrutiny.

**II. N.C.G.S. § 13-1's Denial of the Franchise to Individuals on Probation, Parole, or Post-Release Supervision Violates the North Carolina Constitution's Free Elections Clause**

**A. N.C.G.S. § 13-1 Prevents Elections from Ascertaining the Will of the People**

15. The Free Elections Clause of the North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const., art. I, § 10. It mandates that elections in North Carolina faithfully ascertain the will of the people. This clause has no federal counterpart.

16. N.C.G.S. § 13-1's denial of the franchise to people on community supervision violates the Free Elections Clause by preventing elections that ascertain the will of the people.

17. North Carolina's elections do not faithfully ascertain the will of the people when such an enormous number of people living in communities across the State—over 56,000 individuals—are prohibited from voting.

18. Section 13-1's denial of the franchise to persons on community supervision strikes at the core of the Free Elections Clause, moreover, because of its grossly disproportionate effect on African American people. Elections cannot faithfully ascertain the will of *all* of the people when the class of persons denied the franchise due to felony supervision is disproportionately African Americans by wide margins at both the statewide and county levels.

19. Nor do North Carolina elections faithfully ascertain the will of the people when the vote margin in both statewide and local elections is regularly less than the number of people disenfranchised in the relevant geographic area.

Elections do not ascertain the will of the people when the denial of the franchise to such a large number of people has the clear potential to affect the outcome of numerous close elections.

20. N.C.G.S. § 13-1 prevents thousands of people living in North Carolina communities who would otherwise vote from casting ballots, potentially preventing the will of the people from prevailing in elections that affect every aspect of daily life.

**B. N.C.G.S. § 13-1's Interference with Free Elections Triggers Strict Scrutiny**

21. Because the right to free elections is a fundamental requirement of the North Carolina Constitution, *Harper*, 2022-NCSC-17, P139, N.C.G.S. § 13-1's abridgment of that right triggers strict scrutiny. *See Northampton*, 326 N.C. at 747, 392 S.E.2d at 356. That is so regardless of the General Assembly's intent in passing the law. When statutes implicate state constitutional provisions concerning the right to vote, "it is the effect of the act, and not the intention of the Legislature, which renders it void." *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 225-26 (1875). The effect of section 13-1 is to deny the franchise to over 56,000 people, disproportionately African Americans.

22. In any event, strict scrutiny would apply here even if the General Assembly's intent were relevant in evaluating a Free Elections Clause claim. In manipulating the electorate by disenfranchising groups of voters perceived as undesirable, N.C.G.S. § 13-1 resembles the very English laws that were the impetus for North Carolina's original free elections clause.

23. Section 13-1's denial of the franchise to persons on felony supervision is therefore subject to strict scrutiny.

### III. N.C.G.S. § 13-1's Denial of the Franchise to Persons on Community Supervision Cannot Satisfy Strict or Any Scrutiny

24. For the reasons set forth above, section 13-1's denial of the franchise to persons on community supervision is subject to strict scrutiny under both the Equal Protection Clause and the Free Elections Clause. To satisfy strict scrutiny, Defendants must establish that this provision furthers a compelling government interest and is narrowly tailored to do so. *Northampton Cnty.*, 326 N.C. at 747; *DOT v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001). Defendants failed to make such a showing on all claims.

25. At a minimum, section 13-1's denial of the franchise is subject to intermediate scrutiny. The Supreme Court has consistently applied intermediate scrutiny where the government's discretion to regulate in a particular field had to be balanced against other constitutional protections. Under intermediate scrutiny, the government must show that the challenged law "advance[s] important government interests" and is not more restrictive "than necessary to further those interests." *Id.* Defendants have failed to establish that section 13-1's denial of the franchise to people on felony supervision advances any "important" government interest, much less in an appropriately tailored manner.

26. Furthermore, because N.C.G.S. § 13-1 does not withstand an intermediate level of scrutiny, it fails strict scrutiny as well. *See M.E. v. T.J.*, 275



N.C. App. 528, 559, 854 S.E.2d 74, 101 (2020) (articulating intermediate scrutiny as a less restrictive standard than strict scrutiny).

27. Under any level of scrutiny, Defendants must show that the challenged law adequately serves sufficient state interests today, not just that the law served some state interest in the past. A “classification must substantially serve an important governmental interest *today*, for . . . new insights and societal understandings can reveal unjustified inequality that once passed unnoticed and unchallenged.” *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (internal quotation marks omitted) (emphasis original)). Defendants failed to do so.

28. Section 13-1’s denial of the franchise to people on felony supervision does not advance any valid state interest. Further, much of the evidence presented demonstrates that section 13-1 causes grave harm and undermines important state interests such as voter participation.

29. N.C.G.S. § 13-1’s denial of the franchise to persons on community supervision violates North Carolina’s Equal Protection Clause, Article I, § 19, and the Free Elections Clause, N.C. Const., art. I, § 10 and does not satisfy strict scrutiny.

#### IV. The Constitutional Provision Regarding Felony Disenfranchisement Does Not Insulate N.C.G.S. § 13-1 From Constitutional Challenge

30. Defendants argue that Article VI, § 2, cl. 3 of the North Carolina Constitution precludes Plaintiffs from challenging the manner of rights restoration set forth in N.C.G.S. § 13-1. That is incorrect.

31. The Court rejected this argument from Defendants in its preliminary injunction order in September 2020 and rejects it again today.

32. Article VI, § 2, cl. 3 reflects a delegation of authority to the General Assembly to “prescribe[] by law” the contours of the restoration of the franchise, and legislation enacted by the General Assembly pursuant to this delegation must comport with all other provisions of the North Carolina Constitution. Because “all constitutional provisions must be read *in pari materia*,” a constitutional provision “cannot be applied in isolation or in a manner that fails to comport with other requirements of the State Constitution.” *Stephenson*, 355 N.C. at 377-78, 562 S.E.2d at 392, 394.

33. The Court recognizes that Article VI, § 2(3) of our Constitution grants the General Assembly the authority to restore citizen rights to persons convicted of felonies. As discussed above, however, Article I, § 19 of our Constitution forbids the General Assembly from interfering with the right to vote on equal terms, and Article I, § 10 requires that elections be free so as to ascertain the will of the people. Accordingly, when the General Assembly prescribes by law the manner in which a convicted felon’s right to vote is restored, it must do so on equal terms and in a manner that ensures elections ascertain the will of the people.

34. “A court should look to the history” in interpreting a constitutional provision, *N.C. State Bd. of Educ. v. State*, 255 N.C. App. 514, 529, 805 S.E.2d 518, 527 (2017), *aff’d*, 371 N.C. 149, 814 S.E.2d 54 (2018), and throughout its history Article VI, § 2, cl. 3 has *always* been accompanied by implementing legislation. As explained above, the General Assembly enacted a statutory scheme providing for felony disenfranchisement and rights restoration in 1877, in the very first legislative session after ratification of the 1876 constitutional amendment. At no point in the 144 years since its adoption has Article VI, § 2, cl. 3 ever operated by its own force without implementing legislation.

35. In any event, implementing legislation *has* been enacted, and any statute enacted by the General Assembly must comport with all provisions of the North Carolina Constitution. As concluded above, section 13-1 fails, beyond all reasonable doubt, to do so.

**It is therefore ORDERED, ADJUDGED, AND DECREED THAT:**


1. N.C.G.S. § 13-1’s denial of the franchise to persons on felony probation, parole, or post-release supervision violates the North Carolina Constitution’s Equal Protection Clause and Free Elections Clause.
2. Defendants, their agents, contractors, servants, employees, and attorneys, and any persons in active concert or participation with them, are hereby enjoined from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision.

3. For the avoidance of doubt, under this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina.

SO ORDERED, this the 28<sup>th</sup> day of March, 2022.



Lisa C. Bell, Superior Court Judge

 3/28/22  
Keith O. Gregory, Superior Court Judge

*as a majority of this Three Judge Panel*

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## DISSENT

Judge Dunlow dissents from the majority's decision and order.

For the reasons specified in my dissent to the majority's Order on Summary Judgment, I dissent from the final order of the majority issued today.

This Court would make the following:

### FINDINGS OF FACT

1. Article VI, Section 2, Part 3 of the North Carolina Constitution provides:

**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.

2. The Plaintiffs in this action do not challenge the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution.

3. Because the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution are not challenged in this litigation, this Court must, in analyzing this facial challenge, begin with the assumption that all convicted felons who have not had their rights of citizenship restored are properly and lawfully disenfranchised pursuant to Article VI, Section 2, Part 3 of the North Carolina Constitution.

4. The manner prescribed by law for the restoration to the rights of citizenship is found at N.C.G.S. § 13-1.

5. In the present action, Plaintiffs make a facial challenge to N.C.G.S. § 13-1 (the restoration provision), requesting this Court, "Declare that N.C.G.S. § 13-1's disenfranchisement of individuals while on probation, parole, or suspended sentence is facially unconstitutional and invalid . . . ."

6. The particular provision being challenged in this action is N.C.G.S. § 13-1(1) which provides:

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.

7. N.C.G.S. § 13-2(a) provides:

The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of N.C.G.S. § 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

8. There has been no evidence presented that any agency, department or court having jurisdiction over an inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of N.C.G.S. § 13-1(1) has failed to immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.
9. Each and every individual who is disqualified from voting under the provisions of Article VI, Section 2, Part 3 of the North Carolina Constitution is automatically restored the right to vote under the provision of N.C.G.S. § 13-1(1).<sup>2</sup>
10. The Plaintiffs have offered, and the Court received, a myriad of testimony, statistical analysis and evidence relating to the impact the provision of Article VI, Section 2, Part 3 of the North Carolina Constitution (felon disenfranchisement) has on the African American population.
11. The Plaintiffs have offered no testimony, statistical analysis or evidence relating to the impact, if any, N.C.G.S. § 13-1 has on the African American population or any other suspect class.
12. "[F]elons do not enjoy the same measure of constitutional protections . . . as do citizens who have not been convicted of a felony." *State v. Grady*, 372 N.C. 509, 567, 831 S.E.2d 542, 582 (2019). As a result of their own conduct, felons are subject to these reduced constitutional protections, which "society . . . recognize[s] as legitimate." *See id.* at 555, 831 S.E.2d at 575. Our courts have recognized that there is a dividing line, for constitutional rights, between those who have "served [their] sentence[s], paid [their] debt[s] to society, and had [their] rights restored," and those who have not. *Id.* at 534, 831 S.E.2d at 561.

---

<sup>2</sup> The Court will take judicial notice that the only prerequisite for an individual to have their citizenship rights restored automatically is that the individual live long enough to complete the term of their sentence, probation, parole and/or post-release supervision.

13. Establishing a process by which convicted felons can regain their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.
14. Establishing a restoration process that requires convicted felons to complete their terms of imprisonment, probation, parole or post-release supervision before regaining their citizenship rights, including the right to vote, is a valid and legitimate governmental interest.
15. The Free Elections Clause of the North Carolina Constitution mandates that elections in North Carolina faithfully ascertain the will of the people. The people whose will is to be faithfully ascertained are the persons who are lawfully permitted to vote in North Carolina elections.
16. Because convicted felons, who have not had their citizenship rights restored, are not lawfully permitted to vote in North Carolina elections, the Free Elections Clause has no application to those persons.

Based on the foregoing findings of fact, this Court would make the following:

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter.
2. N.C.G.S. § 13-1 does not bear more heavily on one race than another.
3. N.C.G.S. § 13-1 does not have the intent nor the effect of discriminating against African Americans.
4. The intent of the legislature in enacting N.C.G.S. § 13-1 was to, “substantially relax the requirements necessary for a convicted felon to have his citizenship restored.” *State v. Currie*, 284 N.C. 562, 565, 202 S.E.2d 153, 155 (1974).
5. N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right.
6. N.C.G.S. § 13-1 does not operate to the peculiar disadvantage of a suspect class.
7. Because N.C.G.S. § 13-1 does not interfere with the exercise of a fundamental right nor does it operate to the peculiar disadvantage of a suspect class, the appropriate level of review to apply in this facial challenge is rational-basis review.
8. N.C.G.S. § 13-1 bears a rational relationship to valid and legitimate governmental interests.
9. The Plaintiffs have failed to meet their heavy burden of showing that N.C.G.S. § 13-1 bears no rational relationship to any legitimate government interest.

10. N.C.G.S. § 13-1 does not violate the Equal Protection Clause of the North Carolina Constitution.

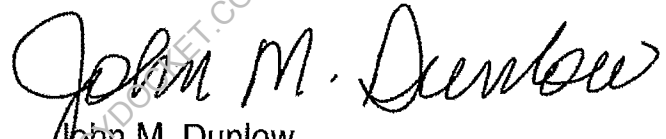
11. N.C.G.S. § 13-1 does not violate the Free Elections Clause of the North Carolina Constitution.

Based on the foregoing findings of fact and conclusions of law, this Court would:

**ORDER, ADJUDGE and DECREE**

1. The Plaintiffs' prayers for relief are DENIED, and the Plaintiffs' complaint is hereby DISMISSED.

This the 25 day of March, 2022.

  
John M. Dunlow  
Superior Court Judge

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the persons indicated below, pursuant to the Court's July 15, 2020 Case Management Order, via e-mail transmission, addressed as follows:

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\*Admitted pro hac vice

This the 28<sup>th</sup> day of March 2022.

  
\_\_\_\_\_  
Kellie Z. Myers  
Trial Court Administrator  
10<sup>th</sup> Judicial District  
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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

# EXHIBIT H

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

19 CVS 15941

COMMUNITY SUCCESS INITIATIVE,  
et al.,

Plaintiffs,

v.

TIMOTHY K. MOORE, et al.,

Defendants.

**THE STATE BOARD  
DEFENDANTS' NOTICE  
REGARDING  
IMPLEMENTATION OF  
INJUNCTION AND MOTION  
FOR CLARIFICATION**

The North Carolina State Board of Elections and its members ("State Board Defendants") hereby provide notice of the State Board Defendants' further efforts to implement this Court's Injunction of September 4, 2020, pursuant to this Court's direction to the State Board Defendants on August 19, 2021, and to seek clarification or guidance on this Court's direction.

In light of the pressing elections-administration deadlines that the State Board is under, and as discussed in greater detail in Section III below, the State Board must implement any changes to language on the voter registration forms by Monday, August 23, 2021, if they are to take effect in time for this fall's municipal elections. Accordingly, to the extent any clarification of this Court's direction is warranted, the State Board respectfully requests that such clarification be provided by Monday, August 23, 2021.

**I. State Board Defendants' Efforts to Implement This Court's Injunction**

Following this Court's oral ruling last Thursday to implement certain changes to the voter registration forms immediately, the State Board plans to update State Board forms and guidance regarding voting eligibility for people convicted of felonies with the following language:

(a) you are not currently serving a felony sentence, including probation, post-release supervision, or parole; or (b) you are serving felony probation, post-release supervision, or parole with only fines, fees, costs, or restitution as conditions (besides the other regular conditions of probation in G.S. 15A-1343(b)) and you know of no other reason that you remain on supervision.

## II. Practical Considerations Regarding Implementation

While the State Board Defendants stand ready to implement the Injunction as instructed by this Court on Thursday, they would like to raise for the Court's consideration certain practical considerations that will make implementation of the Injunction in this manner difficult for both the State and individual voters who might be beneficiaries of this Court's actions.

First, there are significant administrative challenges for the North Carolina Department of Public Safety (DPS) to be able to isolate those people on probation who are serving probation as a result of only monetary conditions (aside from the other regular conditions of probation). More broadly, the State Board is working with DPS to confirm whether DPS will be able to identify every person who is serving probation with only regular conditions and who have monetary obligations. But DPS, as a general matter, has no record of whether, putting aside the general conditions, these persons would not be serving probation but for the monetary obligations. The State Board understands that the judgment and administrative records and inputs into DPS's system do not account for this specific scenario.<sup>1</sup>

Accordingly, this presents administrative issues for the State Board in terms of informing a person as to whether State Board records indicate that they are permitted to register and vote.

---

<sup>1</sup> Separately, following this Court's injunction law fall, DPS was able to identify individuals on *extended* terms of supervision and who owe monetary obligations. Those individuals have been removed from the data used by the State Board to identify ineligible voters.

The State Board has identified two administrative solutions to this issue, both of which present concerns:

1. The State Board could rely on the current feed from DPS and inform people that, according to State Board records, they are not eligible to vote; inform such individuals in the notice that our information does not account for all people affected by the Court's order (namely, those on a non-extended term of supervision); and encourage those persons who *are* eligible under the terms of the Court's order to inform the county board of their eligibility so their registration and vote may be processed. The State Board would assist county boards who were alerted of this issue by communicating with DPS to determine if there was documentation of the person's eligibility—although, as discussed above, such documentation may not be available as a general matter. This proposal raises the concern that it places the onus on the voter to disprove their *ineligibility*, due to lack of confirming information available to the State Board. Such a system could have the unfortunate result of keeping people from voting who should vote under the Injunction.
2. Alternatively, the State Board could request that DPS remove from its feed of felons currently on supervision (and who are ineligible to vote) all persons whose probation terms include financial obligations and the regular conditions of probation only—again, this assumes that the State Board can confirm with DPS that it is possible to isolate this population in the data. This would allow any person covered by the Court's order to register and vote, without any prospect of an initial denial. But it would also be overinclusive, permitting people who are

not covered by the Court's injunction to register and vote (*i.e.*, people for whom the financial obligation is not the reason for being on their initial term of probation, setting aside the regular conditions). Such voters would not benefit from an administrative flagging that could prevent them from unknowingly violating election laws.

Accordingly, the State Board Defendants are in the unfortunate position of either permitting ineligible voters to vote or discouraging eligible voters from voting. They therefore would welcome the Court's guidance on carrying out the Injunction.

*Second*, the language the State Board has identified for implementing the Injunction requires the potential voter to ensure she is eligible by reviewing all the regular conditions of probation under N.C.G.S. § 15A-1343(b) and determine whether those are the only other conditions of her probation. This places the onus on the potential voter to compare the text of the statute to her probation order or her memory of her terms of probation to determine whether those "regular" conditions are the only ones that apply to her. Plaintiffs have raised the concern that requiring this type of analysis by the voter may chill a potential voter's ability to determine whether she is eligible.

### **III. Request for Clarification and/or Guidance**

The State Defendants would appreciate the Court's guidance on which of the above two pathways most effectively implements the Court's injunction, or whether additional changes to the language on the voter registration forms need to be made.

Due to the administrative processes involved in conducting the upcoming elections, time is of the essence. Essentially, the State Board would need any further direction from this Court

by Monday, August 23, 2021, so that the State Board can properly implement the new language before the upcoming elections.

North Carolina will hold municipal elections in multiple counties on October 5, 2021. One-stop early voting begins for the October elections on September 16, 2021, and the statutory voter registration deadline for that election is September 10, 2021.

North Carolina will also hold municipal elections in multiple counties on November 2, 2021. One-stop early voting begins for the November elections on October 14, 2021, and the statutory voter registration deadline is October 8, 2021.

For the State Board to implement new language on the various forms used to conduct registration and the voting process, and for those updated forms to be used in the upcoming municipal elections, the State Board must initiate the process to update that language immediately. Administration of voter check-in at voting sites is largely conducted through electronic databases and information systems. In particular, the State and county boards of elections use the State Election Information Management System (SEIMS), which is a networked, computerized system that every election official and poll worker uses to conduct the voting process at the nearly 3,000 voting locations throughout this state.

To use one-stop early voting as an example, when a voter checks in to vote, a poll worker locates that person's information in SEIMS and, from the SEIMS system, the poll worker prints a One-Stop Application Form, which serves as the voter's affirmation that they are eligible to vote in the election. A sample of such a form was entered into evidence at trial as SDX-35, and it includes the relevant language regarding eligibility as a result of the Injunction. The form is prepopulated with the voter's information, drawing from the data in SEIMS.

The process of generating this form through SEIMS is the result of computer coding, which, in basic terms, is written into the SEIMS system and which instructs the system to generate all of the contents of the form in the exact way that form will appear when printed.

Changes to election administrative forms must be done well in advance of actual voting, because software developers must code those changes into the SEIMS system, test it (to ensure it operates as intended and does not create unintended consequences in the system), and implement the coding changes with a systemwide update. Generally, changes to the SEIMS system cannot be made while voting is occurring, because it runs the risk of interfering with the voting process which, again, is being conducted using the SEIMS system.

For comparison purposes, last fall, after the form language to implement the Injunction was finalized, it took the State Board approximately a month to implement the changes to the forms in SEIMS following this Court's Injunction.

Accordingly, in addition to being required by the Court to initiate changes immediately, the State Board, as an administrative matter, must also initiate the implementation of the Court's instructions immediately, in order for those changes to appear on voters' forms in the upcoming municipal elections.

\* \* \*

Therefore, State Defendants respectfully provide notice to the Court of administrative challenges involved in the implementation of the Injunction and seek the Court's guidance, as soon as possible, on proper implementation of its Injunction.

This the 21st day of August, 2021.

JOSHUA H. STEIN  
Attorney General

/s/ Paul M. Cox



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*Counsel for the State Board  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email and was addressed to the following counsel:

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This the 21st day of August, 2021.

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*Counsel for Legislative Defendants*

/s/ Paul M. Cox  
Paul M. Cox  
Special Deputy Attorney General

# EXHIBIT I

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1 NORTH CAROLINA ) IN THE GENERAL COURT OF JUSTICE  
2 WAKE COUNTY ) SUPERIOR COURT DIVISION  
19-CVS-15941

3

4 COMMUNITY SUCCESS INITIATIVE; JUSTICE  
5 SERVED NC, INC.; NORTH CAROLINA STATE  
6 CONFERENCE OF THE NAACP,

7 Plaintiffs,

8 vs.

9 TIMOTHY K. MOORE, IN HIS OFFICIAL  
10 CAPACITY OF SPEAKER OF THE NORTH  
11 CAROLINA HOUSE OF REPRESENTATIVES;  
12 et al.,

13 Defendants.

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14

15

16

17 Deposition by RingCentral

18 of

19 SENATOR HENRY M. MICHAUX, JR.

20

21

22 (Taken remotely by the Legislative Defendants)

23 Durham, North Carolina

24 Wednesday, June 24, 2020

25

26

27 Reported Remotely in Stenotype  
28 Denise Y. Meek  
29 Court Reporter and Notary Public

Page 2

APPEARANCES

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Page 3

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(Continued)

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ALSO PRESENT:  
AUDREY CHILDERS

Page 4

Deposition by RingCentral of SENATOR HENRY  
M. MICHAUX, JR., a witness located in Durham,  
North Carolina, was called remotely on behalf of the  
Legislative Defendants, before Denise Y. Meek, remote  
court reporter and notary public, in and for the  
State of North Carolina, on Wednesday, June 24, 2020,  
commencing at 9:01 a.m.

Page 5

INDEX OF EXAMINATIONS

1	SENATOR HENRY M. MICHAUX, JR.	PAGE
2		
3	By Mr. Rabinovitz	8
4	By Ms. Theodore	129
5		
6		
7		
8	INDEX OF EXHIBITS	
9	NUMBER                      DESCRIPTION	PAGE
10	Defendants' 1 Affidavit of Henry M. Michaux, Jr.	23
11	Defendants' 2 Chapter 13. Citizenship Restored The General Statutes of North Carolina, Volume 1B - 1969 Replacement Volume	31
12		
13	Bates: CSI_NCSBE_000011 thru 000014	
14	Defendants' 3 North Carolina General Assembly 1971 Session, Chapter 902, House Bill 285	50
15		
16	Defendants' 4 Article - The Robesonian Thursday, July 22, 1971 "Restoring Citizens" Bates: CSI_NCSBE_000003	64
17		
18		
19	Defendants' 5 General Assembly of North Carolina 1971 Session, House DRH3041 Short Title: Citizenship Restored	67
20		
21	Defendants' 6 General Assembly of North Carolina 1973 Session, House DRH7006 Short Title: Citizenship Restored	71
22		
23	Defendants' 7 North Carolina General Assembly 1973 Session Chapter 251, House Bill 33	88
24		
25		

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
 Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 6

1	INDEX OF EXHIBITS	
2	(Continued)	
3	NUMBER                      DESCRIPTION	PAGE
4	Defendants' 8 Article - The News and Observer Saturday, March 24, 1973	92
5	"Under the Dome" Bates: CSI_NCSBE_000006	
6		
7	Defendants' 9 Article - The Robesonian Wednesday, March 28, 1973	95
8	"Baby Animals, Felon Citizenship Restoration Bill Are Discussed" Bates: CSI_NCSBE_000005	
9		
10	Plaintiffs' 1 Article - The News and Observer July 8, 1971	134
11	"Felon Citizenship Bill Gets House Approval" Bates: CSI_NCSBE-000008	
12		
13		
14		
15		
16		
17		
18		
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Page 7

1                      - - -

2                      MR. RABINOVITZ: This is Brian

3 Rabinovitz with the North Carolina Attorney

4 General's Office on behalf of the

5 Legislative Defendants, Speaker Moore and

6 President Pro Tem Berger; and we affirm or

7 agree to the stipulation of the remote

8 oath.

9                      MR. COX: This is Paul Cox from the

10 North Carolina Attorney General's Office

11 representing the State Board of Elections

12 members that are named in this action; and

13 we also agree to the stipulation that

14 Mr. Rabinovitz outlined.

15                      MR. JOYNER: I'm Irving Joyner, and I'm

16 representing Senator Michaux; and agree

17 with the stipulations.

18                      MS. THEODORE: And I am

19 Elisabeth Theodore from Arnold & Porter,

20 representing the plaintiffs; and we also

21 agree to the stipulations.

22                      MR. JACOBSON: This is Daniel Jacobson

23 from Arnold & Porter, also for the

24 plaintiffs.

25                      MS. CARPENTER: This is Whitley

Page 8

1                      Carpenter from Forward Justice, also

2 representing the plaintiffs.

3                      MR. ATKINSON: Daryl Atkinson, Forward

4 Justice, representing the plaintiffs; agree

5 with the aforementioned stipulations.

6                      MS. VYSOTSKAYA: This is Olga

7 Vysotskaya on behalf of the State Board of

8 Elections.

9                      THE REPORTER: Senator, I'll ask you to

10 please raise your right hand.

11                      Do you solemnly swear the testimony you

12 will give in this matter will be the truth,

13 the whole truth, and nothing but the truth,

14 so help you God?

15                      THE WITNESS: I do.

16                      THE REPORTER: Thank you very much.

17                      - - -

18                      SENATOR HENRY M. MICHAUX, JR.,

19 having been first duly sworn,

20 was examined and testified as follows:

21                      EXAMINATION

22 BY MR. RABINOVITZ:

23 Q. Okay. Representative Michaux, we met

24 briefly remotely prior to going on the record

25 here in the deposition today. My name, again,

Page 9

1 is Brian Rabinovitz, and I'm representing the

2 legislative defendants in this case, and that

3 is Speaker Moore and President Pro Tem Berger,

4 both in their official capacities.

5                      I think one thing that Huseby asked us

6 to do, just for everyone, to make sure there's

7 no feedback or anything, is that if most people

8 can mute their microphone, unless -- unless

9 you're talking, I think that will just,

10 hopefully, cut down on any distractions that we

11 might have. And there's also a Huseby tech on

12 the line, I understand. So, you know, if we

13 get disconnected or run into a technical

14 problem, I think that we can ask for their

15 assistance. So Representative Michaux, you

16 know, just a couple preliminary matters.

17                      You understand, even though we're doing

18 this deposition in a somewhat unusual way with

19 everybody appearing remotely, that you are

20 testifying under oath today?

21                      A. Yes. Yes.

22                      Q. And is there anything that would

23 interfere with your ability today to understand

24 and answer my questions?

25                      A. No.

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 10	Page 12
<p>1 Q. Okay. And if I do ask a question that 2 you don't understand, because I may at times 3 say things in an inarticulate way, please just 4 let me know, and I'll be happy to go ahead and 5 repeat it or rephrase it as necessary. If you 6 don't ask me to do that, though, I'm going 7 to -- I'm going to assume that you've 8 understood my question.</p> <p>9 Does that seem fair?</p> <p>10 A. That seems fair. Yes.</p> <p>11 Q. Okay. Great. And we talked about this 12 a little bit before we went -- before we went 13 on the record, but, certainly, if you need a 14 break at any time, you know, you just let me 15 know, and we can go off the record and take a 16 break.</p> <p>17 MR. RABINOVITZ: And I would, you know, 18 extend that to everyone else who is 19 participating as well. I know many people 20 like me are participating from home today. 21 So if other counsel needs a break for some 22 reason, you know, we can certainly 23 accommodate that and go off the record.</p> <p>24 BY MR. RABINOVITZ:</p> <p>25 Q. As I said before, I'm hoping this will</p>	<p>1 respect to matters emerging from this 2 litigation in this case. So I want to make 3 that clear for the record, that the waiver 4 of immunity is a limited one, and it's 5 limited just to the deposition -- this 6 affidavit -- in a deposition about this 7 affidavit.</p> <p>8 MR. RABINOVITZ: All right.</p> <p>9 MR. JOYNER: I apologize.</p> <p>10 MR. RABINOVITZ: Understood. Thank 11 you. Thank you, Professor Joyner. I 12 appreciate that clarification.</p> <p>13 BY MR. RABINOVITZ:</p> <p>14 Q. Just so my question is clear, I'm not 15 asking -- I'm not asking about conversations 16 with Professor Joyner. I'm also not asking 17 about anything, you know, outside of your 18 affidavit or, you know, your participation in 19 this deposition and your deposition here today.</p> <p>20 So what I'm asking -- you mentioned 21 that you talked to some folks yesterday. My 22 understanding was that you were saying that you 23 talked to them in relationship to giving this 24 deposition here today. And so that's -- that's 25 the only question that I'm asking you is: What</p>
Page 11	Page 13
<p>1 only take a couple hours of your time today. 2 that it -- that it won't take too long.</p> <p>3 In terms of how you prepared for 4 today's deposition, other than speaking with 5 your attorney -- and I certainly don't want to 6 ask anything that you spoke with Professor 7 Joyner about -- but aside from conversations 8 with him, what else did you do to prepare for 9 today's deposition?</p> <p>10 A. I checked copies of bills and tried to 11 sit down and recollect what happened 46, 12 47 years ago, for what the deposition was 13 about. And I got -- basically, I talked with 14 folks yesterday, just in general, but...</p> <p>15 Q. Okay.</p> <p>16 A. I'm just trying to rely on an old 17 memory.</p> <p>18 Q. Okay. And other than your attorney, 19 you mentioned speaking with some folks 20 yesterday. Who was it that you spoke with?</p> <p>21 MR. JOYNER: Brian, this is Irv Joyner. 22 I apologize for interrupting, but let me 23 just say for the record that Senator 24 Michaux enjoys immunity, legislative 25 immunity, and is waiving that only with</p>	<p>1 conversations --</p> <p>2 A. Yes. Yes.</p> <p>3 Q. -- did you have with them about this 4 deposition?</p> <p>5 A. Yes. Yes.</p> <p>6 Q. So who was it who you spoke to other 7 than Professor Joyner?</p> <p>8 A. Caitlin Swain, and the lady from Arnold 9 &amp; Porter, who was the NAACP.</p> <p>10 Q. Okay. And from the NAACP, did you -- 11 you spoke with -- do you mean counsel for the 12 NAACP in this case or officials at the NAACP?</p> <p>13 A. No. No. He is there with them now.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah.</p> <p>16 Q. Counsel for the NAACP?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. Okay. And was there anyone 19 else, or was it just -- it was Caitlin Swain 20 and counsel for the NAACP?</p> <p>21 A. And my counsel.</p> <p>22 Q. And your counsel. Sure.</p> <p>23 A. Arnold &amp; Porter.</p> <p>24 Q. Okay. And the folks at Arnold &amp; 25 Porter.</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 14

1           Okay. And can you -- can you -- what  
2 was the topic that you spoke with them about?  
3 Obviously, in relation to this here today, but  
4 can you explain in some more detail what those  
5 conversations involved?  
6           A. It was just basically about what --  
7 what brought about the legislation and what I  
8 remembered about the legislation. You have to  
9 remember, this was 46, 47 years ago, and there  
10 were three of us involved. There was some  
11 legislation that had been passed the year  
12 before I got there, and this was -- I got -- in  
13 '71. I got there in '73 and was asked to take  
14 that on as part of that. And that's basically  
15 what we talked about.  
16           Q. Okay.  
17           A. Yeah.  
18           Q. And were they providing you with  
19 information or data to help refresh your  
20 recollection, or were they just asking you what  
21 your recollection was?  
22           A. It was a -- I guess you could call it a  
23 general conversation. I got supplied with  
24 copies of the legislation and had an  
25 opportunity to look it over. We didn't go into

Page 15

1 any great detail.  
2           Q. Okay.  
3           A. To any extent that I can recall.  
4           Q. Okay. Did they --  
5           A. Other than the fact that compromises  
6 had to be made in order to get the legislation  
7 like we thought -- like I thought it should be  
8 and like we thought it should be.  
9           Q. Okay. And what questions did they ask  
10 you about those compromises?  
11           A. That was yesterday, too.  
12           Q. I understand.  
13           A. It wasn't -- there weren't questions as  
14 it was just a general conversation. My  
15 recalling, for instance, why certain verbiage  
16 was put in there.  
17           Q. Okay. And what -- do you recall what  
18 specific verbiage it was that you were  
19 discussing?  
20           A. Why we -- why we used probation and  
21 parole, put that in there. It's my  
22 understanding that -- my purpose -- our purpose  
23 was, at the time, to try to clear up the  
24 legislation that was passed in '71, which had  
25 you still going before a court to get your

Page 16

1 rights restored.  
2           Our position at the time, in '73, was  
3 the people who were getting their rights  
4 restored couldn't afford to go to court. And  
5 so we just put it in a blanket form in order to  
6 try to get it to a state where they didn't have  
7 to go to court.  
8           They came back and agreed that because  
9 of certain instances that come about, that we  
10 had to put in probation and parole. Because  
11 what I was looking for was almost like a  
12 legislative pardon.  
13           Q. Uh-huh.  
14           A. An unconditional pardon, is what I was  
15 looking for.  
16           Q. Okay. And I am going to get into the  
17 details asking you about each of those pieces  
18 of -- each of those pieces of legislation.  
19 Right now I'm just trying to understand, you  
20 know, as best I can, the nature of the  
21 conversations that you had prior to your  
22 deposition testimony.  
23           Did you -- did plaintiffs discuss with  
24 you the litigation and the parties' positions  
25 in this current litigation?

Page 17

1           A. No.  
2           Q. Did they explain that to you?  
3           A. No.  
4           Q. Okay.  
5           A. I -- they -- I guess they just assumed  
6 that I knew. And I know a little bit about it.  
7 I've, you know, I've read parts of the lawsuit.  
8           Q. Okay. What parts of the lawsuit have  
9 you read?  
10           A. I don't -- I looked at it. I don't  
11 know. It's been a while since I've, you know,  
12 took a look at it, but...  
13           Q. Okay.  
14           A. I was -- I was just, basically,  
15 generally familiar with it.  
16           Q. Okay. So that would probably be the  
17 complaint, I would assume --  
18           A. The complaint, yeah.  
19           Q. -- would be what you would have looked  
20 at, probably?  
21           A. Yeah.  
22           Q. Okay. Prior to your conversation with  
23 the folks who you mentioned yesterday, were  
24 there other conversations that you had earlier  
25 on with other people about this lawsuit or



**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 18

1 about your affidavit, again, other than  
2 Professor Joyner?  
3 A. No.  
4 Q. No. Okay.  
5 A. And the people I talked to yesterday.  
6 Q. Okay. You also mentioned that you  
7 reviewed some documents. And those were -- I  
8 believe you said those were some documents  
9 related to this -- to the legislation that  
10 we're talking about here?  
11 A. To the legislation. Right.  
12 Q. Okay. So would those have been, like,  
13 the session laws or some of the bills that were  
14 introduced?  
15 A. They were bills that were introduced  
16 and passed.  
17 Q. Okay. And when -- when were those  
18 materials provided to you?  
19 A. I think I printed them off yesterday or  
20 the day before.  
21 Q. Okay. So they weren't provided by  
22 anyone? You went and you found them and  
23 printed them?  
24 A. My lawyer got them for me.  
25 Q. Your lawyer. Okay. Okay.

Page 19

1 Before we jump into your affidavit, I  
2 did want to just, for the record, talk about  
3 your background a little bit. I know that  
4 you've had a very long, very distinguished  
5 career, but prior to your legislative service,  
6 can you just kind of go over the major points  
7 in your career before you were elected to the  
8 House?  
9 A. I came out of the Civil Rights -- I  
10 actually came between, like, '58 and -- at the  
11 time I went to the Legislature, I was involved  
12 in the Civil Rights Movement. There were many  
13 persons who were involved, nationally, in it.  
14 I also -- after I finally passed the  
15 bar exam, I got to be the chief assistant  
16 district attorney in Durham County for about  
17 five -- four or five years; I forget which. I  
18 went up -- I went on in the old recorder's  
19 court situation. And when the General Court of  
20 Justice came in -- by 1970, it shifted over  
21 to -- to the General Court of Justice. And I  
22 was a solicitor at one time in the old  
23 recorder's court situation.  
24 But I was involved quite a bit in the  
25 Civil Rights Movement. I had a friend who

Page 20

1 was -- many people know -- Martin Luther King,  
2 Jr., was a close friend. And a lot of others  
3 who were in there, and Jesse Jackson. All of  
4 us were sort of comrades in arms trying to get  
5 some things straightened out. Basically,  
6 that's -- that -- that was it. I got involved  
7 in politics because of Dr. King.  
8 And from that point on, things -- 1964,  
9 is when I first ran. I got arrested a couple  
10 of times for demonstrating, sitting in, and  
11 that type of thing. Other than that, that's  
12 about it.  
13 Q. Okay. And then when were you first --  
14 you said you ran in '64, and I believe you ran  
15 a couple of times before --  
16 A. I ran in 1964, '66, and '68.  
17 Q. Okay.  
18 A. And I gave up on politics after --  
19 after Martin was killed, after Dr. King was  
20 killed, but I was induced back into it in 1972.  
21 That's when I ran and won and got elected 19  
22 times -- reelected 19 times.  
23 Q. Is that right?  
24 A. With a break in between service as  
25 United States Attorney for the Middle District

Page 21

1 of North Carolina.  
2 Q. So that was -- what years did you --  
3 did you break for service?  
4 A. '77 to '81.  
5 Q. I'm sorry. I --  
6 A. June of '77 to '81, 1981. I served as  
7 United States Attorney for the Middle District  
8 of North Carolina.  
9 Q. Okay. And then -- and then you --  
10 after many years of service, you eventually  
11 retired from the House. What year was that?  
12 A. I retired from the House at the end of  
13 the 2019 session.  
14 Q. Okay.  
15 A. I'm sorry. 2018 session.  
16 Q. 2018 session. Okay. And then -- and  
17 then you had another -- another short political  
18 career after that as well. Can you explain  
19 that?  
20 A. I had an extremely short political  
21 career in the Senate in 2020, three months.  
22 Q. Okay. Now, you talked about some of  
23 your civil rights work that you did prior to  
24 when you got elected to join the House of  
25 Representatives.

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 22

1 Did any of your professional work or  
2 organizational work or civil rights work relate  
3 to the issue in this case, which is the voting  
4 rights of former felons?  
5 A. Specifically, no; but on an overall  
6 basis, yes.  
7 Q. Okay. Can you explain that a little?  
8 A. Because -- because there were several  
9 factors involved. And you have to understand  
10 the subtlety in the Black community during that  
11 time. If you -- if you were -- if you got  
12 convicted of a felony, you lost all your rights  
13 for the rest of your life. And that was --  
14 that was a tangential part of the whole  
15 Civil Rights Movement was giving constitutional  
16 rights back to people who had either lost them  
17 or had never been able to exercise them. So it  
18 was not a -- not a pure specific point, but it  
19 was a tangential point. Yes.  
20 Q. Okay. And when you talk about someone  
21 losing all of their rights -- you know, this  
22 case is obviously about voting rights, but what  
23 other issues, you know, fall under that, in  
24 your mind?  
25 A. In my mind, every constitutional right

Page 23

1 that Americans enjoy fell under that right,  
2 including why you don't have the constitutional  
3 right to vote, including the right of  
4 enfranchisement. And anything that we were  
5 denied as African Americans, we considered a  
6 right. And so all we were looking for was just  
7 what every other American enjoyed. The same  
8 rights that they enjoyed, we wanted those  
9 rights. Yeah. So that's why I say,  
10 tangentially, anything that white Americans  
11 enjoy, Black Americans should enjoy too. And  
12 once -- once you -- once you were deprived of  
13 those rights, then there should be some way of  
14 restoring those rights. So as an overall  
15 feature, that was it.  
16 (Defendants' 1 premarked.)  
17 BY MR. RABINOVITZ:  
18 Q. Okay. I want to -- I'm going to try  
19 and go ahead here and share an exhibit with  
20 you. And you'll let me know if this works.  
21 This is going to be the affidavit that you --  
22 that you executed in this case.  
23 Are you able to -- are you able to see  
24 that on your screen?  
25 A. Yes, I am.

Page 24

1 Q. Okay. Great. Does this -- I can  
2 scroll through it, it's several pages long, but  
3 from what you can see, does this appear to be a  
4 true copy of the affidavit that you executed  
5 here? And if you'd like to, I can even let you  
6 have the control to scroll through it, if you'd  
7 like to look at the different pages at your own  
8 pace. Whatever -- whatever works best for you.  
9 You let me know.  
10 A. It appears to be. I have a copy of it.  
11 Q. Okay. Okay. So --  
12 A. So it appears to be.  
13 Q. Okay.  
14 A. Yeah.  
15 Q. Okay. So just for purposes of making a  
16 clear record, though, it's fine for you to look  
17 at your copy, but I want to make sure that what  
18 you see on the screen, you can, you know,  
19 affirm that that -- that that is your  
20 affidavit.  
21 A. Yes.  
22 Q. So there at the bottom, that appears to  
23 be your signature on --  
24 A. That is my signature.  
25 Q. -- May 7th? Okay.

Page 25

1 A. Right.  
2 Q. So this is the affidavit that you  
3 executed for the plaintiffs in this case on  
4 May 7th; is that right?  
5 A. That's correct.  
6 Q. Okay. Now, at the time that you  
7 executed this affidavit, were you already being  
8 represented by Professor Joyner?  
9 A. No.  
10 Q. Okay. So when was it that you -- that  
11 Professor Joyner first started representing you  
12 in this case, approximately?  
13 A. About a month ago, I think; somewhere  
14 in that time.  
15 Q. Okay. And were you represented -- just  
16 to make sure I've covered all the bases, were  
17 you represented by another attorney at any  
18 point when you executed this affidavit?  
19 A. No.  
20 Q. No. Okay. So how did it -- how did it  
21 come about that -- that you executed this  
22 affidavit for -- for the plaintiffs in this  
23 case?  
24 A. For the plaintiffs, the NAACP asked me  
25 about it, and we talked about it -- though,

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 26

1 this has been -- it was a long time even before  
2 the suit was filed -- and they wanted it to be  
3 a part of their action, and I was the only one  
4 left that had any knowledge; or Henry Frye was  
5 the only one.

6 What you have to understand is that  
7 I'm -- I'm probably -- Henry and I -- there  
8 were three Blacks in the legislature at the  
9 time that this -- this information came -- that  
10 this legislation came up. And we sort of  
11 divided things up among us as to what we would  
12 do and what we would take on. And since I  
13 had -- was the only one that had any practice  
14 in criminal law, Joy asked me to help him with  
15 this, to get rid of what everybody was getting  
16 at, which was actually a legislative  
17 unconditional pardon to those who had been  
18 convicted of a felony.

19 And so they knew that I was the -- I  
20 guess the NAACP, at this time, knew I was the  
21 only one that had that same type of knowledge,  
22 and they called on me to see what I could  
23 recall about this particular legislation.

24 Q. Okay. So you said that was back before  
25 this lawsuit was filed. So it was originally

Page 27

1 filed at the end of 2019, in the fall of 2019.

2 So your recollection is that you were  
3 contacted sometime before that; is that right?

4 A. My very vague recollection is yes, I do  
5 remember talking to some people sometime prior  
6 to -- to the suit being filed. You know,  
7 there's been so many suits filed that I've  
8 talked to people about over the years that they  
9 all run together.

10 Q. Okay. Your recollection is that it was  
11 prior to when the suit was filed and that those  
12 were conversations with the NAACP attorneys.

13 Can you just let me know what you --  
14 what do you recall about those conversations?

15 A. It was just -- I really don't. I  
16 really can't recall, other than the fact  
17 that -- like, I had to ask yesterday, you know:  
18 Why is this a particular part of the action?  
19 And that was it.

20 Q. Okay.

21 A. I just -- I mean, I can't sit here and  
22 give you verbatim any type of conversation.  
23 I've had so many conversations about lawsuits  
24 involving constitutional rights, the racism  
25 problem that existed that is bothering their

Page 28

1 mind -- it's bothering my mind -- and I'm just  
2 lucky that right now I can remember even a  
3 portion of it.

4 Q. Right. And I certainly don't want you  
5 to -- you know, I'm only asking you about what  
6 you can recall. And I understand you've had  
7 many conversations with many people over the  
8 years about lawsuits and legislation.

9 Do you recall if they were approaching  
10 you to get your advice about filing the lawsuit  
11 or if they were just trying to get information  
12 from you because of your history?

13 A. I have no knowledge. I know that they  
14 knew that I had a history --

15 Q. Yeah.

16 A. -- in the movement, and they sort of  
17 looked on me as one of the leaders, and that  
18 was it.

19 Q. Okay.

20 A. That's as much as I can tell you about  
21 that.

22 Q. Sure. Sure. No. That's -- that's  
23 fine.

24 So after they initially contacted  
25 you -- you say, you know, that was back before

Page 29

1 the lawsuit was filed -- what other  
2 conversations have you had with counsel for  
3 NAACP or plaintiff's counsel since they first  
4 contacted you?

5 A. Now, I really don't understand that,  
6 because I've had so many conversations with  
7 them about various things. I've testified in  
8 several actions. Only one action, in  
9 particular, that I've had conversations with  
10 them about it.

11 Q. Okay. I'm sorry. My question was very  
12 unclear, and I apologize for that. I just need  
13 related to this action.

14 So you said they contacted you prior to  
15 when they filed it, and then they contacted you  
16 around the time that you executed your  
17 affidavit. So I was -- there's several months  
18 in there. I was just asking if there were  
19 other conversations that you had with them  
20 about this lawsuit during that time.

21 A. There may have been. We -- before they  
22 -- they came to me before the affidavit was  
23 filed.

24 Q. Yes.

25 A. And we talked about it then. Yes. And

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 30

1 they wanted to know what I recalled about the  
2 law itself, and why he, you know -- and, I  
3 mean, that was it. The normal course of trying  
4 to get information in regard to their lawsuit.  
5 Q. Okay. In terms of -- in terms of your  
6 affidavit here, what was the -- what was the  
7 drafting and editing process? Was this -- was  
8 the affidavit drafted by the plaintiff's  
9 counsel here, the initial draft, or was it  
10 drafted by you, initially?  
11 A. It was drafted in conjunction with me.  
12 Q. Okay.  
13 A. By plaintiff's counsel.  
14 Q. Okay. So did they produce a draft  
15 after speaking with you that they then  
16 presented to you to review?  
17 A. Yes.  
18 Q. Okay. And do you recall if there were  
19 changes that you had to make to the draft that  
20 they presented to you?  
21 A. There were some changes that were made,  
22 yes.  
23 Q. Okay. And can you recall what any of  
24 those changes were?  
25 A. I really can't. There were some

Page 31

1 editorial changes.  
2 Q. Okay.  
3 A. And, no, I don't recall all the  
4 changes, but...  
5 Q. Okay. Do you recall if there were any  
6 substantive changes that had to be made?  
7 A. Not that I can recall.  
8 Q. Okay. So you mentioned printing off  
9 some legislation, the bills, when you were  
10 getting ready for your deposition testimony  
11 here today.  
12 What about when you were working with  
13 them on the affidavit? Were you consulting  
14 with any of those legislative history  
15 documents, bills, or session laws?  
16 A. No.  
17 Q. Okay. Any other types of documents at  
18 the time, or just your memory?  
19 A. Just my memory.  
20 Q. Okay. Was there anyone else you talked  
21 to, other than the counsel for the NAACP,  
22 before you executed your affidavit here?  
23 A. No.  
24 (Defendants' 2 premarked.)  
25 BY MR. RABINOVITZ:

Page 32

1 Q. Okay. I want to go ahead and look at  
2 another exhibit here, which should show up on  
3 your screen.  
4 Are you able to see that I've changed  
5 to Defendants' Exhibit 2?  
6 A. Yes.  
7 Q. Okay. And just for the record -- I'll  
8 go back a second to your affidavit. I've  
9 pre -- I premarked your affidavit as  
10 Defendants' Exhibit 1.  
11 Do you see that sticker at the --  
12 A. I see it. Yeah.  
13 Q. -- at the top right-hand corner?  
14 A. Uh-huh.  
15 Q. And this next exhibit I've marked as  
16 Exhibit Number 2. And this represents itself  
17 to be some of the North Carolina statutes from  
18 or through the legislative session in 1969.  
19 Is that what it appears to be from  
20 this --  
21 A. That's what it appears to be.  
22 Q. -- face sheet here?  
23 Okay. I'm going to go on to the second  
24 sheet. So this is obviously not the entire  
25 copy of the General Statutes then, but this is

Page 33

1 Chapter 13 of the General Statutes. So this is  
2 as the law appeared in 1969, I believe.  
3 Does that -- that look accurate to you?  
4 A. That's what it appears to be.  
5 Q. Okay. And if you want to go ahead and  
6 review, you know, 13-1 and 13-2. I want to  
7 talk to you a little bit about what the law was  
8 at that time, the prior law.  
9 A. Okay.  
10 MS. THEODORE: Brian, sorry to -- sorry  
11 to interrupt, but would it be possible for  
12 you to email counsel for plaintiffs, and  
13 for Mr. Joyner, certainly, if he wants  
14 them, a copy of the affidavit -- of the --  
15 of the exhibits that you're showing on the  
16 screen here.  
17 MR. RABINOVITZ: Yeah, I would be happy  
18 to do that. Do you want to go off the  
19 record for a minute for me to be able to do  
20 that?  
21 MS. THEODORE: Sure.  
22 MR. RABINOVITZ: Okay. Actually, I  
23 think Olga just said she can go ahead and  
24 do that while I continue to move along. So  
25 if it's all right with everyone, we can

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 34	Page 36
<p>1 just stay on the record, then.</p> <p>2 MS. THEODORE: Sounds good.</p> <p>3 MR. RABINOVITZ: Okay.</p> <p>4 MR. JOYNER: That's fine.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. RABINOVITZ:</p> <p>7 Q. So what -- what is your -- what was</p> <p>8 your understanding of what was required</p> <p>9 under -- under the statute? And this would</p> <p>10 have been prior to even to the 1971</p> <p>11 legislation. What's your understanding of what</p> <p>12 was required for the restoration of voting</p> <p>13 rights?</p> <p>14 A. The requirement for restoration of</p> <p>15 rights was that you had to hire a lawyer, and</p> <p>16 go to court and have a hearing, and get a</p> <p>17 determination made that way. People that we</p> <p>18 were involved with didn't have the wherewithal</p> <p>19 to hire a lawyer to get any type of rights</p> <p>20 restored. And we just wanted a way -- a way</p> <p>21 for them to get them restored without having to</p> <p>22 go through any expense. Particularly, after</p> <p>23 they had served their time.</p> <p>24 Q. Okay. So you mentioned that there was</p> <p>25 a -- that, you know, one of the requirements,</p>	<p>1 convince the judge.</p> <p>2 A. That's exactly right.</p> <p>3 Q. Okay. Did you have concerns at the</p> <p>4 time about whether judges would fairly treat</p> <p>5 African Americans who were former felons who</p> <p>6 might come before them trying to get their</p> <p>7 rights restored?</p> <p>8 A. I hadn't had any -- I hadn't had any --</p> <p>9 any -- any experience with it, no, but I knew</p> <p>10 that there were prejudiced judges that would --</p> <p>11 that would deny you anything you asked for if</p> <p>12 you were Black.</p> <p>13 Q. Okay.</p> <p>14 A. I mean, that was the -- that was the</p> <p>15 psyche in the -- in the whole community. You</p> <p>16 don't care what rights white folks had, Black</p> <p>17 folks weren't -- weren't -- unless we gave them</p> <p>18 to you, specifically, that was the only way you</p> <p>19 were going to get them.</p> <p>20 Q. Okay. It also seems like, in addition</p> <p>21 to hiring an attorney and going through the</p> <p>22 court process -- I'm just going to go ahead and</p> <p>23 read 13-1, there, so we can discuss it in more</p> <p>24 detail.</p> <p>25 So it says -- it's titled "Petition</p>
Page 35	Page 37
<p>1 because you had to go to court, there was a --</p> <p>2 there was a monetary issue there. People had</p> <p>3 to hire attorneys to assist them with that</p> <p>4 process.</p> <p>5 What other problems, if any, were you</p> <p>6 aware of in the law as it was prior to the 1971</p> <p>7 and 1973 legislation?</p> <p>8 A. There wasn't really any other than the</p> <p>9 fact that we were trying to get people their</p> <p>10 rights back that they had previously enjoyed,</p> <p>11 and what everybody else was enjoying, and</p> <p>12 served their time, had been rehabilitated, and</p> <p>13 why should they not have their rights restored</p> <p>14 without having to go through the expense and</p> <p>15 problems and trouble of a court hearing which</p> <p>16 could take -- you know, turn out not in their</p> <p>17 favor anyway. Particularly, if you had a</p> <p>18 prejudiced court or something like that; it was</p> <p>19 denied.</p> <p>20 Q. So I think there's another piece -- and</p> <p>21 let me know if I characterize this correctly or</p> <p>22 not -- but it seems like another problem with</p> <p>23 it, from your view, is that it -- it wasn't</p> <p>24 automatic. It was a discretionary issue where</p> <p>25 folks had to go in front of a judge and</p>	<p>1 filed." And it says: "Any person convicted of</p> <p>2 an infamous crime, whereby the rights of</p> <p>3 citizenship are forfeited, desiring to be</p> <p>4 restored to the same, shall file his petition</p> <p>5 in the superior court, setting forth his</p> <p>6 conviction and the punishment inflicted, his</p> <p>7 place or places of residence, his occupation</p> <p>8 since his conviction, the meritorious causes</p> <p>9 which, in his opinion, entitle him to be</p> <p>10 restored to his forfeited right, and that he</p> <p>11 has not before been restored to the lost right</p> <p>12 of citizenship."</p> <p>13 Anything else in there that's of</p> <p>14 concern to you?</p> <p>15 A. No apparent areas of concern to me.</p> <p>16 Because if you were Black, and you had been</p> <p>17 convicted of an infamous act, and you had</p> <p>18 served and done your time, you didn't have to</p> <p>19 have your rights restored after that, based on</p> <p>20 that, because you had to -- look at what you</p> <p>21 had to do. If you couldn't get a job because</p> <p>22 you were a convicted felon, or any of the other</p> <p>23 things required than just that one paragraph,</p> <p>24 it was an anathema to Black folks. I mean,</p> <p>25 what you're getting into is you're getting into</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

<p align="right">Page 38</p> <p>1 the whole psyche of the movement in putting  2 into law, language that takes those rights away  3 from you once you have rehabilitated yourself.  4 Q. Okay. And then I want to look at the  5 next section there as well, 13-2, which is  6 titled "When and where petition filed."  7 So it says: "At any time after the  8 expiration of two years from the date of  9 discharge of the petitioner, the petition may  10 be filed in the superior court of the county in  11 which the applicant is at the time of filing  12 and has been for five years next preceding a  13 bona fide, or in the superior court of the  14 county, at term, where the indictment was found  15 upon which the conviction took place; and in  16 case the petitioner may have been convicted of  17 an infamous crime more than once, and  18 indictments for the same may have been found in  19 different counties, the petition shall be filed  20 in the superior court of that county where the  21 last indictment was found."  22 So it appears from this and is it your  23 understanding that there was also a waiting  24 period or a time period that was required  25 before somebody could petition the court?</p>	<p align="right">Page 40</p> <p>1 in one place for five years before you can  2 exercise the two years.  3 Q. Now, it also uses the language there  4 when it's talking about waiting the two years.  5 It says "from the date of discharge of the  6 petitioner." And I want to ask you your  7 understanding of what that means --  8 A. I don't know what it --  9 Q. -- "date of discharge."  10 A. I don't know what it means. Because  11 the way courts were acting then, and even  12 today, what -- discharge from what?  13 For instance, if you -- if you get put  14 on probation, you violate your probation, and  15 your probation is extended, which period of  16 time are you looking at, the original or the  17 extended period?  18 Q. Okay. So it's unclear to you from this  19 statute what was meant by that?  20 A. Yeah. And I think it was made vague on  21 purpose.  22 Q. Okay. And what was the purpose for  23 that, do you believe?  24 A. The purpose was to keep Black folks  25 from being declared full citizens with the</p>
<p align="right">Page 39</p> <p>1 A. You've got -- you've got a built-in  2 two-year time period, which really could be up  3 to five years before you would even think about  4 getting your citizenship back.  5 Q. Okay. And why could it be up to five  6 years?  7 A. Because it says down here -- where does  8 it say it? "The applicant is at the time of  9 filing and has been for five years next  10 preceding a bona fide resident."  11 Anybody who moved -- you've got to live  12 in a place five years before you can --  13 can apply for it.  14 Q. Okay. Does that -- in your mind, does  15 that create any obstacles that were particular  16 to the African-American population?  17 A. Yes. You get a Black man who has been  18 convicted of a felony who can't get a job in  19 one county. He moves around to several  20 counties to get a job. It takes him a year,  21 two years, three years to do that. He's still  22 not up to the five years he's got to live in  23 that county. Even though you've got a  24 two-years application part in there. You've  25 got to live in the county -- you've got to live</p>	<p align="right">Page 41</p> <p>1 right to vote.  2 Q. Okay. Looking at the next section,  3 13-3, titled "Notice given." It says: "Upon  4 filing the petition the clerk of the court  5 shall advertise substance thereof, at the  6 courthouse door of his county, for the space of  7 three months next before the term when the  8 petitioner proposes that the same shall be  9 heard."  10 Can you tell me your thoughts on that  11 section and whether, in your mind, that  12 presented particular problems for the  13 African-American population?  14 A. Most definitely. If they didn't want  15 you to register to vote, why would -- I mean,  16 who is going to say that they're going to put  17 up a notice on the courthouse door that I want  18 my citizenship rights restored? Why? Why have  19 I got to let the whole world know that this is  20 what I want to do. Particularly, if I'm Black.  21 And so the clerk had the option of putting it  22 up there or not, even though the law said that  23 they had to do it.  24 Q. Okay.  25 A. They didn't have to do it.</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 42

1 Q. Okay.

2 A. They didn't want to,

3 Let me tell you -- I mean, what you're

4 talking about -- well, no. Go ahead. I'm

5 sorry. I won't...

6 Q. It's fine if you have more to say about

7 it. I don't want to --

8 A. No. No. No. No.

9 Q. -- cut you off or rush you along.

10 A. No. No. No. Go ahead.

11 Q. Okay. So the next Section 13-4. It's

12 titled "Hearing and evidence."

13 So this section says: "The petition

14 shall be heard by the judge at term, at which

15 hearing the court shall examine all proper

16 testimony which may be offered, either by the

17 petitioner as to the facts set forth in his

18 petition or by anyone who may oppose the grant

19 of his prayer."

20 I'll pause there. Any issues that you

21 identify there that are problematic?

22 A. Yeah. If I didn't want you to have

23 your citizenship rights restored, I'd come in

24 and pray that you not restore.

25 Q. Right.

Page 43

1 A. And then whoever you are and whoever

2 the judge is, it won't get restored.

3 Q. And then it goes on to say: "The

4 petition shall also prove by five respectable

5 witnesses, who have been acquainted with the

6 petitioner's character for three years next

7 preceding the filing of his petition, that his

8 character for truth and honesty during that

9 time has been good; but no deposition shall be

10 admissible for this purpose unless the

11 petitioner has resided out of this State for

12 three years next preceding the filing of the

13 petition."

14 So there's a requirement here that

15 the -- that the petitioner seeking the

16 restoration of rights have five witnesses there

17 to testify to his character for truth and

18 honesty.

19 A. And not by deposition, but by being

20 there. Unless -- I mean, go ahead. I'm sorry.

21 Q. No. I mean, my question to you is just

22 going to be, you know: What are your concerns

23 with, if any, with that particular provision,

24 again, in terms of the African-American

25 community?

Page 44

1 A. You've got to have five witnesses come

2 in and testify to their truth and honesty, and

3 they can't do it by deposition. So if you've

4 got five Black folks in a hearing before a

5 prejudiced Black judge, what do you think is

6 going to happen?

7 Q. And I do need to ask you -- that's a

8 rhetorical question, but I need to ask you what

9 would happen. What is your understanding --

10 A. It would be denied.

11 Q. -- of what would happen?

12 A. It would be denied.

13 Q. It would be denied?

14 A. Right.

15 Q. Okay. Okay. So, again, just to be

16 sure we're on the same page, this is the law --

17 this was the law as it stood prior to the

18 amendment in 1971, which was before you,

19 yourself, had joined the House, but prior to

20 the amendment in 1973, which was when you had

21 joined the House, right?

22 A. Right. That's correct.

23 Q. Okay. So can you just -- well, we'll

24 leave it at that, and we'll move on and come

25 back if we need to.

Page 45

1 It sounds like we've now gone -- we've

2 gone through several problems that you

3 perceived with this statute. I think the first

4 one that you mentioned was the issue of costs

5 that would be associated with getting an

6 attorney to go through this process.

7 Is that one of the problems that

8 identified with this?

9 A. That's one of the problems, yes.

10 Q. Okay. It seems like there's another

11 set of problems related to the procedure here,

12 and I just want to draw those out a little bit,

13 because it seems like you're alluding to a

14 particularly harmful effect or impact that this

15 statute would have on the African-American

16 population because of the way the procedures

17 were designed.

18 So one of the issues is this

19 possibility for folks to come in and give

20 opposing testimony at a hearing when someone is

21 trying to get their rights restored.

22 Can you just explain a little bit more

23 what the concerns are with allowing people to

24 come in and testify in opposition to this

25 petition?

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 46

1 A. I'm a Black man who has been convicted  
2 of a felony, and I want my rights restored.  
3 Number one, I have to hire a lawyer to do it.  
4 Then I have to appear in court with witnesses  
5 to do it. And they have to be live witnesses;  
6 it can't be depositions. And if you are before  
7 a prejudiced court, you're not going to get  
8 your rights restored, period. I mean,  
9 everything in that whole -- in that whole  
10 statute is an impediment to having a Black  
11 person's rights restored depending on the  
12 psyche of the judge who is going to render that  
13 decision.  
14 Q. Okay.  
15 A. That's basically what it is.  
16 Q. Okay. Was this -- so we talked a  
17 little bit about whether any of your civil  
18 rights work or other organizational work was  
19 specifically related to this issue, this voting  
20 for former felons. And I think you said it was  
21 generally related, because it was related to  
22 constitutional rights for everyone, and in  
23 particular, for African Americans, but that you  
24 hadn't -- prior to joining the legislature, you  
25 hadn't worked on this very specific issue. Is

Page 47

1 that correct? Is that a fair statement?  
2 A. That's correct.  
3 Q. Okay. Prior to joining the  
4 legislature, was this an issue, though, that  
5 you were aware of and that you had a -- and  
6 that you had a view on at the time?  
7 A. No.  
8 Q. Okay.  
9 A. It was not a -- it was not an issue  
10 that I was aware of, so I couldn't have had a  
11 view on it.  
12 Q. Okay.  
13 A. Until it was brought to my -- that  
14 specific item was brought to my attention.  
15 Q. Okay. So during your service as an  
16 assistant district attorney in Durham, this  
17 wasn't -- this wasn't something that was --  
18 that you were aware of during that time?  
19 A. That's correct. Right.  
20 Q. Okay. Okay. You know, we've teased  
21 out some of the specific provisions here and  
22 talked about them, but when you did look at  
23 this law, when you joined the legislature and  
24 became familiar with it, did you have concerns  
25 about the procedure being confusing or

Page 48

1 convoluted for folks to follow through with?  
2 A. Yes. It didn't take long to figure  
3 that out.  
4 Q. Okay.  
5 MS. THEODORE: Just for the record,  
6 this was not -- the 1969 law was not the  
7 law that was in place when Senator Michaux  
8 joined the legislature.  
9 A. No, it wasn't, actually. No, it  
10 wasn't, but it was before I got there.  
11 Q. Right. And to clarify my question, to  
12 see if this helps, what I was -- what I was  
13 saying is, if you joined the legislature, at  
14 some point you seem to be familiar with this  
15 law, how it was back in 1969, which I believe  
16 it was that way all the way up through 1971.  
17 So I was just asking about when you became  
18 familiar with the law, what were your concerns  
19 about it? Does that make sense?  
20 A. That makes sense. But I was familiar  
21 with the law as it was passed in '71, because  
22 it was brought to my attention.  
23 Q. Right. Okay.  
24 A. And at that point, it was probably when  
25 I went back and started looking at it and

Page 49

1 seeing what needed to be cleared up in the '71  
2 law that was passed.  
3 Q. Okay.  
4 A. And what we were looking for was an  
5 unconditional pardon for those who had served  
6 their full-time and had their rights  
7 automatically restored.  
8 Q. Okay.  
9 A. Rather than going through the  
10 convoluted issue that was even in the '71  
11 legislation.  
12 Q. Okay. Let me ask you this, then. You  
13 know, I have this statute up as an exhibit.  
14 We're talking about it today, and we're going  
15 through it, but at some point prior to us  
16 talking about this today, you know, because of  
17 your work and interest in this issue, did you  
18 become familiar with this law, the requirements  
19 that were there prior to 1971?  
20 A. No.  
21 Q. No. Okay. So --  
22 A. I became familiar with it when it was  
23 brought to my attention by Joy in 1973.  
24 Q. Okay. And, again, I'm probably just  
25 not asking this as clearly as I should be, but



COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 50	Page 52
<p>1 when he brought that to your attention, 2 obviously, the law that was in place at that 3 time was the 1971 law. 4 As part of your research and 5 understanding the issue, had you looked back at 6 what the law was prior to 1971? 7 A. Yes. Yes. 8 Q. Okay. And so at that time, when you 9 looked back at what the law was prior to 1971, 10 you became familiar with what it was? 11 A. Yes. 12 Q. Okay. Thank you. I'm sorry if I asked 13 a series of questions that were not as clear as 14 they should have been. 15 (Defendants' 3 premarked.) 16 BY MR. RABINOVITZ: 17 Q. I want to go ahead now and look at 18 another exhibit. So this will be -- I've 19 premarked this one as Defendants' Exhibit 20 Number 3. 21 Are you able to see that up on the 22 screen? 23 A. Yes, I am. 24 Q. Okay. And are you able, from looking 25 at that, to identify what that is?</p>	<p>1 Require the Automatic Restoration of 2 Citizenship to Any Person Who Has Forfeited 3 Such Citizenship Due to Committing a Crime and 4 Has Either Been Pardoned or Completed His 5 Sentence." 6 A. Yes. 7 Q. Okay. And so is it your understanding 8 that this is the law that was enacted in 1971? 9 A. If you go to the end of it. 10 Q. Yes. Certainly. 11 A. I don't see any signatures on there. 12 I'm not so sure that that's -- you don't have 13 the ratified bill, do you? 14 Q. Okay. Let me see. Well, I believe it 15 says it was ratified, here. Let me see what I 16 can find here. 17 A. It was a Committee Substitute. 18 Q. Right. So I believe that this is 19 the -- the session law that was enacted. But I 20 will see if -- let's see. 21 So down here at the end it says: "In 22 the General Assembly read three times" -- 23 A. And ratified. 24 Q. -- "and ratified, this the 16th day of 25 July, 1971."</p>
Page 51	Page 53
<p>1 A. It looks like it's a House bill. 2 Q. Okay. 3 A. Involving Chapter 13. 4 Q. Okay. 5 MS. THEODORE: Excuse me for a minute, 6 Brian. I just wanted to check on whether 7 Senator Michaux or Professor Joyner wanted 8 to take a break, if now is a good time. 9 MR. RABINOVITZ: Sure. We've been 10 going for an hour. So if anyone needs a 11 break, please let me know. 12 THE WITNESS: I'm fine. 13 MR. JOYNER: I'm fine as well. Yeah. 14 MS. THEODORE: Okay. 15 MR. RABINOVITZ: Okay. Great. Well, 16 just let me know at any time. 17 BY MR. RABINOVITZ: 18 Q. So we were identifying this -- this 19 particular law here. 20 Do you see at the top that it says that 21 it's from the 1971 Session of the General 22 Assembly? 23 A. Yes. 24 Q. Okay. And this is titled "An Act to 25 Amend Chapter 13 of the General Statutes to</p>	<p>1 A. Right. Okay. I see that. Okay. 2 Q. Okay. So -- 3 A. That -- that -- that's fine. 4 Q. Okay. So this does appear, then, to be 5 the ratified bill; is that right? 6 A. Right. Yes. It appears to be. 7 Q. Okay. So this was the law that was 8 ratified in 1971. This was also the law as it 9 stood when you joined the legislature in 1973. 10 Is that right? 11 A. That's correct. 12 Q. Okay. And, again, I think you've 13 already answered this, but just to be clear, 14 you weren't in the legislature at the time that 15 this was ratified. You also didn't have any 16 informal involvement in this legislation. Is 17 that right? 18 A. In the '71 legislation? 19 Q. Yes, sir. 20 A. No, I didn't have any. 21 Q. Okay. And I want to go ahead and go 22 through this one as well. 23 So the first section is -- again, it's 24 13-1. But I think this is just a complete 25 replacement of what had been there before.</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 54	Page 56
<p>1 Because it says in section 1 up there: 2 "Chapter 13 of the General Statutes of 3 North Carolina is hereby repealed in its 4 entirety and a new Chapter 13 is hereby enacted 5 and read as follows." 6 So my understanding of that is that the 7 law that we were looking at a minute ago from 8 1969, there, was completely repealed, and it 9 was replaced with what we're looking at here 10 now. Is that correct? 11 A. That's correct. That's correct. 12 Q. And so this first section here, 13-1, 13 is entitled "Restoration of Citizenship." And 14 it says: "Any person convicted of a crime, 15 whereby the rights of citizenship are 16 forfeited, shall have such rights restored upon 17 compliance with one of the following 18 conditions." And there are three conditions 19 there. 20 The first one: "(a) the Department of 21 Correction at the time of release recommends 22 restoration of citizenship; 23 "(b) two years have elapsed since 24 release by the Department of Correction 25 including probation or parole, during which</p>	<p>1 conversations with Representative Johnson about 2 this -- this law as it stood at the time. Is 3 that right? 4 A. That's correct. 5 Q. And, obviously, you guys decided to 6 offer, you know, an additional amendment to the 7 law. But just going back and talking about 8 this 1973 law, did Representative Johnson 9 convey to you what his -- you know, what his 10 intention or purpose was in enacting this 1971 11 legislation to replace what had previously been 12 there? 13 A. It wasn't with the voting, I know that 14 was one of them, but he was trying to get 15 convicted felons -- getting them to be able to 16 vote. When you say "rights restored," you 17 don't -- you don't delegate the rights. You 18 say that all have such rights restored, rights 19 of citizenship restored. And that was what he 20 was trying to get at. And he -- he didn't 21 write what eventually came out of that, but he 22 didn't have the wherewithal to fight it at that 23 time. 24 Q. Okay. 25 A. And when I got there in '73, that was</p>
<p>1 time the individual has not been convicted of a 2 criminal offense of any state or of the Federal 3 Government; and 4 "(c) or upon receiving an unconditional 5 pardon." 6 So before I ask about that, 7 specifically, are you familiar with who 8 sponsored this bill? 9 A. Joy Johnson. Yes. 10 Q. Okay. Representative Joy Johnson? 11 A. Right. 12 Q. And he was -- I know, in your affidavit 13 and possibly here today, you mentioned that 14 back at this time, obviously, you weren't in 15 the -- you weren't in the legislature yet, but 16 who were the other African-American members who 17 would have been in the legislature back in 18 1971? Do you recall that? 19 A. Henry Frye was the other member. 20 Q. Okay. So it was just the two of them, 21 and Representative Johnson is the one who 22 sponsored this bill; is that right? 23 A. That's correct. 24 Q. Okay. And it sounds like when you 25 joined the legislature in '73, you had some</p>	<p>1 one of the first things he said. "I'm just not 2 satisfied with what we got in '71. Take a look 3 at it and see what you think about it." 4 And that's when I got into it in '73 5 and told him he really didn't do that much with 6 that bill, that what -- you know, that what we 7 were looking for was a whole lot more than what 8 was -- what that bill was purporting to do. 9 Q. So in what ways did this -- 10 A. Let me -- let me -- let me say that Joy 11 was a preacher, and Henry was a civil lawyer. 12 So Henry didn't know anything about criminal 13 law. But we talked about it. When Joy brought 14 it to me, the three of us sat down and talked 15 about it. And I was the only one with any 16 criminal law experience involved. And I said, 17 "You haven't really done anything with this 18 other than the fact that you've cut out some of 19 the process, but you really haven't made it, 20 you know, really worth much, because you've 21 still got too much -- too many hoops to go 22 through," in the '71 law. 23 Q. Okay. And when you say there were too 24 many hoops to go through, do you mean again -- 25 A. For instance, two years -- two years</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 58

1 had elapsed, and that you still had to have a  
2 hearing by taking an oath before any judge in  
3 the General Court of Justice.

4 Q. Okay. And, again, was it -- was it  
5 your belief that these various hoops you still  
6 had to go through were, you know, detrimental  
7 to former felons and, in particular,  
8 detrimental to African-American former felons?

9 A. Yes.

10 Q. Okay. And can you explain, with  
11 respect to this law, the 1971 law, how was  
12 this, in particular, still detrimental to  
13 African-American citizens?

14 A. Well, here again, basically, you still  
15 had to hire a lawyer, number one. First of  
16 all, you had to have two years elapse before  
17 you could -- you could do anything. And then  
18 you had to go before a judge of any court in  
19 Wake County, or any court where the person  
20 resides, and say that, you know, he would abide  
21 by the law. But he still had to appear before  
22 what could be a prejudicial official.

23 Q. Okay. And so let's take the first one.  
24 The fact that the petitioner still had to hire  
25 a lawyer. Or I guess not the petitioner here,

Page 59

1 but the person formerly convicted of a felony  
2 had to hire a lawyer.

3 Again, can you just explain the impact  
4 that that had on African Americans?

5 A. Yeah. Well, if you've got a guy who's  
6 been convicted of a felony when he gets out of  
7 prison he's got to get a job somewhere to get  
8 some money to hire a lawyer. He can't get a  
9 job because he's a convicted felon. I mean, it  
10 was -- the same situation that existed under  
11 the '69 law existed here under the '71 law.  
12 There were some other things that were taken  
13 out of the '69 law, but there were some things,  
14 I guess, in order to try to get something in  
15 there, that they had to agree to the compromise  
16 that was made. But the compromise was not why  
17 Joy nor Henry nor I nor anybody else had in  
18 mind in terms of what we were trying to do for  
19 convicted felons in getting their rights  
20 restored. And I told -- and I told them that.

21 Q. And, you know, another requirement here  
22 is --

23 A. Hold on. Let me back up a minute.  
24 Because Joy came back and introduced another  
25 bill. That's why the bill that finally passed

Page 60

1 in '73 was a Committee Substitute.

2 Q. Okay. And we are going to go and look  
3 at those, the specific bills as well. So I  
4 certainly want to give you a chance to talk  
5 about each of those different pieces.

6 A. Right.

7 Q. We talked about hiring a lawyer.  
8 Again, there's this two-year requirement in  
9 this one.

10 A. Right.

11 Q. What was the effect of the two-year  
12 requirement, in your mind, on African  
13 Americans?

14 A. Well, the fact that they just -- you  
15 know, two years down the road, they had been  
16 out of -- for whatever time they spent in jail,  
17 they didn't vote then, and they still had to  
18 wait two years when they came out, and decided  
19 that, "You know, hey, I didn't vote while I was  
20 in jail. I don't guess I've got the right to  
21 vote. Nobody has told me I have the right to  
22 vote." And you've still got to wait two years  
23 to do that.

24 So by the time that's happened -- if he  
25 had a 10-year sentence, he hadn't voted in

Page 61

1 10 years. He's still got to wait another two  
2 years. He didn't have the money to go hire a  
3 lawyer to find out that he could do it even  
4 with the two years. So the two years in there  
5 is a detriment to him.

6 Q. What about --

7 A. Because it exacerbates the situation.

8 Q. Sure. What about in section (a) there?  
9 It talks about another possibility is that "the  
10 Department of Correction at the time of release  
11 recommends restoration of citizenship."

12 A. There's another problem. That's the  
13 other problem. One of the other problems.

14 Q. And what is the problem there?

15 A. The problem is if the Department of  
16 Correction didn't like you, anybody there  
17 didn't like you in the Department, they didn't  
18 have to recommend you.

19 Q. Okay. And would you have, again, a  
20 particular concern for African-American former  
21 felons there for the Department of Correction  
22 and what their view might be on the issue?

23 A. Say that again.

24 Q. So this -- if (a) is discretionary for  
25 the Department of Correction to make this

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

<p align="right">Page 62</p> <p>1 recommendation --</p> <p>2 A. That's correct. Right.</p> <p>3 Q. -- is there a concern there in your</p> <p>4 mind for African Americans based on that, the</p> <p>5 discretion that the Department of Correction</p> <p>6 had?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And can you explain that?</p> <p>9 A. It depends on who is in charge of</p> <p>10 making the recommendation.</p> <p>11 Q. Okay.</p> <p>12 A. If nobody is in charge of making the</p> <p>13 recommendation, it doesn't get made. If there</p> <p>14 is somebody in charge of making the</p> <p>15 recommendation, then if they don't like you,</p> <p>16 they don't make the recommendation.</p> <p>17 Q. Okay.</p> <p>18 A. If you're Black, and I'm white and</p> <p>19 don't like you because you're Black, you don't</p> <p>20 get the recommendation.</p> <p>21 Q. Right. Okay. What about -- just</p> <p>22 talking more generally, you know, you've talked</p> <p>23 a lot about the requirement to -- well, scratch</p> <p>24 that. I'll move on and come back to that</p> <p>25 later.</p>	<p align="right">Page 64</p> <p>1 that were removed?</p> <p>2 A. Right.</p> <p>3 Q. And some of the impediments that were</p> <p>4 removed were among those that were detrimental,</p> <p>5 under the former law, to the African-American</p> <p>6 population?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And the procedure here is also</p> <p>9 simplified to some extent over what the</p> <p>10 procedure had been under the 1969 statute?</p> <p>11 A. Right. But just still leaving it up to</p> <p>12 one person.</p> <p>13 Q. Okay. All right. I want to go ahead</p> <p>14 and look at a couple newspaper articles from</p> <p>15 around this time when this law was being</p> <p>16 considered and when it was passed.</p> <p>17 (Defendants' 4 premarked.)</p> <p>18 BY MR. RABINOVITZ:</p> <p>19 Q. So this next exhibit I'm showing is</p> <p>20 Defendants' -- I've premarked it as Defendants'</p> <p>21 Exhibit Number 4. This is from July 22, 1971.</p> <p>22 If I go back to the previous exhibit, that</p> <p>23 was -- it was ratified on July 16, 1971. So</p> <p>24 this is -- this is a couple of days, it appears</p> <p>25 to me, after ratification here, in the</p>
<p align="right">Page 63</p> <p>1 Is there -- is there anything else that</p> <p>2 you can think of that we didn't discuss about</p> <p>3 the 1971 statute that made it continuing to be</p> <p>4 a problem for you?</p> <p>5 A. Other than the whole bill? No.</p> <p>6 Q. Okay. Was it, in your mind, at least,</p> <p>7 an improvement over the 1969 statute?</p> <p>8 A. No.</p> <p>9 Q. Okay. So in your mind, it wasn't any</p> <p>10 better than the 1969 statute?</p> <p>11 A. It was better that, really, one or two</p> <p>12 items had been taken out, but it was still an</p> <p>13 impediment to Black folks, to Black former</p> <p>14 convicted felons getting the right to vote.</p> <p>15 Q. Okay. But there were some -- some</p> <p>16 obstacles that were taken out, right?</p> <p>17 A. Right.</p> <p>18 Q. So, for example, this law did not --</p> <p>19 does not appear to me to require the five</p> <p>20 witnesses, for example --</p> <p>21 A. Yeah.</p> <p>22 Q. -- who testify to your truthfulness and</p> <p>23 honesty. Is that right?</p> <p>24 A. That's correct. Yes.</p> <p>25 Q. Okay. So there were some impediments</p>	<p align="right">Page 65</p> <p>1 Robesonian, which was a local newspaper that</p> <p>2 was in circulation at the time, is my</p> <p>3 understanding. Were you familiar with that</p> <p>4 newspaper?</p> <p>5 A. No.</p> <p>6 Q. Okay. So this says a couple of things</p> <p>7 here. So it's titled "Restoring Citizens."</p> <p>8 And it's just two short paragraphs, so I'll go</p> <p>9 ahead and read it.</p> <p>10 The first paragraph says: "Procedure</p> <p>11 for restoration of citizenship to persons</p> <p>12 convicted of felonies is simplified under a</p> <p>13 bill introduced by Representative Joy J.</p> <p>14 Johnson of Robeson and enacted into law. It</p> <p>15 looks like a humanitarian gesture."</p> <p>16 So we were just talking about this, but</p> <p>17 one of the things that this paragraph says is</p> <p>18 that the law was simplified in comparison to</p> <p>19 what was there before. And I think you just</p> <p>20 said you agree with that, that there was some</p> <p>21 simplification that was done. Is that correct?</p> <p>22 A. That's correct. Right.</p> <p>23 Q. Okay. And the second paragraph here</p> <p>24 says: "A full pardon or a recommendation by</p> <p>25 the Department of Correction, plus an oath</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 66

1 before a judge or clerk of Superior Court,  
2 seems adequate to restore citizenship to a  
3 person who has paid his debt to society. If  
4 the previous procedure was more complicated,  
5 simplification should make former felons feel  
6 more welcome as restored citizens and encourage  
7 them to make their conduct acceptable."  
8 Do you agree with the characterization  
9 or take any issue with the characterization in  
10 this article?  
11 A. Yeah, I take issue with it.  
12 Q. Okay. Can you explain that?  
13 A. Yeah. The last -- the last -- that  
14 last paragraph, the last paragraph, the last  
15 sentence: "If the previous procedure was more  
16 complicated, simplification should make former  
17 felons feel more welcome as restored citizens  
18 and encourage them to make their conduct  
19 acceptable."  
20 Acceptable to who? You've still got to  
21 go before a judge or a clerk. And if it's not  
22 acceptable to them, then -- you know, that  
23 was -- that was typical at that time, a typical  
24 reaction. They took out some of the things  
25 that you had to do, but it still left it up to

Page 67

1 one person. That's -- that's -- that's a nice  
2 little article.  
3 Q. Okay.  
4 A. For something saying, really, nothing.  
5 Q. Okay.  
6 A. And plus the fact it says that -- it's  
7 off-base. "A full pardon or a recommendation."  
8 Q. Uh-huh.  
9 A. I'm not sure how they get the full  
10 pardon in there, because the full pardon comes  
11 from the governor.  
12 Q. Okay. All right. I want to go ahead  
13 and look at another article here. Why don't we  
14 look at another article. No, I want to  
15 actually jump to some of the legislative  
16 history documents here.  
17 (Defendants' 5 premarked.)  
18 BY MR. RABINOVITZ:  
19 Q. So this I've marked as Defendants'  
20 Exhibit Number 5. Can you identify what this  
21 is or, at least, this first page here?  
22 A. It looks like a bill from the  
23 1971 session.  
24 Q. Okay.  
25 A. A bill entitled "An Act to Amend

Page 68

1 Chapter 13 of the General Statutes to Require  
2 the Automatic Restoration of Citizenship."  
3 Q. Is this -- you had mentioned that you  
4 reviewed some -- reviewed and printed off some  
5 legislative materials when you were looking at  
6 this.  
7 A. Yes.  
8 Q. This is for the 1971 law; not the 1973  
9 law.  
10 A. Right.  
11 Q. But was this included in the materials  
12 that you looked at?  
13 A. Yes, sir.  
14 Q. Okay.  
15 A. That my lawyer sent me the other day.  
16 Right.  
17 Q. Okay. And so you would have some --  
18 you've looked at this, you know, more recently  
19 than --  
20 A. Right.  
21 Q. -- than back in 1973, at least, you've  
22 had a look at it?  
23 A. Right.  
24 Q. Okay. So this, I believe, is -- is the  
25 bill as it was introduced.

Page 69

1 A. That's correct.  
2 Q. That's correct? Okay.  
3 So this adds a section -- if you look  
4 at section 1 of this bill, it's adding a new  
5 section to the statute, or proposing to add a  
6 new section to the statute, 13-11.  
7 And then if you look at section 2, it's  
8 repealing the previous sections from the law.  
9 So repealing 13-1 through 13-10. So it's  
10 attempting to replace all of that with this new  
11 section 13-11.  
12 Does that appear correct to you?  
13 A. That appears correct. Right.  
14 Q. Okay. And 13-11 is entitled  
15 restoration of citizenship. It says: "Any  
16 person convicted of an infamous crime, whereby  
17 the rights of citizenship are forfeited, shall  
18 have such rights automatically restored to him  
19 upon the full completion of his sentence or  
20 upon receiving an unconditional pardon."  
21 What's your understanding of what that  
22 section was -- was trying to do, what the aim  
23 of that section was?  
24 A. The aim of that section was to restore  
25 their rights automatically without having to do

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 70

1 anything.  
2 Q. Okay. And when it says -- it uses the  
3 phrase "full completion of his sentence" in  
4 there. What's your understanding of what that  
5 meant? Did that include imprisonment?  
6 Anything that would be in someone's sentence?  
7 So parole? Probation?  
8 A. That's my understanding. Anything that  
9 when he had completed serving any sentence that  
10 was given -- probation, parole, anything  
11 connected with that sentence -- once it had  
12 been completed, then his rights were  
13 automatically restored.  
14 Q. Okay.  
15 A. Without any -- any -- doing anything,  
16 that they were automatically restored. Right.  
17 Q. Okay.  
18 A. Which is what -- which is what Joy was  
19 really trying to get at.  
20 Q. Okay. And then I'm not going to go  
21 through all of the other versions, since you  
22 weren't involved in this legislation. We  
23 already looked at, you know, the session law as  
24 it was eventually enacted, but I just wanted to  
25 look at that -- that original version here, or

Page 71

1 the original proposal of what Representative  
2 Johnson introduced.  
3 (Defendants' 6 premarked.)  
4 BY MR. RABINOVITZ:  
5 Q. I want to move on now to the 1973  
6 legislation. And so I've put up on the screen  
7 what I've premarked as Defendants' Exhibit  
8 Number 6.  
9 Can you let me know what -- can you  
10 identify what this is for me?  
11 A. Yeah, that's a 1973 bill entitled "An  
12 Act to Provide the Automatic Restoration of  
13 Citizenship."  
14 Q. Okay. And my understanding is that  
15 unlike the 1971 version, you were --  
16 MR. JACOBSON: Hey, Brian? Sorry.  
17 Q. -- you were in the legislature by this  
18 time, and you were involved in this -- this  
19 legislation, this bill. Is that correct?  
20 MR. JACOBSON: Brian, can you hear me?  
21 Brian?  
22 MR. RABINOVITZ: Yeah. I'm sorry.  
23 MR. JACOBSON. I'm sorry to interrupt.  
24 I could actually use a short break.  
25 Can we take, like, a five- or ten-minute

Page 72

1 break?  
2 MR. RABINOVITZ: Sure. That's  
3 absolutely fine with me.  
4 Do you want to just take ten minutes so  
5 everyone can have the time they need?  
6 MR. JACOBSON: Great. Thank you.  
7 MR. RABINOVITZ: Okay. So I guess the  
8 court reporter will take us off the record,  
9 then.  
10 THE REPORTER: Yes. Off the record.  
11 (Recess from 10:30 to 10:43 p.m.)  
12 BY MR. RABINOVITZ:  
13 Q. Okay. So Representative Michaux, we're  
14 back on the record.  
15 Can you -- this is the exhibit that we  
16 left off on, marked as Defendants' Exhibit  
17 Number 6. Are you able to see that?  
18 A. Yes.  
19 Q. Okay. And I don't remember how far we  
20 got through the identification. So are you  
21 able to identify this exhibit for me?  
22 A. That looks like the original bill that  
23 was introduced in the '73 session on the  
24 restoration of citizenship rights.  
25 Q. Okay. Great. And this is one of when

Page 73

1 you mentioned you reviewed some legislative  
2 history documents yesterday in preparation for  
3 today?  
4 A. Yes.  
5 Q. This is one of the documents that you  
6 reviewed?  
7 A. Yes.  
8 Q. So I just want to start off by asking  
9 about, you know, you've alluded a couple of  
10 times to how you became involved in this. But  
11 now that we've got -- that we have this in  
12 front of us and, you know, we're at this point  
13 in the story, could you just -- just summarize  
14 or explain again how it was that you became  
15 involved with this particular issue and this  
16 legislation.  
17 A. Well, when I got to the legislature in  
18 '73, Representative Johnson, Frye, and I sat  
19 down and started talking about bills. And  
20 Representative Frye, or Representative Johnson,  
21 indicated he wanted me to look at the -- he was  
22 introducing a new restoration of citizenship  
23 bill, because he felt that there were some  
24 things in the '71 bill that got left out, and  
25 he was trying to get some of them back in.

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 74	Page 76
<p>1 And I took a look at it, at his 2 suggestion, and suggested that he didn't quite 3 accomplish what he really wanted to accomplish 4 with that bill. And then we started work on 5 the '73 legislation.</p> <p>6 Q. Do you remember -- do you recall what 7 your conversation was about what still fell 8 short in the 1971 legislation?</p> <p>9 A. The hearing. The hearing called for in 10 the '71 legislation. And that what we were -- 11 what I thought that he was looking for was the 12 fact that he didn't have -- that some of the 13 hoops were taken out, but that they still had 14 hoops to jump through as a result of the '71 15 legislation. And what he wanted was a -- I 16 guess what you might want to call a legislative 17 pardon, a full pardon, without having to go 18 through any -- for instance, in the '71 19 legislation, you still had to have a hearing, 20 and it depended on too many folks to approve 21 that right of citizenship. And what he was 22 looking for, in my estimation, particularly in 23 the bill that he introduced, was a flat-out 24 pardon, where once all the sentence had been 25 completed, that the citizenship rights were</p>	<p>1 Q. Okay. Now, you said that he first 2 approached you with a version of what he wanted 3 to do. So was his version what we have here, 4 what was initially introduced, or was this 5 version after you-all had discussed it? Do you 6 recall that?</p> <p>7 A. This -- I don't recall specifically 8 what it was, but this had more than what he 9 really wanted. For instance, there's no 10 hearing or anything other than certifications.</p> <p>11 Q. Okay.</p> <p>12 A. Yeah, that's all it was, just 13 certification.</p> <p>14 Q. Okay.</p> <p>15 A. Not any hearings or swearing before 16 anybody or recommendation from anybody. Once 17 they had completed their service, that was it. 18 And that was what he was looking for. And I 19 told him -- and that's when I told him that 20 what he was looking for, that he didn't have it 21 in -- in the '71 legislation. This is what he 22 was looking for --</p> <p>23 Q. Okay.</p> <p>24 A. -- in '73.</p> <p>25 Q. Okay. So you said when he first came</p>
Page 75	Page 77
<p>1 automatically restored without any -- without 2 them having to do anything.</p> <p>3 Q. Okay. And so what I'm looking at 4 this -- this first bill here, this 1973 bill, 5 it lists here as the sponsors -- it's a little 6 hard for me to read. It says Representative, 7 and then someone has written in "J.," Johnson. 8 And it used to say "of Robeson," but now 9 there's a handwritten word under there. Do you 10 know what that says?</p> <p>11 A. Yeah, that's "others" who signed onto 12 the bill.</p> <p>13 Q. Okay.</p> <p>14 A. The only way you would be able to find 15 that out is you would have to go to the jacket 16 of the bill and find out who signed in onto the 17 bill.</p> <p>18 Q. Okay.</p> <p>19 A. The other legislators -- the other 20 legislators included -- probably included Henry 21 and me.</p> <p>22 Q. Okay. So it just says "others." It 23 doesn't say specifically who at that time?</p> <p>24 A. Well, it says "others" on this version, 25 but the jacket would have who the others were.</p>	<p>1 to you to look at the proposal for the '73 2 legislation, you had some suggestions for him 3 about what he needed to include. Do you recall 4 what things it was that you had --</p> <p>5 A. Not --</p> <p>6 Q. -- focused on?</p> <p>7 A. Not really, other than the fact I said, 8 "This is" -- you know, that, "This is what you 9 wanted," instead of what came out in '71.</p> <p>10 Q. Okay. Okay. And so is what we have 11 here -- and we can go ahead and read through 12 it, but does this appear to be -- you know, 13 this is more of what you were -- what you were 14 looking for? What you thought it needed to be 15 replaced with?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And just to, I guess, summarize 18 it, it sounds like the main point was to 19 simplify and specifically make it automatic 20 that once a felon's complete sentence was 21 finished, their rights of citizenship would be 22 restored. Is that correct?</p> <p>23 A. That's correct. Without going through 24 any other -- without going through any other 25 process. Right.</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 78	Page 80
<p>1 Q. Okay. And what was the -- what was the 2 purpose of that? Why was that the goal? 3 A. Because it would -- it would let them 4 know that they were, you know, that their 5 rights were restored and that they could go 6 vote. 7 Q. Okay. 8 A. All the rights that they had had prior 9 to their incarceration or whatever. 10 Q. Was a purpose also to remove the 11 discretionary decision-making that was involved 12 in the previous law which could possibly inject 13 some bias or prejudice into the process? 14 A. Yes. You said it better than I could. 15 Yes. 16 Q. Okay. Can you say anything more on 17 that? 18 A. No. 19 Q. Okay. Fair enough. So I want to go 20 through and read through this section 13-1, 21 here, "Restoration of citizenship." 22 "Any person convicted of a crime, 23 whereby the rights of citizenship are 24 forfeited, shall have such rights restored upon 25 the occurrence of one of the following</p>	<p>1 the statute becomes effective. 2 So what has been removed here, or at 3 least one of the things that's been removed, 4 was that additional section under the '71 law 5 that had the procedure for going into court and 6 swearing under -- 7 A. Swearing an oath. 8 Q. Okay. 9 A. It cut out the two years, still. 10 Q. Okay. So this completely removes the 11 court process and the fees that you mentioned 12 would be associated with having to get an 13 attorney and go to court; is that right? 14 A. That's correct. Right. 15 Q. Okay. And the -- any discretionary 16 issue with -- with the judge making a 17 determination, and, you know, possible 18 prejudice there? 19 A. Correct. 20 Q. Okay. So what do you recall -- after 21 you started working on this, though, what do 22 you recall from the -- you know, the 23 legislative process or the amendment process 24 that took place? 25 A. That was -- nobody really wanted to do</p>
Page 79	Page 81
<p>1 conditions: 2 "Number (1) Upon the unconditional 3 discharge of an inmate by the Department of 4 Correction or Department of Juvenile 5 Correction, of a probationer by the Probation 6 Commission, or of a parolee by the Board of 7 Paroles." 8 So that part is -- I think that's what 9 we just -- we had just been talking about. 10 A. Right. 11 Q. That it was after the completion of all 12 aspects of their sentence, this would just be 13 an automatic process? 14 A. Right. 15 Q. Okay. And then number (2) just says, 16 you know: "Or upon receiving an unconditional 17 pardon." So that was just another -- another 18 way, if somebody was -- got a full pardon, then 19 they would also have this automatic 20 restoration? 21 A. Correct. 22 Q. Okay. And just scrolling through this, 23 you can see there's a section 13-2, and then 24 that's pretty much the end of it. Section (2) 25 is just about the effectiveness when it -- when</p>	<p>1 it that way. We had to go in and start making, 2 you know, compromises and whatnot, in order to 3 try to get something passed in the way that the 4 original bill in '73 called for. What the 5 original bill in '73 called for was once you 6 completed everything, your rights were 7 automatically restored, period, in the report. 8 That was it. 9 Q. Right. 10 A. Nobody -- nobody -- everybody was a 11 little bit afraid that you were opening up the 12 floodgates, that you were really opening up the 13 floodgates, and they didn't really want to do 14 that. So it went into a period of negotiations 15 from that point on. 16 Q. Okay. But this -- but this particular 17 bill here, this bill that we've been looking 18 at, this is a fair representation of what it 19 was you were trying to achieve? 20 A. That's exactly right. 21 Q. Okay. All right. I want to look at a 22 little bit more of the legislative history 23 documents here. So I'm going to scroll down. 24 This is all still part of this what I've marked 25 as Defendants' Exhibit Number 6. We were just</p>



COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 82	Page 84
<p>1 looking at this original bill here. This is 2 a Committee Substitute. 3 A. Right. 4 Q. So is this one of the documents that 5 you reviewed also when you were looking at the 6 legislative history yesterday? 7 A. Yes, it is. 8 Q. Okay. And this Committee -- this 9 Committee Substitute, it adds a -- under 13-1, 10 it adds an additional subsection, number (3), 11 that says: "The satisfaction by the offender 12 of all conditions of a conditional pardon." 13 A. Yes. 14 Q. Okay. But the first part there, if you 15 look at sections (1) and (2), I believe are 16 very similar to what came before. 17 So 13-1 says: "Restoration of 18 citizenship. Any person convicted of a crime, 19 whereby the rights of citizenship are 20 forfeited, shall have such rights restored upon 21 the occurrence of any one of the following 22 conditions." 23 So these (1), (2), and (3), these are 24 each one in and of itself. It says "any one of 25 the following conditions." So any of those are</p>	<p>1 probation. He violated his probation by not 2 showing up for something, and they extended his 3 probation under the original sentence. And 4 that's what got put in there. 5 Q. Okay. 6 A. We didn't -- we didn't particularly 7 care for that in there, but it was the only way 8 we were going to get it to make sure that the 9 bottom line was that there was -- that you 10 still didn't have to go for a hearing or 11 anything like that. 12 Q. Okay. So it still had that -- that 13 main feature that you talked about, that it 14 would, rather than involving the hearing, it 15 would be -- it would be automatic? 16 A. Right. 17 Q. And it wouldn't be subject to the 18 discretion of a judge or the requirement to 19 hire an attorney here? 20 A. That's correct. 21 Q. Okay. I want to move on a little bit 22 further down here. There is an amendment here. 23 Is this -- is this also contained in the 24 materials that you -- 25 A. Yeah.</p>
Page 83	Page 85
<p>1 sufficient on their own. Is that your 2 understanding? 3 A. Yes. 4 Q. Okay. And number (1) says: "The 5 unconditional discharge of an inmate by the 6 State Department of Correction or the North 7 Carolina Board of Juvenile Correction, of a 8 probationer by the State Probation Commission, 9 or of a parolee by the Board of Paroles; or of 10 a defendant under a suspended sentence by the 11 court." 12 A. Yeah. That -- that was added. 13 Q. That was added. Okay. 14 So what -- what is the -- what was 15 added here that sticks out to you? 16 A. What was added was everything 17 involving -- involving the satisfaction of all 18 conditions of a conditional pardon. And that 19 the involvement of the parole -- in other 20 words, let's assume that the convicted felon 21 served the sentence that was given to him. Say 22 that sentence was a bifurcated sentence. He 23 spent some time in jail, and then he spent some 24 time on probation. He violated -- he got on -- 25 he did his time in prison. He was now on</p>	<p>1 Q. Okay. And what is your understanding 2 of what this amendment was trying to insert 3 into this bill? 4 A. I just wanted put back in what was 5 taken out. This just follows the '71 6 legislation. It failed. 7 Q. Okay. So, in particular, this was 8 trying to put back in the requirement that 9 somebody go into court -- 10 A. Right. 11 Q. -- in front of a judge, take an oath -- 12 A. That's correct. 13 Q. -- which was in the 1971 legislation 14 and which you guys had tried to remove -- 15 A. Right. 16 Q. -- in this '73? 17 A. Right. 18 Q. Okay. And as you noted, this 19 particular amendment failed? 20 A. Right. 21 Q. Okay. 22 A. But we had worked a deal. We had 23 worked a deal by throwing in probation and 24 parole. 25 Q. Okay. And even after, you know, that</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 86

1 compromise was reached, you continued to -- you  
2 continued to sponsor and be in support and  
3 failed?  
4 A. Yes.  
5 Q. Okay. I'm going to go on and look  
6 at -- there's another amendment here. I'm  
7 going to try to make this just a little smaller  
8 so we can see this whole thing at once.  
9 A. Yeah.  
10 Q. Again, was this included in the  
11 materials that you looked at?  
12 A. Yes. Yes, it was.  
13 Q. Okay. Now, what was -- what was this  
14 amendment trying to accomplish here?  
15 A. I have no idea.  
16 Q. Okay. So I'll just go ahead and read  
17 it. It says "a new section to be added" that  
18 was going to say the following:  
19 "Provided that this act shall not apply  
20 to a second conviction of any felony, or to any  
21 additional felony conviction after a first such  
22 conviction."  
23 A. Kind of where you didn't get but one  
24 bite of the apple. If you got a second felony  
25 conviction, you couldn't have your citizenship

Page 87

1 rights automatically restored.  
2 Q. Okay. So this would have been -- from  
3 your perspective, this would not have been an  
4 amendment you would have been in favor of?  
5 A. Oh, no. No way.  
6 Q. Okay. And this amendment failed?  
7 A. Yes.  
8 Q. Okay.  
9 A. We had made the compromise, and this  
10 was -- this was done on the floor.  
11 Q. Uh-huh. Okay.  
12 Just to go back for a second before we  
13 move on. Scroll back up to the top. This is  
14 the bill as it was introduced. If you look at  
15 section 13-1, subsection (1) here, this  
16 includes -- the original proposal did include  
17 not only the active sentence -- the original  
18 proposal, first of all, talked about  
19 unconditional discharge. What does  
20 "unconditional discharge," there, mean?  
21 A. Unconditional discharge. There are no  
22 conditions other than discharge.  
23 Q. Okay.  
24 A. Everything had been completed.  
25 Everything has been done.

Page 88

1 Q. Okay.  
2 A. Nothing hanging over his head.  
3 Q. So for an individual on probation, you  
4 know, probation oftentimes or, generally, comes  
5 with conditions involved.  
6 A. Yes. Right.  
7 Q. So this would -- this would mean -- in  
8 your mind, would it be fair to say that all  
9 conditions of probation would have been  
10 satisfied?  
11 A. Yes.  
12 Q. Okay. And I guess the same goes for  
13 parole, as well, that any conditions attached  
14 to parole would also have been satisfied?  
15 A. That's correct.  
16 (Defendants' 7 premarked.)  
17 BY MR. RABINOVITZ:  
18 Q. Okay. All right. I want to now go and  
19 look at -- this is the -- well, I've marked  
20 this as Defendants' Exhibit Number 7.  
21 Are you able to identify what this is?  
22 A. It looks like the ratified bill.  
23 Q. Okay. And I'll just go ahead and do  
24 what we did with the 1971 bill. And scroll  
25 down to the bottom here so we can look at the

Page 89

1 last sentence here that says: "In the General  
2 Assembly read three times and ratified, this  
3 the 20th day of April, 1973."  
4 A. Yeah.  
5 Q. So that means that that is what we're  
6 looking at here, right?  
7 A. Yes.  
8 Q. We're looking at the ratified bill?  
9 A. Yes.  
10 Q. Okay. And if you look at -- well,  
11 what's your understanding of what was -- what  
12 was accomplished by this bill, by this 1973  
13 bill?  
14 A. What was accomplished, we got -- we got  
15 a confederate restoration of citizenship  
16 rights, but we had to add in there the fact  
17 that the Paroles -- Probation and Paroles  
18 Commission, they had to certify that there was  
19 nothing hanging over them. Like I say, in  
20 addition to probation or parole that may come  
21 back as a violation of probation and parole.  
22 But other than that, once the  
23 individual has completed everything that he was  
24 sentenced to, on certification by everybody  
25 involved, his citizenship rights will restore.

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 90

1 Q. Okay.

2 A. And he get a copy of it, by the way.

3 Q. Okay. And what was the -- what was the

4 intent of that automatic restoration? What was

5 the benefit of that?

6 A. That he would be -- he went back to

7 being a citizen, a full-fledged citizen and

8 could exercise all his constitutional rights

9 and all rights provided to other folks who had

10 never been convicted.

11 Q. Okay. You mentioned a minute ago in

12 passing that the former felon would get a copy

13 of that as well, you said, "by the way."

14 A. Yes.

15 Q. What's -- what's the significance of

16 that to you?

17 A. Anybody who raised a question, he would

18 have a certificate, an official certificate he

19 could show. They did it in the form of a

20 little card. I used to have one somewhere. I

21 don't know where it is. But they were issued

22 that certificate that could be shown to anybody

23 who raised a question about that felony

24 conviction, that their rights were restored.

25 Q. And what's the -- what's the importance

Page 91

1 of having that?

2 A. So if he went to register to vote, and

3 somebody said, "He's a convicted felon," he

4 could say, "No, my rights have been restored."

5 (Defendants' 8 premarked.)

6 Q. Okay. Okay. I want to go ahead and

7 bring up another exhibit here.

8 So this had been premarked as

9 Defendants' Exhibit Number 8. And I'll

10 represent that this is a page from -- from

11 The News and Observer back from March 24, 1973.

12 And you can see there's an "Under the Dome"

13 section there, which The News and Observer

14 still has.

15 And I'm going to go and zoom in on this

16 for you, because there's only one small part

17 that we need to look at here.

18 So in this "Under the Dome" section it

19 says here where I'm highlighting, "Felons

20 Regain Right Under Bill in House."

21 A. Yeah.

22 Q. I'm going to continue to zoom in on

23 that section so that we can hopefully look just

24 at that.

25 Are you -- are you able to see that

Page 92

1 pretty well now?

2 A. I see it. Yeah.

3 Q. Okay. So this says: "A bill that

4 would provide for full restoration of citizen

5 rights to felons who have fulfilled their

6 sentences received tentative approval by the

7 House Friday."

8 So this was, obviously, before the

9 final, final version. It says: "The bill will

10 be up for final approval Monday night. It was

11 introduced by the House's three Black members,

12 Representative Michaux" -- so you from Durham,

13 Henry Frye from Guilford, and Joy Johnson from

14 Robeson.

15 A. They got my first initial wrong, but go

16 ahead.

17 Q. Right. Right. And then it -- it

18 reports what you said at the time:

19 "Representative Michaux said the bill would

20 eliminate the current legal requirement that

21 felons appear before a judge, take an oath and

22 request restoration of their citizenship."

23 Does that sound accurate, like

24 something you would have said at the time?

25 A. Probably. Yeah. Yeah.

Page 93

1 Q. I don't imagine you remember

2 specifically being interviewed for this all the

3 way back in 1973?

4 A. You're right about that.

5 Q. Okay. But it does sound generally

6 correct of what -- what you might have said

7 back then?

8 A. Yes.

9 Q. You have no reason to doubt how it's

10 been reported here?

11 A. No reason to doubt it.

12 Q. Okay. And I think these are all things

13 we've talked about, that a major goal of the

14 1973 legislation was to remove these various

15 things that you and your colleagues saw as

16 impediments. So appearing before a judge,

17 taking -- and taking an oath, which was an

18 impediment for several reasons. Right?

19 A. Correct.

20 Q. And I think at least two of those

21 reasons, again, you've mentioned the cost

22 involved with getting an attorney to assist you

23 in doing that. Is that one of the reasons?

24 A. That's one of the reasons, yes.

25 Q. And then you also mentioned the

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 94

1 possibility of bias or prejudice since this  
2 would be up to the discretion of a particular  
3 judge who might have a bias or prejudice?  
4 A. That's correct.  
5 Q. Okay. And then it quotes you here, and  
6 you say: "The problem is that many people who  
7 have served their time do not realize they've  
8 lost their rights of citizenship."  
9 A. Right.  
10 Q. Can you just -- I don't know that we've  
11 talked about that reason in particular. Can  
12 you just expound a little bit more on what you  
13 meant by that or what you understand you meant  
14 by that at the time?  
15 A. Well, people who are not familiar with  
16 the law, but who come in contact with it, don't  
17 realize that they have the right to have their  
18 citizenship restored. And that's -- here,  
19 again, that's particularly true in the Black  
20 community. You might even find that true  
21 today. If you didn't have the automatic  
22 restoration, you would probably find that --  
23 you know, folks don't know that their rights  
24 may be automatically restored, even with that  
25 little certificate that they have. They would

Page 95

1 go down to the -- back then you would go down  
2 to the Board of Elections, and they would say,  
3 "You're a convicted felon. You've lost your  
4 citizenship rights." That's when they would  
5 find out.  
6 Q. Okay.  
7 A. Or try to get a job and find out they  
8 can't get a job because they're a convicted  
9 felon. They don't have a right to have a job.  
10 Q. And you said, I believe a minute ago  
11 when talking about this, that this was a -- was  
12 or might have been a particular problem in the  
13 Black community. Can you explain why that is?  
14 A. Because we didn't -- we didn't have the  
15 wherewithal to find out what all of our rights  
16 were at the time. We were told what our rights  
17 were.  
18 Q. Okay. So there was -- access to  
19 information, I guess, would be maybe one way to  
20 put that?  
21 A. That's a nice way to say it. Yeah.  
22 (Defendants' 9 premarked.)  
23 BY MR. RABINOVITZ:  
24 Q. Okay. All right. Now, I want to look  
25 at another news article here. This -- so this

Page 96

1 one I marked at the bottom, because I was  
2 trying not to cover over any of the text, but  
3 I've marked this one as Defendants' Exhibit  
4 Number 9. And this, I'll represent, is a news  
5 article from the Robesonian from -- again, a  
6 local North Carolina newspaper at the time.  
7 And it's talking about several -- several  
8 bills. So it says, "Baby Animals, Felon  
9 Citizenship Restoration Bill are Discussed."  
10 And if I can -- I think if you look --  
11 I'm going to mark the part here. No, that  
12 wasn't right.  
13 A. I see it. You're talking about where  
14 it starts, "Representative Joy Johnson...?"  
15 Q. Yeah.  
16 A. Yeah.  
17 Q. So I was trying to mark the part here  
18 that talks about -- that I believe talks about  
19 this -- this particular bill.  
20 A. Yeah.  
21 Q. I'm not doing a very good job of that.  
22 Let me try one more time.  
23 Okay. There we go. And I'm going to  
24 zoom in on that a little bit. Which messes  
25 that up. Well, I just won't do it this way.

Page 97

1 I'll just zoom in on it and you can --  
2 A. I can -- I can read it.  
3 Q. Okay. Great. Sorry about that. A  
4 little technical issue there.  
5 So this says that: "The House passed  
6 legislation" -- so this is after the  
7 legislation was passed out of the House --  
8 "which would automatically restore the  
9 citizenship rights of felons upon their  
10 unconditional discharge from state prison.  
11 Representative Joy Johnson of Robeson, the  
12 bill's sponsor, said if rights are taken away  
13 from felons automatically upon conviction, they  
14 should be restored automatically upon release."  
15 Does that -- you would agree with that  
16 statement? That's the sentiment that he was  
17 expressing through that statement?  
18 A. Yes.  
19 Q. And that that was something that the  
20 bill sought to achieve?  
21 A. Yes.  
22 Q. Okay. And then it just characterizes  
23 the current law, which was -- at this time it  
24 would have been what the 1971 law was:  
25 "Current law permits restoration of citizenship

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 98	Page 100
<p>1 upon the recommendation of the Office of 2 Corrections upon the person's release, after 3 two years have elapsed since release, or in the 4 condition of an unconditional pardon." 5       So that's -- that's what this law -- 6 again, these are other things that the -- that 7 the 1973 law was trying to do away with because 8 of the procedural complications? 9       A. That's correct. 10       Q. Okay. All right. So I want to go 11 ahead and go back to Exhibit Number 1 here, 12 which is your affidavit, and I just want to ask 13 you about a few things in your affidavit here. 14       So I'm going to go down to paragraph 12 15 here. And so this is after an affidavit. 16 You've talked about being elected to the House. 17 And you say in paragraph 12: "At the time, 18 Kelly Alexander, Sr., was president of the 19 NAACP, and the state conference was very 20 active. Their informal lobbyist at the general 21 assembly was Peter Stanford. I recall that 22 NC NAACP identified as one of its priorities 23 for equal voting rights the need to inform our 24 laws to enact a system of automatic restoration 25 of rights to those formerly convicted of a</p>	<p>1       Q. Okay. And that is something you were 2 able to do in that 1973 amendment to the law? 3       A. Right. 4       Q. Okay. I want to look at the next 5 paragraph. This is paragraph 13. It says: 6 "In that session, I was assigned the bill to 7 further extend the franchise to people formerly 8 convicted of felonies, along with a major bill 9 addressing Sickle Cell disease as a health 10 crisis. I also worked closely with 11 Representatives Frye and Johnson on advocating 12 for Landlord-Tenant rights bill - a bill that 13 was ultimately defeated based, I believe, on 14 bias in the legislative body. All of these 15 legislative actions were aimed at addressing 16 the effects of racial and class discrimination 17 in North Carolina." 18       I want to ask you first: What does 19 it -- you use the language here, you say you 20 were "assigned" the bill. What does it -- what 21 do you mean by that? 22       A. Well, Henry, Joy, and I were the 23 Legislative Black Caucus. And we assigned -- 24 we looked at all the bills, and we assigned the 25 bills that we had an interest in among the</p>
Page 99	Page 101
<p>1 felony, and we agreed." 2       So what do you recall about the 3 conversations at the time or at least about 4 that being a priority for the State NAACP? 5       A. It was identified as one of the 6 priorities. 7       Q. Yes. 8       A. So there were, I guess, many priorities 9 that we talked about. Kelly, Sr., and Peter 10 Stanford, we talked about many of the 11 impediments that were put before folks in order 12 to get them to be able to vote. So, I mean, 13 you know, we identified it as one of the things 14 that -- Black folks, particularly convicted 15 felons, didn't have any knowledge that they 16 could have their citizenship rights restored in 17 that, you know, form or fashion. I mean, it 18 just came up in general conversation, as other 19 things came up involving equal voting rights. 20       Q. Okay. And so you say "one of its 21 priorities." And so the priority we're talking 22 about here is the automatic restoration of 23 rights? 24       A. Of citizenship rights for convicted 25 felons, yes.</p>	<p>1 three of us to handle. That's what I meant by 2 that. 3       Q. Okay. And you say -- 4       A. Henry, for instance, took on the 5 Landlord-Tenant Bill. He was assigned that and 6 that bill in particular. 7       Q. Okay. So you just mean how you guys 8 decided to divvy it up? 9       A. We divided the bills up of what we -- 10 what we looked on as priorities; and to act on 11 them, yes. 12       Q. Okay. And so you mentioned several 13 bills here, including this bill that we've been 14 talking about, the Automatic Restoration Bill, 15 and you say all of the legislative actions were 16 aimed at addressing the effects of racial and 17 class discrimination in North Carolina. And I 18 think we've talked about that at length related 19 to this Automatic Restoration Bill. 20       Is there anything else on that related 21 to the Automatic Restoration Bill that we 22 haven't talked about, other ways that it 23 addressed racial and class discrimination in 24 North Carolina? 25       A. No.</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 102

1 Q. Okay. Okay.  
2 A. Not in conjunction with this.  
3 Q. Okay. What was the issue with the  
4 Landlord-Tenant Bill and racial and class  
5 discrimination there?  
6 A. Good Lord. Evictions, additional  
7 costs, increase in rents, credit apps, slums,  
8 ghettos. I mean, what do you want to talk  
9 about?  
10 Q. So there were many -- there were many  
11 issues tied up with that, it sounds like?  
12 A. There was many issues tied up with  
13 every -- yes. There was many issues tied up  
14 with society in general.  
15 Q. Okay. And the automatic restoration  
16 was, in your mind, one piece of that?  
17 A. One piece of the action, yes.  
18 Q. Okay. I want to look at the next  
19 paragraph, this paragraph 14. One of the  
20 things that you say in there is that: "It was  
21 clear that the way the law was operating was  
22 mostly aimed at having an effect on  
23 African-Americans' political participation and  
24 was discriminatory and unequal."  
25 Is there -- you know, we've talked

Page 103

1 about that, I think, a great deal. Is there  
2 anything on that topic that we haven't  
3 discussed that you want to add to with respect  
4 to the Automatic Restoration Bill?  
5 A. No.  
6 Q. Okay.  
7 A. Well, let me back up or we'll be  
8 getting in trouble with this. It still doesn't  
9 do what it intended to get done. And the  
10 reason I say that is that because a convicted  
11 felon cannot own a firearm under the laws in  
12 North Carolina.  
13 Q. Okay.  
14 A. And that's a Second Amendment right.  
15 Q. Right. And I think in the next -- in  
16 the next paragraph, paragraph 15, you say you  
17 remember that you wanted automatic restoration  
18 "applicable across the board."  
19 What did that mean to you, "applicable  
20 across the board"?  
21 MS. THEODORE: Brian, can you just read  
22 him the rest of the sentence, please?  
23 MR. RABINOVITZ: Sure. Sure. Happy to  
24 do that.  
25 BY MR. RABINOVITZ:

Page 104

1 Q. You say: "I remember we wanted  
2 automatic restoration applicable across the  
3 board -- at the least, the restoration of your  
4 citizenship rights after you completed  
5 imprisonment."  
6 A. Well, that's -- that's just a statement  
7 that I made stating that we wanted to make sure  
8 that everybody had an opportunity to have their  
9 citizenship rights restored. We weren't being  
10 selfish in this particular instance.  
11 Q. Okay. So you mean it would apply  
12 equally to everyone?  
13 A. Everybody.  
14 Q. Okay. And then in paragraph 16, you're  
15 talking a little bit -- you've alluded to this,  
16 as you just did a minute ago, that -- you say:  
17 "Ultimately, it wasn't perfected." And you go  
18 on to say that you had to convince your  
19 colleagues and reach some compromises.  
20 So can you just, you know, explain that  
21 in a little bit more detail what you mean by  
22 that here?  
23 A. Well, I explained that before, because,  
24 for instance, in the case of parole or  
25 probation, a violation is an extension of the

Page 105

1 sentence that you originally receive. Had we  
2 left it as it was, once the sentence is  
3 received, in spite of any extension, that would  
4 not have counted. What we had -- what we had  
5 to -- what we had to concede on was the fact  
6 that any -- that if probation or parole was  
7 extended for any violation at all, that had to  
8 be included in there also.  
9 Q. Okay.  
10 A. We did not want that -- we did not want  
11 that in there, because we knew that if you  
12 missed one session with the probation officer,  
13 you could be violated for that, and they would  
14 extend your probation, normally, in a  
15 situation, beyond what you were actually  
16 sentenced for.  
17 Q. Okay.  
18 A. And we wanted -- we didn't want -- we  
19 didn't want that extension after, keeping him  
20 from getting his restoration.  
21 Q. Okay. And you ultimately, though, were  
22 able to reach a compromise; is that right?  
23 A. That included everything. Yes.  
24 Q. Okay. And what was the -- obviously,  
25 you -- there was something that you felt you

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 106

1 achieved out of that compromise; not to put  
2 words in your mouth. But what was important in  
3 what you were able to get? What was -- what  
4 was most important to you then that you were  
5 able to get out of that compromise?  
6 A. That you didn't have to jump through  
7 any hoops to get your rights restored. You  
8 didn't have to have a hearing. You didn't have  
9 to do anything. That the onus was on the State  
10 to provide you with the fact that your rights  
11 were automatically restored; that you didn't  
12 have to go begging for them. Just like Joy  
13 said, if you automatically took them away, you  
14 could automatically restore them. And that's  
15 what we got out of it.  
16 Q. And those benefits to you were  
17 substantial enough that the compromise was  
18 worth it?  
19 A. Yes, sir.  
20 Q. Is there -- you were a legislator for a  
21 long time. Are compromises a part of the  
22 process when trying to get legislation through?  
23 A. Yes. Yes. Everything that --  
24 everything that comes out of that legislature  
25 is a compromise.

Page 107

1 Q. Right. That's what I was going to say.  
2 I would imagine that pretty much everything --  
3 everything involves some kind of compromise.  
4 A. I have seen very few pure bills.  
5 Q. Right. Is that a -- is that a feature  
6 or a bug of the legislative process?  
7 A. I think it's -- I think -- I think, to  
8 me, it's a -- it's an attribute. It's a  
9 significant attribute. That you could sit and  
10 compromise. That you're able to do that.  
11 Q. And what are the benefits?  
12 A. Why is that? Is that what you're  
13 asking?  
14 Q. Well, I was just going to say: What  
15 are the benefits of that, the benefits of a  
16 compromise?  
17 A. You're able -- you're able to sit down  
18 and look at all sides of the situation. I was  
19 Senior Chair of Appropriations for four years.  
20 I made so many compromises on what the budget  
21 should look like, that what I had originally in  
22 the budget wasn't anywhere near. But the  
23 budgets came out good because of the time that  
24 we were in. We were right in the middle of a  
25 depression, when I had to put that budget

Page 108

1 forward. And there were so many compromises  
2 made in the bill that it kept the state  
3 running. It kept the state moving. And that's  
4 why I say, the art of compromise is the art of  
5 politics, or vice versa.  
6 Q. Sure.  
7 A. Don't get me on this soapbox now  
8 because...  
9 Q. I'm just seeing what else -- I'm just  
10 looking through my notes and making sure I  
11 don't miss anything else here.  
12 One of the things that you mentioned,  
13 looking at the -- looking at the next  
14 paragraph, you're talking about some of the  
15 problems with it, the way that this was set up,  
16 the way that the system was set up, and you  
17 talk about perverse incentives and  
18 criminalization especially in the charging of  
19 African Americans.  
20 What -- can you explain that a little  
21 bit more? What were the issues under the  
22 previous law that created this incentive in the  
23 charging of African Americans, I guess, to  
24 charge them more severely than would otherwise  
25 happen?

Page 109

1 A. I thought we went over that.  
2 MS. THEODORE: Brian? Excuse me for a  
3 minute. Are you referring to a particular  
4 part of the affidavit; and if so, could you  
5 just let us know what that is?  
6 MR. RABINOVITZ: Yeah. I'm sorry if I  
7 forgot to mention it.  
8 BY MR. RABINOVITZ:  
9 Q. I was talking about paragraph 17, in  
10 the -- in the -- I guess it's the third  
11 sentence there in paragraph 17. You say that  
12 you saw your efforts "as a step forward,  
13 understanding that it did not solve the  
14 original problem."  
15 And so I was asking about that original  
16 problem, which you describe as follows: "The  
17 law was designed to suppress African-American  
18 voting power and it had created a perverse  
19 incentive to criminalize and charge African  
20 Americans differently to achieve that aim."  
21 So I was just asking if you could  
22 explain that to me a little bit more.  
23 A. Well, what I was saying was that in  
24 taking into account the attitudes that existed  
25 during that period of time, anything that you

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 110

1 could do to stop African Americans from voting  
2 were on one side; what you could do to get the  
3 African Americans to vote on the other side.  
4 If you wanted to suppress the vote, you  
5 criminalize certain things that would make --  
6 make their vote not count or not be able to  
7 cast that vote. And the attitude was that  
8 African Americans should not have the right to  
9 vote. And this was one of the laws that was  
10 designed, particularly, as I stated initially,  
11 because we didn't have the wherewithal to  
12 understand that we could have our rights  
13 restored. That it -- it suppressed that power  
14 that we had in that one person being able to  
15 vote.  
16 Q. Okay. And so the 1973 legislation that  
17 added the automatic restoration, I guess would  
18 also, in some part, alleviate this problem? Is  
19 that accurate?  
20 A. When you -- when you give -- pardon  
21 me -- when you give that person that  
22 certificate that says, "Your rights are  
23 restored," that you have the right to vote,  
24 then, yes, it solved that problem to an extent.  
25 Now, you don't want me to tell you that the way

Page 111

1 it's being applied now -- it's now -- really,  
2 it's yet again.  
3 Q. Can you explain what you mean by that?  
4 A. I mean by that, that we have found out  
5 in recent years that if you're a convicted  
6 felon, your Second Amendment rights were not  
7 restored, according to the North Carolina law.  
8 For instance, to own a weapon. A convicted  
9 felon could be put back in jail for owning --  
10 for possession of a weapon by a convicted  
11 felon.  
12 Q. Okay.  
13 A. That same amendment gives you the right  
14 to own a weapon. So that right, really, has  
15 not been restored.  
16 Q. Okay. So now you're talking about the  
17 Second Amendment and a potential conflict  
18 because restoration of citizenship, I gather,  
19 also affects somebody's Second Amendment  
20 rights. Is that -- is that what you're --  
21 A. What we're saying is it's an automatic  
22 restoration of rights. That's the way the  
23 legislation -- it's citizenship restoration, an  
24 automatic restoration of citizenship.  
25 Q. Right.

Page 112

1 A. And, anyway, when I said we -- if you  
2 look at 18 -- I said that was a "bitter pill to  
3 swallow," because I had -- and not that I'm any  
4 kind of fortune teller or anything like that --  
5 we knew there were other problems that were  
6 going to come up with that.  
7 Q. Right.  
8 A. Any way -- any way you could -- any way  
9 you could dissuade or suppress that vote, any  
10 little change, and it's happening with that.  
11 Why is a convicted felon, who has been given  
12 his automatic restoration citizenship, why  
13 can't he own a weapon?  
14 Q. Okay.  
15 A. I mean, this is not in this suit,  
16 but --  
17 Q. Sure.  
18 A. -- but it's a part of it.  
19 Q. Right. So it's a separate issue  
20 about --  
21 A. And it still -- it still exists.  
22 Q. Understood. Understood.  
23 I guess that goes back, to some extent,  
24 to the compromise. You still felt like you  
25 achieved something significant through the

Page 113

1 legislation?  
2 A. Yeah, until folks found out, you know,  
3 there were other ways to get around it.  
4 Q. Okay.  
5 A. We have to come back and fight for  
6 everything that's taken for granted by other  
7 folks.  
8 Q. Okay. I want to look at paragraph 19.  
9 A. Okay.  
10 Q. You say here -- well, let me step back  
11 for a second, because you were talking a little  
12 bit about the Second Amendment. I just want to  
13 make sure that I've explored this.  
14 You talked about other ways to get  
15 around it, to get around the legislation that  
16 you enacted.  
17 Other than the Second Amendment issue  
18 that you mentioned, what other ways are you  
19 talking about that people have used to get  
20 around what you tried to do through that 1973  
21 legislation?  
22 A. Well, prior -- prior to -- prior to  
23 that -- you mean recently?  
24 Q. I guess anytime since you -- since  
25 you enacted the --



COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 114

1 A. Since the '73 legislation?  
2 Q. Yes.  
3 A. Oh, boy. I told you don't get me on my  
4 soapbox here.  
5 People had found -- we -- I don't know  
6 how to -- I don't want to be here all day  
7 explaining to you --  
8 Q. Sure.  
9 A. -- but there are many things that have  
10 happened since 1973. And we're still fighting  
11 enfranchisement. I mean, in 1971, you had put  
12 into the North Carolina Constitution, a test to  
13 see whether or not you could register to vote.  
14 That was in the 1971 constitution, and it's  
15 still there.  
16 Q. Okay.  
17 A. So, I mean, any little thing -- they  
18 know that the federal law has knocked that out,  
19 but you've got to go fight for everything that  
20 you think -- that you think applies across the  
21 board, you may find out later on that it  
22 doesn't apply across the board. There are  
23 things going on right now.  
24 Q. Okay. So just -- I just want to make  
25 sure I'm clear. When you're talking about

Page 115

1 these other issues, you're talking about the  
2 many obstacles that are -- that are out there,  
3 but you're not specifically talking about ways  
4 that people have tried to get around the  
5 automatic restoration statutes?  
6 A. Yes, I am.  
7 Q. Okay.  
8 A. Yes, I am, because -- because you get  
9 around it by criminalizing a felon who owns --  
10 who owns a weapon.  
11 Q. Okay. Okay. Are there other examples,  
12 or that's -- that's the main example?  
13 A. Well, that applies here.  
14 Q. Yes.  
15 A. But --  
16 Q. And I'm just asking about things that  
17 would apply here to this particular  
18 legislation, not other voting issues outside of  
19 this case.  
20 A. Well, then, no, I -- because you're  
21 getting me on a soapbox again.  
22 Q. Okay. Okay. So in paragraph 19 you  
23 say: "We were proud of what we accomplished,  
24 but we knew that far more was needed for the  
25 law to be just, to live up to our

Page 116

1 constitutional values, and to end the influence  
2 of the white supremacist aims on  
3 North Carolina's law and practice."  
4 A. Please stop me from going further on my  
5 soapbox, but go ahead.  
6 Q. So, you know, this is what we've talked  
7 about before, you know, you were -- I believe  
8 you thought that the law achieved important  
9 things, but that it -- it didn't --  
10 A. Yeah.  
11 Q. -- achieve everything that you had  
12 hoped could be achieved through it.  
13 A. Right.  
14 Q. And so my question is: Were there  
15 further efforts that you were a part of, after  
16 1973, to amend this law to try and make it  
17 more -- more the way that you wanted it to be  
18 or more the way that you thought that it should  
19 be?  
20 A. Not until my latter years when I got  
21 involved in actions involving convicted felons  
22 in possession of a firearm. The very last --  
23 the very last case that I had -- it got  
24 dismissed, because I couldn't -- they wouldn't  
25 let me go further with it -- involved that,

Page 117

1 which was 2019 -- 2018, 2019.  
2 Q. Okay. And when you say it was a -- it  
3 was a case, what was your role --  
4 A. I had a client -- I had a client who  
5 was charged with, as a convicted felon --  
6 possession of a weapon by a convicted felon.  
7 Q. Uh-huh.  
8 A. So I had represented him on his felony  
9 conviction, which occurred some eight, nine,  
10 ten years before.  
11 Q. Okay.  
12 A. And I had -- he had served all of his  
13 time under that and had gotten his certificate  
14 of citizenship restoration, which included on  
15 that certificate the fact that he could not  
16 possess a weapon.  
17 Q. Okay. And so this, again, goes back to  
18 the -- the Second Amendment issue that you were  
19 mentioning before --  
20 A. Yes, sir.  
21 Q. -- as something that went against what  
22 you were trying to do with the 1973 law?  
23 A. Yes, sir.  
24 Q. Between 1973, though, and when you  
25 retired, were there any other bills that you

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 118

1 introduced in -- in the House, or when you were  
2 over in the Senate for a short time, to try to  
3 correct the issues that you thought still  
4 remained with the 1973 legislation?  
5 A. No.  
6 Q. Okay. Are we okay to continue, or do  
7 you need a break?  
8 A. No. We can continue.  
9 Q. Okay.  
10 MR. JOYNER: Brian, let me just ask  
11 you: How much longer do you intend to go?  
12 So that we can kind of navigate through  
13 some other break needs and lunch needs for  
14 people that are on the phone.  
15 MR. RABINOVITZ: Sure. I think I'll  
16 probably just have 10 or 20 minutes left  
17 when I get back. I don't know what other  
18 folks need, but I'll probably just be  
19 another 10 or 20 minutes.  
20 MR. JACOBSON: Paul and Olga, are you  
21 guys planning on asking additional  
22 questions, or no?  
23 MR. COX: At this time, I don't think  
24 so. If we do, it's going to be very brief.  
25 But, more likely than not, no.

Page 119

1 MR. JOYNER: Okay. So can we, then, do  
2 another -- you say you can finish in about  
3 ten minutes -- and then take a brief break  
4 at that point?  
5 MR. RABINOVITZ: Sure. Yeah. It will  
6 take me 10 to 20 minutes, but if you want  
7 to go ahead and just break on the hour,  
8 then, you know, we can come back and I'll  
9 finish up quickly.  
10 I guess the same question for the  
11 plaintiffs' attorneys, if we're trying to  
12 gauge time: Do you folks anticipate having  
13 extensive questioning, or how extensive,  
14 after I'm through?  
15 MS. THEODORE: We will -- we will  
16 certainly have some questioning, and I  
17 think it will take -- I think it will take  
18 longer than ten minutes. I think probably  
19 what will make sense is that we could do  
20 maybe a lunch break after you're finished  
21 and before we -- before we start the  
22 redirect, potentially.  
23 MR. RABINOVITZ: Okay.  
24 MR. JOYNER: So can we kind of look at  
25 maybe, once you finish, regrouping about a

Page 120

1 half an hour, 45 minutes after that? How  
2 does that schedule work?  
3 Senator Michaux has, you know -- you  
4 know, he's been very gracious thus far, but  
5 I know that he needs to get a break in  
6 here.  
7 MR. RABINOVITZ: Sure. Well, here is  
8 what I would propose. Like I said, I think  
9 I have 10 to 20 minutes left. Why don't I  
10 try and get through that, you know. If it  
11 seems like it's going overly long, you  
12 know, we can -- we can break. But,  
13 otherwise, I'll try and get through that,  
14 and then we can, you know, talk off the  
15 record about how we want to structure the  
16 rest of the time and make sure everyone  
17 gets any break they need and gets lunch if  
18 they need it, and then we can move on from  
19 there.  
20 Does that sound acceptable?  
21 MR. JOYNER: Senator Michaux, how is  
22 that for you?  
23 THE WITNESS: Sounds fine with me. I'm  
24 retired.  
25 BY MR. RABINOVITZ:

Page 121

1 Q. Okay. So at the time that you were  
2 passing the 1973 law -- let's go back to --  
3 let's go back to paragraph 10 here in your  
4 affidavit.  
5 So you mentioned there were only the  
6 three of you African-American legislators, and  
7 that, otherwise, the general assembly was all  
8 white. And then you go on to say in the last  
9 sentence there: "The majority of legislators,  
10 regardless of party, were conservative rather  
11 than progressive when it came to race, race  
12 relations, and the civil rights of African  
13 Americans, and many openly held racist views."  
14 And then going back to the second  
15 sentence. Sorry to skip around. But you say:  
16 "By necessity, to be effective in that  
17 legislature you had to form coalitions around  
18 issues and make constant strategic  
19 determinations about legislative negotiations,  
20 compromises, and trade-offs."  
21 And we talked about how, in this  
22 particular legislation, you had to make a  
23 compromise. Is that the type of compromise  
24 that you were talking about in this paragraph  
25 here?

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 122	Page 124
<p>1 A. Yes.</p> <p>2 Q. Okay. And it was because of the way</p> <p>3 you describe it here, I think, the makeup of</p> <p>4 the legislature at that time and racist views</p> <p>5 that were held by many of the white legislators</p> <p>6 who were in power at that time. Is that</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. I just asked you a few minutes</p> <p>10 ago about any other attempts to amend this</p> <p>11 legislation over the next, you know, almost --</p> <p>12 almost 50 years, more than 40 years, and you</p> <p>13 said that there weren't other attempts.</p> <p>14 But, certainly, during that time, would</p> <p>15 you agree that the makeup of the legislature</p> <p>16 and the views held by many of the folks in the</p> <p>17 legislature changed considerably on race</p> <p>18 issues? Is that right?</p> <p>19 A. I would say they have changed, yes.</p> <p>20 Q. And is it also correct that between</p> <p>21 1992 and -- and up to -- well, not the entire</p> <p>22 time, but I guess from 1992 to 2017, there were</p> <p>23 14 years during that time period when Democrats</p> <p>24 held the governor's office and majorities in</p> <p>25 both the Senate and the House?</p>	<p>1 Senate?</p> <p>2 A. You're making me have to think about</p> <p>3 it.</p> <p>4 Q. Okay.</p> <p>5 A. I'm not sure I can answer that because</p> <p>6 I -- I'm sitting here trying to remember. You</p> <p>7 said between 2000 and 2010?</p> <p>8 Q. Yes.</p> <p>9 A. You may be -- you may be right on that.</p> <p>10 Yeah.</p> <p>11 Q. Okay. You can't be sure as you sit</p> <p>12 here today, then?</p> <p>13 A. I'm not sure.</p> <p>14 Q. Okay. But there was, at least, some</p> <p>15 time period in there -- I'll narrow it -- some</p> <p>16 time period during the administrations of</p> <p>17 Governor Easley and Governor Perdue when there</p> <p>18 was also Democratic leadership in the House and</p> <p>19 the Senate?</p> <p>20 A. That's correct. Yeah.</p> <p>21 Q. Okay. And there also was not an</p> <p>22 attempt by you or your colleagues during those</p> <p>23 years to further amend this 1973 statute?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay.</p>
<p>Page 123</p> <p>1 A. I would assume you're right on that.</p> <p>2 Q. Okay. In fact, I think there was a</p> <p>3 stretch from 1991 -- or sorry, 1999 -- all the</p> <p>4 way up until 2010, when the Democrats held</p> <p>5 those three -- those three leadership</p> <p>6 positions?</p> <p>7 A. No. What do you say? No.</p> <p>8 Q. I said from 1999 to 2010, there was --</p> <p>9 during that time period there was a Democratic</p> <p>10 governor and Democratic leadership in the</p> <p>11 Senate and the House.</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 A. Because I'm trying to -- I'm trying</p> <p>15 to -- I'm trying to remember the year that</p> <p>16 Brubaker was Speaker of the House and when the</p> <p>17 speakership was -- was shared by the House.</p> <p>18 Q. Right. Okay.</p> <p>19 A. In the '90s. That was in the '90s.</p> <p>20 Q. That was in the '90s. Okay.</p> <p>21 A. It was in the '90s.</p> <p>22 Q. So I'll leave out 1999, then. Why</p> <p>23 don't we say in the early 2000s through about</p> <p>24 2010, at least, there was Democratic leadership</p> <p>25 in the governor's office, the House, and the</p>	<p>Page 125</p> <p>1 A. As far as I know. As far as I can</p> <p>2 remember.</p> <p>3 Q. Okay. And I think I'm just about</p> <p>4 wrapping up here, but I do want to make sure I</p> <p>5 cover my bases. I had initially sent out a</p> <p>6 subpoena for your experience that included some</p> <p>7 document requests, and your attorney</p> <p>8 represented to me that you didn't have any</p> <p>9 documents that were responsive to that request.</p> <p>10 A. That is true.</p> <p>11 Q. I just -- I just want to -- I just want</p> <p>12 to make sure that I've covered everything and</p> <p>13 that there's -- that there's nothing that I've</p> <p>14 left out that, you know, you might still have</p> <p>15 in your possession.</p> <p>16 Do you have any letters or other</p> <p>17 papers -- other than what you printed out</p> <p>18 yesterday. I'm not talking about the statutes</p> <p>19 that you printed out yesterday.</p> <p>20 MS. THEODORE: Brian, I'm going to</p> <p>21 object to all of these questions about</p> <p>22 document discovery, because, as you know,</p> <p>23 the document discovery requests that you</p> <p>24 sent in this case were -- were untimely.</p> <p>25 MR. RABINOVITZ: Okay. Your --</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 126	Page 128
<p>1 MS. THEODORE: Our position is that the 2 document discovery requests that you sent 3 us in this case were untimely, and those 4 requests were withdrawn. 5 MR. RABINOVITZ: Yup, they were 6 withdrawn, and your objection is noted. 7 And I'll just note that I'm simply asking 8 now during the deposition, orally, about 9 whether he has any of those documents. So 10 the request has been withdrawn. So I'll 11 proceed. 12 BY MR. RABINOVITZ: 13 Q. Any documents in your possession that 14 reflect any effort to address the voting rights 15 of people convicted of felonies that would 16 include letters of support or opposition to any 17 policies or bills? Do you have anything like 18 that in your possession? 19 A. I do not have them in my possession. 20 No, sir. All the documents and everything that 21 I have gathered over the years have been turned 22 over to North Carolina Central University. 23 Q. Okay. Over to Central University, you 24 said? 25 A. Yes, sir.</p>	<p>1 we come back. But I anticipate that I, you 2 know, will be able to very quickly turn it 3 over to the other attorneys, and then I 4 would only have follow-up questions if 5 something comes up on their questioning 6 that I needed to go back to. 7 But in terms of taking a break now, 8 does that work to take a break now to 9 figure out how we're going to proceed? 10 MR. JOYNER: Well, why don't we go off 11 the record now, and then we can figure out 12 how to proceed. I mean, if we're going to 13 take a break, then it ought to be one 14 break, rather than breaking and trying to 15 come back and figure out a strategy. So if 16 we could just go off the record. And then 17 I don't know what the schedules of others 18 are, but, you know, I would propose moving 19 that way. 20 MR. RABINOVITZ: Okay. That works for 21 me. 22 Okay. So Madam Court Reporter, if we 23 could just -- if we could go off the record 24 at this time, I think -- I think that will 25 work. We'll do it that way.</p>
Page 127	Page 129
<p>1 Q. So all of your papers are in a 2 collection at North Carolina Central 3 University? 4 A. Yes, sir. 5 Q. Okay. So there's really, then, no need 6 for me to go through and ask you about 7 particular documents, because everything that 8 you would have had, you've turned over. Is 9 that right? 10 A. That's correct. 11 Q. Okay. And do you know if that 12 collection is publicly accessible or not? 13 A. I have no idea. 14 Q. Okay. 15 A. I gave it to them unrestricted. 16 Q. Okay. And that's fine. Then I think 17 that -- I think that will wrap up that line of 18 questioning. 19 MR. RABINOVITZ: It's right at noon 20 right now. So what I would propose is that 21 we take another break off of the record to 22 have a discussion about how we're going to 23 proceed. I will check my notes and make 24 sure I haven't left anything out; and if I 25 have, maybe take five or ten minutes when</p>	<p>1 THE REPORTER: We are now off the 2 record. 3 (Recess from 12:03 to 12:55 p.m.) 4 MR. JOYNER: What is that 858 number? 5 I'm sorry. I missed that. 6 MR. FARAJI: Yeah. This is Farbod 7 Faraji for Protect Democracy. I joined 8 earlier but I didn't want to interrupt the 9 proceedings. 10 THE REPORTER: We can go back on the 11 record at any time. 12 MS. VYSOTSKAYA: I think we could go 13 back on the record unless there is an 14 objection from plaintiffs. 15 MS. THEODORE: We're ready to go back 16 on the record. 17 MS. VYSOTSKAYA. If we are back, the 18 Board of Elections does not have any 19 questions right now for Representative 20 Michaux. We reserve the right to ask the 21 questions after plaintiffs finish their 22 examination. 23 EXAMINATION 24 BY MS. THEODORE: 25 Q. Okay. Good afternoon, Senator Michaux.</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 130	Page 132
<p>1 I'm Elisabeth Theodore, one of the lawyers for 2 the -- 3 A. Yes, ma'am. 4 Q. -- North Carolina NAACP and the other 5 plaintiffs. 6 So, Senator Michaux, you were asked 7 some questions in your direct examination about 8 the original bill proposed by Representative 9 Johnson in 1971. Do you remember that? 10 A. Yes. 11 Q. And you testified that it was amended 12 by a Committee Substitute, correct? 13 A. Correct. 14 Q. Okay. Now, I'm going to call up 15 Defendants' Exhibit 5. I can try to do that 16 right now. 17 Okay. Do you see here I have on the 18 screen what's marked as Defendants' Exhibit 5? 19 Do you see that, Senator? 20 A. Not yet. 21 MS. THEODORE: Am I not sharing? 22 MR. RABINOVITZ: It says -- it says you 23 started screen-sharing, but there's nothing 24 there. It's just a message that you're 25 screen-sharing.</p>	<p>1 record. 2 BY MS. THEODORE: 3 Q. All right. So Senator Michaux, you see 4 this -- is this first page that you're seeing 5 on this screen the first page of Defendants' 6 Exhibit 5? 7 A. Yes. 8 Q. A copy of the original bill proposed by 9 Representative Johnson? 10 A. Yes. 11 MS. THEODORE: Okay. And, Dan, can you 12 scroll down to proposed section 13-11. 13 A. Okay. 14 Q. And, Senator Michaux, do you see there 15 that proposed section 13-11 does not use the 16 words "probation" or "parole"? Is that 17 correct? 18 A. That's correct. 19 Q. Okay. And then -- 20 MS. THEODORE: Dan, can you scroll to 21 the second page of Defendant's Exhibit 5? 22 BY MS. THEODORE: 23 Q. All right. And if you would go to the 24 top of that second page there, you see that it 25 reads --</p>
Page 131	Page 133
<p>1 MR. JACOBSON, Are you sure you clicked 2 on the thing you want to share? 3 MS. THEODORE: I think so. Hang on. 4 Let me try again. 5 MR. RABINOVITZ: There's also a second 6 step. Once you click on it, you also have 7 to click on "Share" too. So it's kind of a 8 two-step thing. 9 MS. THEODORE: Is it working now? 10 THE WITNESS: No. 11 MR. RABINOVITZ: In the bottom 12 right-hand corner, is there a little green 13 "Share" button? 14 MS. THEODORE: I clicked on that. 15 Yeah. Do you need to give me control or 16 something like that? 17 MR. RABINOVITZ: No. No. But there is 18 a Huseby tech person if we want to go off 19 the record again for a second. We can ask 20 them for help. They're live on the call. 21 MS. THEODORE: Yeah. Maybe we should 22 go off the record for a second. 23 MR. RABINOVITZ: Okay. 24 (Brief discussion off the record.) 25 MS. THEODORE: Let's go back on the</p>	<p>1 MS. THEODORE: Go up a little more to 2 the top, please, Dan. 3 BY MS. THEODORE: 4 Q. Do you see -- do you see, Senator 5 Michaux, that it reads there "Committee 6 Substitute for House Bill 285"? 7 A. Yes. 8 Q. Okay. So you recognize this as a copy 9 of the Committee Substitute? 10 A. Yes. 11 Q. Okay. And let's go down to proposed 12 section 13-1, "Restoration of citizenship." Do 13 you see that, Senator Michaux? 14 A. Yes. 15 Q. Okay. And you see that -- you see that 16 this Committee Substitute now includes the 17 phrase "including any period of probation or 18 parole" -- 19 A. Yes. 20 Q. -- in section 13-1? 21 A. Yes. 22 Q. Okay. And that language from the 23 Committee Substitute is what was eventually 24 passed, correct? 25 A. That's correct.</p>

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 134

1 Q. Okay. And I'm going to move to a  
2 different exhibit, which we'll mark as  
3 Plaintiffs' Exhibit 1.  
4 MS. THEODORE: Dan, can you call up  
5 that News and Observer article?  
6 MR. JACOBSON: Yes. One second.  
7 MS. VYSOTSKAYA: To the extent that we  
8 are introducing new exhibits, could you  
9 possibly share those with us as well, with  
10 all the defendants?  
11 MS. THEODORE: Yes.  
12 MS. VYSOTSKAYA: That would be great.  
13 MS. THEODORE: I will -- I will send  
14 that to you right now as Dan is calling it  
15 up. It's -- this is a document that you've  
16 produced in discovery.  
17 MR. JACOBSON: Can everyone see this?  
18 THE WITNESS: Yes.  
19 MS. THEODORE: All right,  
20 Senator Michaux.  
21 And, Dan, do you want to scroll down to  
22 the article?  
23 (Plaintiffs' 1 marked.)  
24 BY MS. THEODORE:  
25 Q. All right. Senator Michaux, I know

Page 135

1 this is hard to see, but I will represent to  
2 you that this is an article produced by the  
3 defendants in this case from The News and  
4 Observer dated July 8, 1971.  
5 A. Yes.  
6 Q. Okay. And so this is an article that  
7 would be concerning the 1971 bill; is that  
8 right?  
9 A. That's what it appears to be, yes.  
10 Q. Right. And you see it's entitled  
11 "Felon Citizenship Bill Gets House Approval"?  
12 A. Yes.  
13 Q. Okay. And I'm going to -- I'm going to  
14 direct your attention to the third paragraph of  
15 this article which I will read to you. It  
16 says: "Representative Henry Frye, D Guilford,  
17 told the House he favored the bill's provisions  
18 which called for automatic restoration of  
19 citizenship when a felon had served his prison  
20 sentence, but he would go along with the  
21 amendment if necessary to get the bill passed."  
22 So do you understand Representative  
23 Frye to have understood the original proposed  
24 1971 bill to restore voting rights upon release  
25 from a prison sentence, meaning release from

Page 136

1 incarceration?  
2 A. I don't know. I don't know what  
3 Representative Odom's amendment was.  
4 Q. All right. But when Representative  
5 Frye says in --  
6 A. Okay. Okay. Okay.  
7 Q. Sorry. When Representative Frye says  
8 in this newspaper article that he -- that he  
9 favored the bill's original provisions, which  
10 called for automatic restoration when a felon  
11 had served his prison sentence, would you  
12 understand that to refer to release from  
13 incarceration?  
14 A. I don't know. The second part of the  
15 amendment still involved the two years, from  
16 what I'm reading. And I don't know what  
17 Representative Frye was thinking at the time.  
18 Oh, oh. Oh. Oh. Oh.  
19 Q. Representative Frye, here, is talking  
20 about the original proposed bill in 1971?  
21 A. Yeah. I know he's talking about the  
22 original bill, but I'm not so sure, because the  
23 amendment that Representative Odom wanted in  
24 there was -- I don't know. Because the third  
25 part of that is that if he had received a full

Page 137

1 pardon. And I don't understand -- I don't know  
2 what -- I don't know. I can't answer that.  
3 Q. All right. Let's -- okay, let's take  
4 this -- this exhibit down.  
5 Okay. So, Senator Michaux, you  
6 testified on direct examination that the 1973  
7 bill got you what you were trying to achieve.  
8 And I just want to clarify. You might have  
9 gotten what you were trying to achieve in terms  
10 of not having to go to court to get a judge to  
11 sign off on the restoration of rights to vote.  
12 Is that -- is that correct?  
13 A. That's correct. Taking out all of  
14 the -- it took out what Joy really wanted, was  
15 the fact that since they were automatically  
16 taken away, they are now automatically  
17 restored. And you didn't have to go to the  
18 court, you know, to do that. Right.  
19 Q. All right. And let's -- I'm going to  
20 turn you back to the affidavit you prepared in  
21 this case, which is Defendants' Exhibit 1.  
22 Okay. And let's turn to paragraph 15  
23 of that affidavit.  
24 Okay. And in this paragraph 15, you're  
25 discussing your goals and Representative

COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
Senator Henry M. Michaux, Jr. on 06/24/2020

Page 138	Page 140
<p>1 Johnson's and Frye's goals in 1973 with respect 2 to the restoration of citizenship rights 3 including voting rights; is that -- is that 4 correct? 5 A. Yes. Uh-huh. 6 Q. Okay. And you say in the affidavit: 7 "I remember we wanted automatic restoration 8 applicable across the board." And you say 9 "across the board" included, "at the least, the 10 restoration of your citizenship rights after 11 you completed imprisonment." And you say: 12 "This was a priority for the North Carolina 13 NAACP and it was a priority for us. 14 And that's correct, right? 15 A. That's correct. 16 Q. Okay. And so your original aim, and 17 that of the NAACP, was to restore voting rights 18 automatically as soon as someone had 19 released -- was released from prison, 20 regardless of whether they had probation or 21 parole. Is that correct? 22 A. That's correct. 23 Q. Okay. And you testified on direct that 24 one of the problems with conditioning 25 restoration of voting rights on completion of</p>	<p>1 originally proposed in 1973, correct? 2 A. We didn't propose -- we didn't propose 3 that in the original bill, in the '73 original 4 bill. I don't think we did. No. 5 Q. Okay. 6 A. Joy -- you have to understand, Joy -- 7 no, that wasn't in the original bill. 8 Probation and parole was not in the original 9 bill. It was in the Committee Substitute. 10 Q. Okay. 11 A. It was in the Committee Substitute. 12 Q. All right. I'll -- 13 A. Yeah. 14 Q. I'll move on. So let's move on to 15 paragraph 17. 16 So you say in paragraph 17 of your 17 affidavit that the felony disenfranchisement 18 law was "designed to suppress African-American 19 voting power." 20 And you say in paragraph 18 of your 21 affidavit that what you were able -- what you 22 were able to achieve in 1973 was "to make the 23 system practiced in North Carolina somewhat 24 less discriminatory." Is that right? 25 A. That's correct.</p>
Page 139	Page 141
<p>1 probation or parole is that judges could extend 2 the probation or parole, including for reasons 3 like inability to pay fees. Is that correct? 4 A. That's correct. 5 Q. And so is that one of the reasons why 6 you would have preferred a bill that restored 7 citizenship rights after the completion of 8 imprisonment? 9 A. Yes. 10 Q. Okay. Let's turn to page 16 of your 11 affidavit. And you say there that you were 12 able to convince your colleagues -- and we're 13 talking about 1973 here -- that you were able 14 to convince your colleagues "to only go so far" 15 and that you will have to "compromise to 16 reinstate citizenship voting rights only after 17 completion of a sentence of parole or 18 probation." Is that right? 19 A. That's correct. 20 Q. And, similarly, on direct, you 21 testified that you reached a deal by throwing 22 in probation and parole, I think, is what you 23 said? 24 A. That's correct. Yes. 25 Q. And that deal was part of what you</p>	<p>1 Q. So you think you were able to fix some 2 of the worst parts of the law, but you weren't 3 able to fix them all. Is that -- is that 4 correct? 5 A. That's correct. 6 Q. Okay. So let's see. 7 Moving on. You testified on direct 8 that the automatic restoration of rights that 9 you were able to achieve in 1973 removed any 10 issues about having to pay a fee to go to 11 court, hire a lawyer, that sort of thing, 12 correct? 13 A. That's correct. 14 Q. Okay. But the 1973 bill, it didn't 15 remove issues with being able to pay fees 16 relating to completing probation or parole or 17 having your parole or probation extended 18 because you couldn't pay court supervision 19 fees, for example, right? 20 A. Right. That's correct. 21 Q. Okay. And, Senator Michaux, you were 22 asked some questions related to impediments to 23 disenfranchisement of African Americans in the 24 years since 1973, in practice? 25 A. Yes.</p>

**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.**  
**Senator Henry M. Michaux, Jr. on 06/24/2020**

Page 142	Page 144
<p>1 Q. You didn't attempt to comprehensively 2 describe all of the impediments that exist 3 today or that have existed since 1973, correct? 4 A. That's correct. 5 Q. And you would have no reason to dispute 6 that conditioning restoration of voting rights 7 on the payment of fees relating to completing 8 probation and parole disproportionately affects 9 African Americans even today. Is that right? 10 A. Yes, I would say that's correct. Yes. 11 Q. Okay. I just want to clear up one 12 thing about your testimony on direct. I think 13 there might have been some confusion about when 14 lawyers for the North Carolina NAACP first 15 spoke with you in connection with this 16 particular lawsuit, specifically. 17 So this lawsuit was originally filed in 18 November of 2019, which was eight months ago. 19 And, in fact, the lawyers for the -- for the 20 North Carolina NAACP spoke to you for the first 21 time in connection with this particular case 22 just a couple months ago, in May of 2020; is 23 that right? 24 A. Yes. Yes. 25 Q. We spoke to you -- the lawyers for the</p>	<p>1 cherishes the right to vote. Everybody 2 understands that people with the power of the 3 vote and with the right to vote have -- have 4 the right to make changes in their lives. 5 Everything is based on your being able to help 6 foment whatever changes in the law you wanted 7 to help you, not only yourself, but the rest of 8 your constituency, for the rest of your 9 community, for the rest of the country. 10 Voting -- voting is one of those 11 cherished things in which you feel as though 12 you have a -- you are a -- you are a 13 participant in directing the way that you live 14 your life in this country, or anywhere. I 15 mean, it's -- it's a foregone conclusion in 16 everybody's mind -- in my mind, in 17 particular -- that if you don't express that 18 right to vote, if you don't vote, you don't 19 have anything to complain about. And this is 20 one way of expressing your dissatisfaction or 21 your satisfaction with the way you live your 22 life. They say money -- they say "Money is the 23 mother's milk of politics." That's not true. 24 Voting is. 25 MS. THEODORE: Thank you very much,</p>
Page 143	Page 145
<p>1 North Carolina NAACP spoke to you shortly 2 before filing the summary judgment motion, not 3 the original lawsuit, not the original 4 complaint. Is that -- is that right? 5 A. I'm not sure about that. I know that I 6 talked -- that I've had several conversations 7 over a period of time about this and other 8 matters. And some were -- all of the -- a lot 9 of the other matters were all brought in about 10 the same time. 11 Q. Okay. 12 A. And I can't specifically say that 13 was -- that was a part of the thinking, yes, 14 but I can't say we specifically -- we 15 recognized it, that that was one of the things, 16 but I don't remember the full conversation, no. 17 Q. Okay. Senator Michaux, I just have one 18 final question, which is: Can you just talk a 19 little bit about the importance of the right to 20 vote, in general, for African Americans, 21 specifically, or just the importance of the 22 right to vote, and why you felt so strongly 23 about these issues? I know it's a big 24 question. 25 A. That is a big question. Everybody</p>	<p>1 Senator. That's all that -- that's all 2 that the plaintiffs have. 3 MR. RABINOVITZ: This is Brian 4 Rabinovitz, again, for the Legislative 5 Defendants. I would -- I don't have any 6 other questions. 7 And Representative and Senator Michaux, 8 I would just like to thank you very much 9 for your time today. You've been very 10 generous in giving us many hours out of 11 your morning, and I very much appreciate 12 that, and appreciate Professor Joyner's 13 work in setting this all up and helping 14 this go smoothly. So thank you very much. 15 THE WITNESS: No problem. 16 Ms VYSOTSKAYA: And for the Board of 17 Elections, we don't have any follow-up 18 questions. We very much appreciate 19 Representative Michaux' testimony today, 20 that somebody of that stature and 21 importance in North Carolina would dedicate 22 so much time to us this morning is great. 23 I appreciate it. 24 THE WITNESS: Thank you. 25 THE REPORTER: Okay. Conclude the</p>



**COMMUNITY SUCCESS INITIATIVE, ET AL. vs TIMOTHY K. MOORE, ET AL.  
 Senator Henry M. Michaux, Jr. on 06/24/2020**

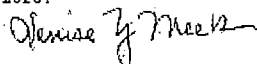
Page 146

1 record?  
 2 MS. VYSOTSKAYA: Yes, please. Thank  
 3 you.  
 4 Thank you, Madam Court Reporter. We  
 5 appreciate you hanging with us with the  
 6 technological issues.  
 7 MS. THEODORE: Plaintiffs would like a  
 8 copy.  
 9 MR. RABINOVITZ: And I would like a  
 10 copy for the Legislative Defendants.  
 11 MR. COX: The State Board Defendants as  
 12 well.  
 13 (Deposition concluded at 1:22 p.m.)  
 14 (Signature reserved.)  
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Page 148

1 ERRATA SHEET  
 2 CAPTION: Community Success Initiative, et al.  
 vs. Timothy K. Moore, et al.  
 3  
 4 JOB NO.: 298767  
 5  
 6 I, the undersigned, SENATOR HENRY M. MICHAUX,  
 JR., do hereby certify that I have read the foregoing  
 deposition, and that, to the best of my knowledge,  
 said deposition is true and accurate with the  
 exception of the following corrections:  
 7  
 8 PAGE LINE CORRECTION AND REASON THEREFOR  
 9  
 10  
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 24  
 25 Senator Henry M. Michaux, Jr. Date

Page 147

1 REPORTER'S CERTIFICATE  
 2  
 3 NORTH CAROLINA )  
 4 WAKE COUNTY )  
 5  
 6 I, Denise Y. Meek, a Court Reporter and  
 Notary Public in and for the State of North Carolina,  
 7 do hereby certify that prior to the commencement of  
 the examination, SENATOR HENRY M. MICHAUX, JR., was  
 8 duly remotely sworn by me to testify to the truth,  
 the whole truth, and nothing but the truth.  
 9  
 10 I DO FURTHER CERTIFY that the foregoing is a  
 verbatim transcript of the testimony as taken  
 stenographically by me at the time, place, and on the  
 11 date hereinbefore set forth, to the best of my  
 ability.  
 12  
 13 I DO FURTHER CERTIFY that I am neither a  
 relative nor employee nor attorney nor counsel of any  
 of the parties to this action, and that I am neither  
 14 a relative nor employee of such attorney or counsel  
 hereko, and that I am not financially interested in  
 15 the action.  
 16 IN WITNESS WHEREOF, I have hereto set my  
 hand this 8th day of June 2020.  
 17  
 18   
 19  
 20 DENISE Y. MEEK  
 Court Reporter/Notary Public  
 State of North Carolina  
 21  
 22 COMMISSION: 201519500202  
 EXPIRATION: July 8, 2020  
 23  
 24  
 25

25

# EXHIBIT J

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

19 CVS 15941

COMMUNITY SUCCESS INITIATIVE,  
et al.,

Plaintiffs,

v.

TIMOTHY K. MOORE, et al.,

Defendants.

**REQUEST FOR  
CLARIFICATION  
REGARDING  
IMPLEMENTATION OF  
INJUNCTION**

The North Carolina State Board of Elections and its members (State Board Defendants), provide additional information to the Court on its efforts to implement the Court's injunction of September 4, 2020, pursuant to the Court's direction to the State Board Defendants on August 19, 2021, and seek additional clarification on the implementation of the Court's orders.

The State Defendants' goal is to implement, as soon as possible, the Court's injunction in the manner in which the Court intended. Since this Court's oral ruling on August 19, the State Board has worked diligently with the North Carolina Department of Public Safety, other shareholders within State government, and Plaintiffs to (1) change the language on voter registration forms that will inform voters of their rights to register and vote and (2) identify the group of people who this Court intended to cover with the injunction and ensure that they are able to register to vote and vote. In working to find solutions, the State Board has identified several pathways, concerns, and solutions to both changing the language and identifying the affected group. There is no perfect pathway. Accordingly, the State Board requests this Court's guidance and assistance with determining which pathway best effectuates this Court's injunction.

## **I. The State Board Defendants' Efforts to Implement this Court's Injunction**

Following this Court's oral ruling on August 19 to implement certain changes to the voter registration forms immediately, on Friday, August 20, the State Board proposed incorporating this Court's comments into the language below:

(a) you are not currently serving a felony sentence, including probation, post-release supervision, or parole; or (b) you are serving felony probation, post-release supervision, or parole with only fines, fees, costs, or restitution as conditions (besides the other regular conditions of probation in G.S. 15A-1343(b)) and you know of no other reason that you remain on supervision.

The Court indicated during the August 20 hearing that this language appears to align with this Court's orders. However, since that time, Plaintiffs have requested that the Court order modification of this language in two ways.

First, Plaintiffs requested that the word "besides" be modified to "in addition to other." Pls' Br. at 2. The State Defendants' proposed language however says "besides the other regular conditions" not just "besides the regular conditions." Therefore, the State Defendants' proposal captures Plaintiffs' concern. Moreover, the State Defendants urge the Court to accept the "besides" formulation because it should resolve any confusion for a person who, for example, is on an extended term of probation for violating a regular condition but also has outstanding financial obligations that are not responsible for the extension (and therefore is not covered by the injunction).

Second, Plaintiffs have requested that in addition to a reference to regular conditions of probation, the proposed language be modified to include "or the required condition of post-release supervision in G.S. 15A-1368.4(b)." Pls' Br. at 2. The State Defendants' proposed language incorporates directly this Court's order which enjoins the State from preventing a person convicted of a felony from exercising their right to vote "if that person's only remaining

barrier to obtaining an ‘unconditional discharge,’ other than regular conditions of probation pursuant to N.C.G.S. § 15A-1343(b), is the payment of a monetary amount.” Sept. 4, 2020 Order, Part I-A. Moreover, the State Defendants do not believe that there are people who would fall into this category of post-release supervision—but is working to confirm this with DPS.<sup>1</sup> Given that it is unlikely for there to be people who fall into this category, the State Defendants believe that including language that applies to a null set in the voter registration form will only cause confusion for the person who is on post-release supervision and has to assess whether this injunction applies to them. Therefore, in the interest of clarity, the State Board requests that the Court not include language in the voter registration form that may not apply to anyone.

## **II. Administrative Considerations in the Implementation of this Court’s Orders**

While the State Defendants stand ready to implement the injunction clarified by this Court yesterday, the State Defendants would like to raise for the Court’s consideration certain practicalities that might make implementation of the injunction in this manner difficult for both the State and individual voters who might be beneficiaries of this Court’s actions.

There are significant administrative problems that raise questions about the manner in which the State Defendants can most effectively implement this Court’s injunction.

DPS cannot distinguish those on probation solely because of monetary conditions and those people who are placed on probation for other regular conditions in addition to monetary

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<sup>1</sup> Plaintiffs state that the State Board’s counsel “asserted for the first time” that the “Court’s injunction in fact doesn’t cover anyone on post-release supervision.” Pls’ Br. at 2 n.2. This is wrong. *See* State Bd. Defs’ Br. Opp’n Mot. for Summ. J 11 (“Likewise, a person who fails to pay an obligation while on post-release supervision does not have their supervision period extended. Instead, violating conditions of post-release supervision leads to re-imprisonment for a period up to the remainder of the prison term imposed at sentencing. *Id.* § 15A-1368.3(c). If a person is then re-released into post-release supervision, they serve the time remaining on their original supervision period. *Id.* § 15A-1368.3(c)(1).”).

conditions, and, if the Court accepts Plaintiffs' proposal, to isolate those people who are on post-release supervision only for monetary conditions (in addition to the required condition of post-release supervision). The judgment and administrative records and inputs into DPS's system do not account for this specific scenario.

Because DPS cannot isolate only those voters who are on probation or post-release supervision only for monetary conditions, the State Board will have to implement some kind of workaround based on the information DPS does have available.

The first option, which the State Defendants previewed to the Court at the hearing on Friday could potentially be incongruous with what the State Defendants understand the Court's intention to be, by requiring a process of establishing the voter's eligibility to vote, due to the lack of information available to verify all voters who may be covered by the injunction. This first option requires no further information from DPS, but requires the State Board to inform all individuals on probation and post-release supervision that there may be a subset of them who would be beneficiaries of the injunction of their eligibility and encourage them to petition their respective county boards for the ability to register and vote. As the State Defendants explained to the Court on Friday, this pathway is difficult to administer.

The second option requires DPS to identify for the State Board all people on probation whose terms include only monetary conditions along with the other regular conditions of probation.<sup>2</sup> The list that DPS provides will identify the people who have been coded in the

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<sup>2</sup> And, if the Court accepts the Plaintiffs' proposal, all people on post-release supervision whose terms include only monetary obligations with the required conditions. Just as with the conditions of probation, DPS has been working quickly to determine whether it will be able to identify individuals who are on post-release supervision and who are subject to monetary conditions in addition to the required condition of post-release supervision in § 15A-1368.4(b), should this Court grant Plaintiffs' request for modification. DPS is continuing to work through

system as having any regular condition of probation listed in § 15A-1343(b) and monetary conditions (fines, fees, costs, or restitution).<sup>3</sup> The State Board would then inform county boards to not reject the registrations and ballots of individuals on this list.

This list will be over-inclusive in two ways.

First, it will likely include people who are serving probation not *just* because of their monetary obligations—and, accordingly, people whom this Court’s injunction does not cover.

Second, the list may include some individuals who are subject to some special conditions because of the way in which sentencing laws have changed over the years. Over time, a number of conditions that used to be special conditions have been re-codified as regular conditions. For example, the regular condition of not using, possessing, or controlling any illegal drug or controlled substance only became a regular condition after December 1, 2009—until then, it was a special condition. Similarly, the regular condition of submitting to drug screening when instructed by the person’s probation officer became a regular condition after December 1, 2011—until then, it was a special condition. Therefore, when DPS runs a search for anyone who is not coded with one of the special conditions, it will capture everyone who is subject to conditions that are *currently categorized* as regular conditions—regardless of whether the condition was a special condition at the time of that person’s sentencing. This list then, may include people who were sentenced to a condition that was categorized as special at the time of sentencing (*e.g.*, drug screening) but is no longer categorized as special. These people will not

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the evening to try to confirm its capabilities by the time of the hearing tomorrow morning.

<sup>3</sup> This list will also include those individuals who are currently living in North Carolina but who are currently under community corrections resulting from a sentence from another state who are subject to conditions that are the same as any of North Carolina’s regular conditions and who are subject to other monetary obligations like fines, fees, costs, and restitution.

be prevented from registering to vote and voting—even though the Court’s injunction does not technically apply to them.

These two over-inclusive categories raise two very serious issues regarding elections administration. The State Board is the body responsible for certifying elections. If voters who do not fall within this Court’s injunction are not restricted from registering to vote and voting, the State Board is concerned that, in the future, individuals will challenge election results in tight races on the basis that the races were decided by ineligible voters. The over-inclusive list will also make it more difficult for the State Board to determine the eligibility of voters and resolve voter challenges and other protests—without a clear indication of whether voters are properly covered by the injunction or not, the State Board will have no ability to resolve questions about voter eligibility.

In addition, these over-inclusive categories also raise a very serious issue for individuals who have monetary obligations and are serving probation or post-release supervision for reasons other than just those obligations. The State Board could not prevent them from registering and voting—even when this Court’s injunction does not technically cover them.

As the State Defendants told this Court on Friday when it previewed these concerns, the State Defendants do not believe that they should take actions that could allow a person who is ineligible to register to vote and vote. Currently, individuals who are ineligible to register due to a State felony conviction are prevented from doing so by the State Board’s automated registration check. The State Board is obligated to ensure that only eligible voters cast a ballot. Therefore, should the Court order the State Board to follow this approach, the State Defendants would urge the Court to incorporate into the remedy provisions a method for the State Board to properly identify the eligible voting population.



### **III. Timing Considerations in the Implementation of this Court's Orders**

As discussed above, time is of the essence. Essentially, the State Board needs this Court's input by Monday, August 23, 2021, so that the State Board can properly implement the new language.

North Carolina will hold municipal elections in multiple counties on October 5, 2021. One-stop early voting begins for the October municipal elections on September 16, 2021, and the statutory voter registration deadline for that election is September 10, 2021.

North Carolina will hold municipal elections in multiple counties on November 2, 2021. One-stop early voting begins for the November municipal elections on October 14, 2021, and the statutory voter registration deadline October 8, 2021.

In order for the State Board to implement new language on the various forms used to conduct registration and the voting process, and for those updated forms to be used in the upcoming municipal elections, the State Board must initiate the process to update that language immediately. Administration of voter check in at voting sites is conducted largely through electronic databases and information systems. In particular, the State and county boards of elections use the State Election Information Management System (SEIMS), which is a networked, computerized system that every election official and poll worker uses to conduct the voting process at the nearly 3,000 voting locations throughout this state.

To use one-stop early voting as an example, when a voter checks in to vote, a poll worker locates that person's information in SEIMS and, from the SEIMS system, the poll worker prints a One-Stop Application Form, which serves as the voter's affirmation that they are eligible to vote in the election. A sample of such a form was entered into evidence at trial as SDX-35. The form is prepopulated with the voter's information, drawing from the data in SEIMS.

The process of generating this form through SEIMS is the result of computer coding, which, in basic terms, is written into the SEIMS system and which instructs the system to generate all of the contents of the form in the exact way that form will appear when printed.

Changes to election administrative forms must be done well in advance of actual voting, because software developers must code those changes into the SEIMS system, test it (to ensure it operates as intended and does not create unintended consequences in the system), and implement the coding changes with a systemwide update. Generally, changes to the SEIMS system cannot be made while voting is occurring, because it runs the risk of interfering with the voting process which, again, is being conducted using the SEIMS system.

For comparison purposes, last fall, after the language was finalized it took the State Board approximately a month to implement the changes to forms in SEIMS following this Court's Injunction.

Accordingly, in addition to being ordered to initiate changes in time, as an administrative matter, the State Board must initiate the implementation of the Court's instructions immediately, in order for those changes to appear on voters' forms in the upcoming municipal elections.

Therefore, the State Defendants respectfully request guidance from the Court as soon as possible to determine how best to fully comply with this Court's orders.

This the 22nd day of August, 2021.

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Defendants*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email and was addressed to the following counsel:

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This the 22nd day of August, 2021.

/s/ Paul M. Cox  
Paul M. Cox  
Special Deputy Attorney General